

SERIOUS CRIME ACT 2015

EXPLANATORY NOTES

TERRITORIAL EXTENT

Part 6: Miscellaneous and General

Commentary on Sections

Section 82: Approval of draft decisions under Article 352 of TFEU relating to serious crime

327. This section provides, for the purposes of section 8 of the European Union Act 2011, for the approval of two draft Decisions of the Council of the European Union under Article 352 of the Treaty on the Functioning of the European Union (“TFEU”).
328. Section 8 of the European Union Act 2011 sets out that a Minister of the Crown may not support an Article 352 Decision unless one of subsections (3) to (5) is complied with in relation to the draft Decision. Subsection (3) is complied with if the draft Decision is approved by Act of Parliament. Neither subsection (4) (urgent approval) nor (5) (exempt purposes) is applicable to the draft Decisions which are the subject of this section. Therefore, an Act of Parliament is required before the UK may vote in favour of either Decision in the Council of the European Union. Article 352 of the TFEU is a legal base for measures that are in line with the objectives set out in the Treaties, but for which the Treaties have not explicitly provided the necessary powers. Article 352 requires unanimity in the Council of the European Council and the consent of the European Parliament.
329. *Subsection (2)(a)* provides for the approval of the draft Decision to repeal Council Decision [2007/124/EC](#), Euratom¹ (“the 2007 Decision”). The 2007 Decision established, for the period 2007 to 2013, an EU funding programme to protect people and critical infrastructure against terrorist attacks and other security-related incidents. As the period covered by this programme has now expired, the 2007 Decision is due to be repealed; it is the draft Council Decision² effecting that repeal which is the subject of subsection (2)(a). The funding programme provided for by the 2007 Decision has been replaced by the Internal Security Fund (Police)³. The Internal Security Fund (Police) will continue to fund many of the activities foreseen by the 2007 Decision including the protection of people and critical infrastructure and the management of security-related risks and crises. The UK has not opted in to the Internal Security Fund (Police) measure pre-adoption; no decision has been taken by the Government on whether to do so post-adoption.
330. The Commission published the draft Council Decision on 8 September 2013 (document number 15187/13). The European Parliament gave its consent to the repeal on 4

¹ [http://www.biicl.org/files/4276_decision_2007-124-](http://www.biicl.org/files/4276_decision_2007-124-ec_est_spec_prog_on_prevention_preparedness_and_consequence_mgmt_of_terrorism.pdf)

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² <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2015187%202013%20INIT>

³ Regulation (EU) No 513/2014 of the European Parliament and of the Council of 16 April 2014 http://ec.europa.eu/dgs/home-affairs/financing/fundings/pdf/overview/regulation_eu_no_5132014_of_the_european_parliament_and_of_the_council_en.pdf

*These notes refer to the Serious Crime Act 2015 (c.9)
which received Royal Assent on 3rd March 2015*

December 2013. The next step will be for the Council to act unanimously to adopt the text. The Council will only vote after all Member States have completed their domestic procedures and are in a position to vote in favour of repeal.

331. The House of Commons European Scrutiny Committee considered this draft Decision in their 17th, 23rd and 33rd Reports of Session 2013-14. The draft Decision has now cleared scrutiny. The House of Lords European Union Committee cleared the draft Decision in their report *Progress of Scrutiny* 5th Edition Session 2013-14.
332. *Subsection (2)(b)* provides for the approval of the draft Decision of the Council of the European Union relating to the “Pericles 2020” programme. Council Regulation 1338/2001 established a harmonised framework for protecting the euro against counterfeiting. The effects of that Regulation were extended to those Member States which had not adopted the euro by Council Regulation 1339/2001. Those Regulations were supplemented by Council Decision 2001/923, which established a detailed action programme for the protection of the Euro against counterfeiting (“the Pericles Programme”). Council Decision 2001/924 extended the effect of Decision 2001/923 to those Member States that had not adopted the euro. In 2011, the European Commission concluded that the Pericles Programme should be renewed. The renewed programme (“the Pericles 2020 programme”) runs from 1 January 2014 to 31 December 2020 and is established by Council Regulation 331/2014⁴. The legal basis for this Regulation is Article 133 of the TFEU. This provides that “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall lay down the measures necessary for the use of the euro as the single currency”. In the same way as the effect of Council Regulation 1338/2001 and Council Decision 2001/923 was extended to those Member States which had not adopted the Euro, the effect of Council Regulation 331/2014 will be extended to those same Member States. That will be done by way of a measure the legal basis for which is Article 352 of the TFEU. The Council agreed the text of the draft Regulation on 29 November 2013 (document number 16616/13)⁵. The European Parliament gave its consent to the draft Regulation on 12 March 2014. The Council will vote on the final Regulation by unanimity once all Member States have completed their domestic procedures and are in a position to vote in favour.
333. The House of Commons European Scrutiny Committee considered the draft Regulation in its 56th Report of Session 2010-12, 2nd Report of Session 2012-13 and 1st Report of Session 2014-15. The draft Regulation has now cleared scrutiny by that Committee. The House of Lords European Union Committee has also cleared the document⁶.

4 <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014R0331&qid=1399564678498&from=EN>

5 http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cls/cons_cons%282013%2916616_/cons_cons%282013%2916616_en.pdf

6 *Progress of Scrutiny* 1st Edition Session 2012-13