UK’s 2014 Opt-Out Decision (‘Protocol 36’)
Written Evidence

Contents
David Anderson QC, Independent Reviewer of Terrorism Legislation – Written evidence..... 1
Association of Chief Police Officers – Written evidence ............................................................ 5
Association of Chief Police Officers in Scotland – Written evidence........................................ 32
Bar Council – Written evidence .................................................................................................. 36
Court of Justice of the European Union – Written evidence...................................................... 50
Crown Office and Procurator Fiscal Service – Written evidence ........................................... 54
Europol – Written evidence ........................................................................................................ 59
Faculty of Advocates – Written evidence .................................................................................. 69
Fair Trials International – Written evidence ............................................................................. 74
Martin Howe QC – Written evidence ........................................................................................ 90
William Hughes, former Director General, SOCA – Written evidence ................................... 94
JUSTICE – Written evidence ........................................................................................................ 98
Justice Across Borders – Written evidence .............................................................................. 108
Mike Kennedy, former President of Eurojust and former Chief Operating Officer at the Crown Prosecution Service Officer – Written evidence ......................................................... 157
Lynda Lacy – Written evidence ................................................................................................ 164
Law Society of England and Wales – Written evidence ............................................................ 170
Law Society of Scotland – Written evidence ............................................................................. 178
Liberal Democrat UK MEP Group – Written evidence ............................................................ 185
Northern Ireland Executive – Written evidence ........................................................................ 192
Dr Maria O’Neill, University of Abertay Dundee – Written evidence ....................................... 193
Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council – Written evidence ................................................................................................................................... 200
The Police Foundation – Written evidence ........................................................................................................ 204
Police Service of Northern Ireland – Written evidence .................................................................................. 211
Scottish Government – Written evidence ......................................................................................................... 239
UK Government – Written evidence ................................................................................................................. 240
United Kingdom Independence Party – Written evidence ................................................................................ 256
David Anderson QC, Independent Reviewer of Terrorism Legislation –Written evidence

My interest in the opt-out decision

1. The principal statutory functions of the Independent Reviewer are to review the operation of UK anti-terrorism legislation and to produce three annual reports which are submitted to the Home Secretary (or in one case the Treasury) and laid before Parliament. I took over the role from Lord Carlile in 2011, and combine it with practice as a Q.C. from London Chambers. For some 25 years I have specialised in cases involving European Law. I have also taught EU law at King’s College London, where I remain a Visiting Professor, and sit as a Recorder of the Crown Court.

2. I cannot improve on the account of the legal background to the opt-out decision that is given by Hinarejos, Spencer and Peers in the CELS Working Paper of September 2012, with which the Committee will be familiar. Nor do I enter into the political debate as to the desirability or otherwise of repatriating powers from the EU. My concerns relating to this topic are with the legal and operational aspects of the fight against terrorism. I expect to comment in my Terrorism Acts report of summer 2013 on whether there is a risk that the exercise of the opt-out could impede the effectiveness of that fight.

3. Any such comments will be informed by the investigation and conclusions of this Committee. I do not seek to replicate or pre-empt in any way the Committee’s work. In order to inform myself more fully as to the issues, I have however discussed the possible implications of the opt-out for counter-terrorism with police, agencies and OSCT. I have also had helpful discussions in Brussels with the EU Counter-Terrorism Co-ordinator (Gilles de Kerkhove), a member of the cabinet of Commissioner Malmström, senior officials of the Commission and Council and MEPs from each of the major UK parties, and in The Hague with representatives of Eurojust and Europol.

4. Those discussions were confidential, and are unlikely in any event to have ranged beyond the scope of evidence that this Committee will itself receive at first hand from similar sources. Nonetheless, and in case it is of value to the Committee, I set out for what it may be worth some of the initial impressions that I have formed.

The UK’s leading role in EU counter-terrorism law and practice

5. I have been struck by the extent to which – contrary to the tendency of the UK media to depict the UK as a marginalised influence in European affairs – the UK is seen within the EU as a key player in the field of police and criminal justice, specifically (though not exclusively) where anti-terrorism is concerned.

6. For example:

   (a) The mandatory requirements concerning jurisdiction and terrorist offences in 2002/475/JHA, as amended by 2008/919/JHA, have the effect of requiring all
Member States to introduce laws equivalent to some of those established in the UK’s Terrorism Acts 2000 and 2006 (albeit that UK influence was in part diffused via the Council of Europe’s 2005 Convention on the Prevention of Terrorism).

(b) The EU Action Plan on combating terrorism, first drafted during the UK presidency in the second half of 2005, is closely modelled on the UK’s own CONTEST strategy. An indicator of the high degree of UK influence may be seen from the fact that the four elements of the CONTEST strategy, which governs the entirety of UK counter-terrorism policy (Pursue, Prevent, Protect, Prepare) were translated into four equivalent and only slightly less alliterative EU elements: Pursue, Prevent, Protect and Respond.

(c) The UK was described to me by the Commission as “very active” in developing EU policies for counter-radicalisation both internally and in third countries; for aviation security; and for the risk and threat analysis. I was told that if the UK supports a Commission initiative, that initiative is immediately given credibility; and that other large Member States have been won over in the EU setting to the UK approach, for example as regards the assessment of risk.

(d) It was explained to me at the Council that the UK has been exceptionally useful in managing the relationship between the USA and the EU. UK influence has been decisive in the negotiation of a number of specific measures, including the EU-US Agreements on Passenger Name Records and Terrorist Finance Tracking Provisions (TFTP). It has also enabled the EU more effectively to defend its citizens’ interests on domestic US issues such as the manner in which the National Defense Authorization Act is interpreted by the US Administration.

(e) Europol, up to 10% of whose cases concern counter-terrorism, has developed under UK leadership as an effective information hub.

7. This degree of influence of course did not happen by chance, but because of a desire on the part of the UK to encourage other Member States to take the threat of terrorism as seriously as it is taken here. While international terrorism retains a high public profile in countries affected by it in the recent past (e.g. UK, Spain, the Netherlands, Denmark), it is almost invisible as a public concern in some other countries, for example in Eastern Europe. Bilateral contacts continue, and are useful. Equally, however, it is evident that EU mechanisms have been productive both as a method of spreading UK thinking and good practice in the field of counter-terrorism across the continent and beyond, and in defending the interests of the UK and other Member States in dealings with third countries.

Measures of practical utility

8. The police will no doubt identify to the Committee those measures into which they consider it necessary or desirable to opt back in; and the Committee will test their assertions.

9. My own confidential briefings have indicated that there are a number of measures relevant to counter-terrorism that are considered by SO15 to be essential tools. These are not, of course, limited to terrorism-specific measures: provisions of a
general nature relating to such matters as joint investigation teams, information exchange and the surrender of suspects all have potential application in terrorism cases. Some are Schengen-related, with the result that unanimous consent of the Member States will be required should the UK seek to rejoin them after an opt-out.

Possible consequences of exercising the opt-out

10. The opt-out granted to the United Kingdom by Article 10(4) of Protocol 36 is of course a Treaty right, as to whose exercise the United Kingdom enjoys an absolute discretion. Everyone I spoke to in Brussels was punctilious in acknowledging this. Some were disappointed that a Member State which has played such a significant role in the development of police and criminal justice measures, especially in the counter-terrorism context, should be minded to exercise an opt-out. This was generally put down to politics. I also detected concern as to the practicalities of negotiating alternative measures (particularly to the EAW, should that not feature on the opt-in list).

11. So far as the feasibility of opting to rejoin selected measures is concerned, the picture seems a little cloudy. Not in doubt is the obligation on the EU institutions under Article 10(5) to ensure the “widest possible measure of participation” of the United Kingdom. That is, however, subject to the practical operability of the various parts of the acquis not being seriously affected, and their coherence being respected. In an apparent reference to these provisos, Commissioner Malmström was recently quoted as saying that “on each of these opt-ins, there will have to be a negotiation” and that “of these 136 laws, many are very connected”. The UK could be pressurised, in other words, to rejoin some measures it disagreed with in order to retain those it considered valuable. Furthermore, in the case of Schengen measures, it was suggested to me by those experienced in Brussels politics that the requirement of unanimous consent by the Member States may result in individual Member States seeking to impose conditions as the price for their consent.

12. I cannot predict how easy or difficult the negotiations might be. Indeed it is difficult to see how anyone could do so, before the UK’s opt-in list has been prepared. A number of views were expressed to me in Brussels. One Commission official told me: “We should welcome the UK to whatever it wants to come back to. It makes a serious contribution.” A senior figure observed that “it won’t be easy for the UK, but you generally get what you want.” One referred to the supposed British tendency to “want to eat a la carte but pay the price of the menu”. Several mentioned the possible negative impact of perceived British intransigence in related or even unrelated fields: one declared that “patience is wearing thin”. MEPs predicted what one called “a messy process”. Ultimately, as it was put to me by a Council official, “It will depend on choices that are made. Presumably British colleagues will not be stupid in those choices.”

Conclusion

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1Financial Times, 9 December 2012.
2 This can be strongly felt and expressed: see Commissioner Reding’s scathing reference to the UK’s supposed “empty chair policy when it comes to justice and fundamental rights issues” in her speech to the Fundamental Rights Conference, 6 December 2012: http://europa.eu/rapid/press-release_SPEECH-12-918_en.htm?locale=en.
13. My only concerns as Independent Reviewer are that the UK should not put at risk its ability to rely on such pre-Lisbon measures as are of genuine assistance in the fight against terrorism and, more broadly, that it should not diminish the beneficial influence over other countries’ approach to counter-terrorism that it has earned through the EU over the years.

14. I look forward to assessing these risks in the future, with the assistance of the Committee’s report.

14 December 2012
1. PURPOSE / RECOMMENDATIONS

1.1 Purpose of Paper

1.1.1 This paper is written in response to the call for evidence from the House of Lords Select Committee on the European Union in consideration of the 2014 opt-out decision under Protocol 36 of the Treaty of Lisbon.

1.1.2 Many of the questions contained within the call for evidence are properly for consideration by the legislature or the judiciary; in preparing this paper, ACPO is only able to give a view on operational policing matters and how they may be affected by the opt-out decision for each of the Third Pillar Measures (TPMs).

1.1.3 As such the purpose of this paper is to determine which of the TPMs ACPO should recommend that the UK opt back into from a policing and community safety perspective. It should be noted that ACPO’s analysis has concentrated on those measures that impact directly on policing and it has not considered in full the advantages and disadvantages of opting back into measures which do not have such impact.

1.2 Recommendations

1.2.1 ACPO:

- Recommends that 13 separate TPMs are opted back into.
- Recommends that 12 TPMs should not be opted back into
- Recommends above all else, that the EAW be opted back into under the same arrangements that are currently in place.

2. BACKGROUND

2.1 The Opt Out Decision

2.1.1 ACPO recognise that arguments pertaining to police operational efficiency and effectiveness and will be important in influencing decision-making but on their own may not be the determining factor. However it is important that appropriate weight is given the impact of changes on policing and community safety. From this stance, ACPO seek to give clarity about the relative priority attached to each of the measures affected and to proffer arguments about their importance supported by practical evidence.

2.2 Assessment Methodology

2.2.1 The assessment has been undertaken by a small team led by Commander Allan Gibson, ACPO lead for Extradition and Mutual Legal Assistance.

2.2.2 The assessment approach has comprised:
• Identifying the lead ACPO Business Area and subject matter expert for each of the TPMs impacting on UK policing.
• Circulation of a standard assessment questionnaire to subject matter experts.
• Collation and analysis of the returned questionnaires.
• Liaison and information sharing with officials partner agencies.
• Stakeholder meetings to discuss emerging findings and a draft paper involving representatives from: ACPO, NPIA, SOCA, Home Office, Ministry of Justice, CPS, CELS

3 The Third Pillar Measures (TPMs)

3.1 Categorising the TPMs

3.1.1 As of the 1st January 2012, there were 133 TPMs captured within the remit of the opt-out decision. The number has changed over the course of the year as some of the measures are repealed and this reduction will continue right up to December 2014 but for ease we will retain this as the original figure.

3.1.2 The repeal process needs to be understood as it is important for a number of measures – not least the many measures concerning mutual legal assistance (MLA). The opt-out clause only applies to measures that came into force before the signing of the Lisbon Treaty. However, since that date, EU law has not stood still and more measures have been signed. The post-Lisbon measures that HMG signed into are binding on the UK. In the cases where a post-Lisbon measure takes over from a TPM, the TPM ceases to exist. It is by the process that the 133 TPMs are being reduced in number. As such the final list is likely to end up being between 100 and 120 measures.

3.1.3 Of the 133 measures, not all are concerned with law enforcement. Some relate to judicial matters, some to legislative and some are a mix. 108 measures have been deemed to be concerned with law enforcement and have been assessed in this paper.

3.2 Prioritising the TPMs

3.2.1 Each of the 108 TPMs that relate to law enforcement have been considered in depth and the assessment of relevance to UK policing for each of them is shown at Appendix B.

3.2.2 From a UK policing perspective, the assessment has categorised the 108 into five different categories as follows:

• TPMs that it is vital that we opt back into - there are 13 of these
• TPMs that we should opt back into - there are 16 of these
• TPMs that we need not opt back into but if we did they would have no practical effect on UK policing (and as such we hold no view on them) - there are 55 of these
• TPMs that are not in the interest of UK policing to opt back into - there are 12 of these
TPMs that have been replaced by post Lisbon measures or are likely to be so before December 2014 - there are 12 of these

3.2.3 The 13 TPMs identified as vital by the assessment are:

- Convention implementing the Schengen Agreement of 1985 (SIS)
- 2002/187/JHA (Eurojust)
- 2002/465/JHA (Joint Investigation Teams)
- 2002/584/JHA (The European Arrest Warrant)
- 2007/533/JHA (SIS)
- 2008/675/JHA (Exchange of criminal records)
- 2009/315/JHA (Exchange of criminal records)
- 2009/371/JHA (Europol)
- 2009/934/JHA (Eurojust/Europol)
- 2009/935/JHA (Eurojust/Europol)
- 2009/948/JHA (Eurojust/Europol)
- 2009/968/JHA (Eurojust/Europol)
- 2008/977/JHA (Data protection)

3.2.4 Each of the 13 TPMs that have been deemed vital to UK policing will now be covered in more detail.

4 The Vital TPMs

4.1 As described ante there are 13 TPMs that UK policing feels that it is vital that we opt back into. We shall consider each of these in turn.

4.2 European Arrest Warrant

4.2.1 The assessment process has confirmed that EAW is the most important of all the measures.

4.2.2 Most of the stakeholders consulted believe that opting out of this and relying on alternative arrangements would result in fewer extraditions, longer delays, higher costs, more offenders evading justice and increased risk to public safety. That said, extradition did exist before 2004 and so it could operate without it – as it does with non-EU states.

4.2.3 The EAW has been in operation for eight years and has now become a mainstream tool. In the last year prior to the introduction of the EAW (2003), the UK received a total of 114 extradition requests worldwide and surrendered 55 individuals; in the same year the UK made 87 extradition requests to other countries across the globe and 64 people were returned. In 2010/11 the UK received 5,382 EAW requests and made 221 EAW requests to other EU states. The UK surrendered 1,149 individuals (approximately 7% of which were UK nationals, the other 93% being fugitives to the UK). The UK had 93 people surrendered to it.

4.2.4 These trends in extradition reflect the increasing international patterns of crime and offending. Open borders across Europe, free movement of EU citizens, low cost air
travel, cheap telecommunications, the internet and the expansion of criminal networks across national boundaries are all contributory factors to the growth in extradition requests. These are irreversible changes which need to be matched by increasing flexibility on the part of European law enforcement and criminal justice agencies.

4.2.5 Further evidence of these changes is to be found in data concerning arrests. Recent data gathered by the MPS in the first quarter of 2012 showed that of 61,939 people arrested in London, 8,089 were nationals from EU countries (13%) and 9,358 were foreign nationals from outside the EU (15%). The presence of fugitives from justice fleeing to the UK is a significant public safety issue. In 2011/12 the MPS received 50 EAWs for homicide, 20 for rape, and 90 for robbery. Each of these cases represents a person who is wanted for a serious crime who fled to the UK. There is strong evidence to show that foreign criminals who come to UK continue to offend when in the UK. There is a real risk that opting out of the EAW and relying on less effective extradition arrangements could have the effect of turning the UK into a ‘safe haven’ for Europe’s criminals.

4.2.6 The EAW is an efficient system, built upon mutual recognition of criminal justice systems between member states and an obligation to comply with a properly constructed warrant. Barriers which previously existed have been removed. The nationality of the person sought can no longer be a barrier to affecting an extradition request. Under the previous arrangements many European states, such as Germany, France and Poland, did not allow their nationals to be extradited to stand trial and required them to be tried in their home state. On this point, it should be noted that some non-EU states still have this rule.

4.2.7 Prior to the introduction of the EAW, extradition between European states where it did occur could, and often would, take many months in uncontested cases and many years in contested cases. EAW data from the Commission to the European Parliament show that across the EU it takes an average of 17 days to surrender a wanted person in cases with consent and 48 days in non-consensual cases.

**Pre-EAW Example:**
On 4 November 1995 Rachid Ramda, an Algerian national, was arrested in the UK in connection with a terrorist attack on the Paris transport system. France sought extradition from the UK. The legal process was protracted and it was not until 2005 that his extradition was finally completed. Throughout this time he was detained in British prisons. He was convicted in France and sentenced in March 2006 to ten years imprisonment.

**Post-EAW Example:**
Hussein Osman, a naturalised British citizen born in Ethiopia, was identified as a suspect for the failed bomb attack at Shepherd Bush Tube Station on 21 July 2005. The UK sought his extradition under the relatively new EAW arrangements. His extradition was completed in September 2005. On 9 July 2007 Hussain Osman was found guilty at Woolwich Crown Court of conspiracy to murder and sentenced to a minimum of 40 years imprisonment.
Contrast these with Abu Hamza. Fourteen years after his arrest on behalf of the USA (under legal conditions largely identical to the 1957 Treaty) he was finally extradited to the USA to face terrorism charges there.

These are not isolated examples – numerous others could be cited.

The EAW is not a perfect system and the position of ACPO has been to support proposals for change such as a proportionality clause to prevent member states seeking the extradition of individuals in relatively trivial cases. On the question of British nationals being detained for long periods in European prisons (e.g. the Andrew Symeou case, detained in Greece for 2 years in connection with a manslaughter allegation and ultimately acquitted), ACPO has supported proposals to affect change, such as the introduction of the European Supervision Order (ESO), this requires member states to create a mechanism by which their criminal justice systems can supervise each other’s suspects in their home countries whilst released on bail. The ESO is itself a TPM although a criminal justice rather than law enforcement measure. Member states were required to implement the ESO by 1 December 2012 although the UK has not achieved this. ACPO’s position has been that it would like to see improvements to the EAW system but these can be best achieved by remaining within and lobbying for change. Overall the benefits of the EAW to the UK greatly exceed the problems that are experienced in a small number of cases.

The EAW is a cost-efficient measure for a number of reasons. Firstly, it is a standardised system that is relatively simple and easy to operate. It has removed the previous complexity that arose from having to understand different bilateral arrangements. This has led to EAW work becoming mainstream, capable of being dealt with by non-specialist police officers and lawyers. Processes are quicker and move through the courts with less difficulty. This reduces the cost of having to detain suspects for extended periods in UK prisons at British taxpayers’ expense. In contrast, extradition to Part II countries under the Extradition Act 2003 continues to be complex, expensive and slow as was evident in the recent Abu Hamza extradition to the United States.

Added to all of this is the cost to the public purse. If we relied upon a 1957-type mechanism, then we would be committing ourselves to footing the legal bill for extradition processes that go on for years and cost hundreds of thousands of pounds. The public and the judiciary are frustrated that the extradition of terrorists is often delayed for years. A return to the 1957 process could make this long drawn-out process the norm. That may not have been such a problem twenty or thirty years ago when criminals rarely crossed borders. Nowadays that is routine.

It is not just foreign criminals who would sit for years in UK jails. UK court cases would stall for many years as we waited to get our fugitives back, robbing their victims of the chance for justice to be served. To expect witnesses to wait for long periods before a suspect could be returned to the UK to face trial would be a gigantic step backwards.
Lastly, but by no means least there is the benefit to public safety in the UK. Where there are foreign criminals in the UK who are wanted abroad, we want to extradite them as soon as possible; a burglar in France is a burglar in England: the EAW allows us to do this. Without it, we would not only have them on our soil for longer but the UK would be likely to be seen as a safe haven for EU criminals, much as Spain used to be for British fugitives.

The view therefore of ACPO is simple. The EAW works very effectively and increases the safety of the UK public. It is for this reason that ACPO strongly supports the EAW.

Schengen Information System (SIS)

Following on naturally from the EAW is SIS, which relies heavily on the EAW.

In total there are 23 TPMs that relate to the Schengen Information System – known as SIS I and SIS II for the newest version. That said, only two of these are actually vital with the rest (save for 2000/586/JHA which is in the ‘should’ group) being statements of intent, old measures or matters that do not relate to UK policing.

SIS II is an EU-wide, IT enabled, business change programme that will enable all participating States to share real-time information on persons and objects of interest to law enforcement via a series of alerts. These alerts will be made available via the national police system, in the UK’s case this will be the Police National Computer (PNC). The SIS II alert types (identified by their article number in the SIS II legal basis) are as follows:-

- Article 26: Alerts for persons wanted for arrest for extradition purposes, for whom a warrant has been issued
- Article 32: Alerts for missing persons who need to be placed under police protection or in a place of safety, including minors and adults at risk
- Article 34: Alerts for witnesses, absconders, or subjects of criminal judgements to appear before the judicial authorities
- Article 36: Alerts relating to people or vehicles requiring specific checks or discreet surveillance
- Article 38: Alerts relating to objects that are misappropriated, lost, stolen and which may be sought for the purposes of seizure or for use as evidence (e.g. firearms, passports etc.)

Easy access to this information will enable the UK to exchange information across Europe in real time in order to fight cross border crime and rapidly repatriate UK criminals that have fled to other EU countries. In the course of their day-to-day duties, SIS II will aid law enforcement officers by providing them with :-

- Routine and real-time information from participating countries about wanted persons, missing persons, lost and stolen ID cards, travel documents and lost and stolen vehicles. This information is shared in the form of alerts.
- Information about people and objects whose movement is of interest to foreign law enforcement officers.
• Warning markers if a person is potentially armed, violent or dangerous.
• A simple and already standard means of accessing this information via the PNC.
• A simple and standardised means of sending alert information via the PNC to other SIS II users in Member States.
• A single point of contact - the SIRENE (Supplementary Information Request at the point of National Entry) Bureau – for liaising with other participating countries and obtaining further information (sits within the Serious and Organised Crime Agency).

4.3.5 The initial benefit of joining SIS II is that for the first time it will provide UK policing agencies with real time access to information (via SIS II alerts). The UK will also have the ability to place alerts on the system, extending the reach of UK policing into Europe in a far more practical and immediate way than has ever been possible before. SIS II will deliver several key strategic benefits :-

• Reduced criminality – particularly via the ability to screen wanted criminals at border controls.
• Greater identity assurance and protection at the border.
• Improved public protection.
• Improved judicial and police cooperation across the Schengen Area.

4.3.6 In addition to the above strategic benefits, the practical day to day benefits to the UK can be summarised as follows:

• UK having direct routine access to all EAWs.
• Real-time access to over 44 million Alerts for wanted persons/ property via PNC.
• Cooperation is automated and operation enshrined in legal and quasi-legal documentation.
• Member States have access to all UK Alerts and are legally required to act.
• Detection of criminals at point of entry greatly enhanced by SIS II/ e-Borders link.
• SIS II provides access to the primary EU tool for police and judicial cooperation.
• Real time access for all designated UK Agencies to all EU data.
• SIS II provides a common platform for improved information sharing. (images, fingerprints, identity documents)
• The UK becoming an operational EU partner in SIS and related activities.
• A significant and unique barrier effect which is likely to deter many EAW subjects that would otherwise see the UK as a haven and a destination of choice for criminality.

4.3.7 Millions of pounds have been spent preparing for the implementation of SIS in terms of staff committed and the IT infrastructure to support it. The work that the UK has done so far indicates how committed the UK is to SIS. With all of the above activity, the benefits for UK policing and public safety are clear.

4.4 The issue of SIS is also tied heavily to the EAW.
4.5 SIS does not require the EAW to operate. It can in theory operate with another extradition system but it would be far less effective by not having the EAW. One of the biggest benefits of SIS is that real time wanted alerts are loaded immediately onto the central database. If we did not have the EAW process in place then we would receive the information that the person stopped by police is wanted for a serious offence abroad but be unable to deal with it. Inclusion of the EAW in the SIS process is designed to allow for an instant arrest. A position not possible with any non-EAW extradition arrangements at present.

4.5.1 For all of these reasons, the view of UK policing is that SIS is a vital measure that the UK are already heavily committed to and as such it is vital that we opt back into it.

4.6 The Exchange of Criminal Records

4.6.1 Two TPMs deal with the exchange and use of criminal records within criminal justice systems of member states - 2008/675/JHA and 2009/315/JHA. These measures seek to ensure that a conviction in one state is given the same weight in all. So for instance if a person from Poland is convicted of burglary in the UK and it is discovered that he has 12 convictions across the EU for burglary, the UK courts must treat these 12 convictions as they would for UK matters when it comes to bad character and sentencing.

4.6.2 In addition, they provide a mechanism by which these convictions can be quickly obtained. Since this came into force in the UK as a result of the Coroners and Justice Act 2009, progress has been swift. At the inception of this Act, the MPS conducted three pilots into the effectiveness of this new measure. The result of these pilots have been widely circulated in both the UK and the EU and generally show that in London, around 35% of foreign nationals have convictions abroad and around 8% are wanted in their home countries. These wanted suspects are not circulated via an EAW simply because the state that wants them did not know that they were in England. It is solely by confirming their identification, through a criminal records request, that their offending history is established. It therefore allows the removal of dangerous criminals from the UK who were otherwise free to remain at large.

4.6.4 This has huge ramifications for policing in the UK in terms of bail, charging decisions, public safety, extradition, the trial, sentencing and deportation. The importance cannot be overstated.

4.6.5 Two years ago when these measures came into force, the results took around a week to obtain. Although not ideal this was a vast improvement over the many months it used to take. However, with more and more countries now coming on-line with this system, the results - while not yet instant - can certainly be obtained from some countries within a few hours. Easily quick enough to greatly assist while the suspect is under arrest and in police detention.

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3 Commonly referred to as the Harrow Pilot, the Newham pilot and the five borough pilot
4.6.6 Under the Framework Decision, member states that convict non-nationals must send information of the conviction to the home member state of the convicted person. This process is known as ‘notification’. All notified convictions of UK nationals are recorded on the Police National Computer (PNC).

4.6.7 In addition, member states must, upon request from another member state, provide up-to-date information on the convictions of one of its nationals. This process is known as ‘request’ and it is the means by which the UK obtains antecedent information about foreign nationals being investigated or prosecuted on these shores. Any offences that present a serious risk to the UK public will be recorded on the PNC.

4.6.8 The exchange of criminal antecedent information is a critical part of ensuring justice is done and that the public are protected from harmful people. Prior to this TPM, EU nationals were treated as if they were of good character by our courts absent information to the contrary. Such information is used in determining whether to grant court bail, for determining mode of trial, for bad character evidence during trial and for sentencing. Exchanging information in this way also stops criminals moving from one jurisdiction to another simply to prevent their pasts catching up with them. The information is also made available to multi-agency public protection panels, charged with the responsibility of managing the risks to communities presented by sexual and dangerous offenders. The information is also used for child protection, firearms licensing and employment vetting. Lastly, the information is made available to the UK Border Agency to facilitate decision making as to whether a person should remain in the UK or be allowed to re-enter.

4.6.9 Some case studies of the benefits of being part of the measure are given below:

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<thead>
<tr>
<th>Romanian predatory rapist convicted using foreign convictions as bad character evidence</th>
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<tbody>
<tr>
<td>A Romanian national ‘A’, was arrested in the UK on suspicion of raping a prostitute and a vulnerable female adult in London. A request for conviction data identified that he had a previous conviction for rape of a vulnerable adult in Romania.</td>
</tr>
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</table>

Application to use the previous conviction as bad character evidence was made by the prosecuting counsel and was granted by the judge. ‘A’ was convicted of 4 counts of rape, 1 count of false imprisonment, 2 counts of assault by penetration and 1 count of actual bodily harm. An indeterminate prison sentence was imposed with a recommendation that he serve at least 11 years.

The prosecuting counsel was firmly of the view that ‘A’ would have been acquitted but for bad character evidence given the extreme vulnerability of the victims as witnesses.

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<th>The Jasionis Brothers</th>
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<tr>
<td>In 2010, two brothers were circulated on PNC as being wasted for a gang rape. They were eventually located and arrested. As part of the case, their fingerprints and DNA were sent to Lithuania so that their identities could be checked under the provisions of the relevant TPM. Prior to the trial, Lithuania confirmed that brother one had a conviction for murder. Brother two was wanted in Lithuania for</td>
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13
another rape but not on an EAW as they did not know that he was in the UK. As a result of this, an urgent EAW was generated. The previous conviction for murder (due to the MO) was instrumental in convicting brother one of the gang rape. Brother two was acquitted but immediately arrested on the EAW. He was swiftly extradited to Lithuania (within a matter of weeks) and has since been convicted and sentenced, thus removing a dangerous offender from the UK. Although it was the EAW that removed him, it was another TPM that allowed the identification to take place in the first instance.

**UKBA deport EU nationals with serious offending history:**
Since April 2010 the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) has been sharing serious foreign conviction information with UKBA of EU nationals subject to criminal proceedings in the UK for minor offences. The UKBA are deporting EU nationals who are identified as posing the highest risk to the UK and putting in place measures to refuse them re-entry.

4.7 Joint Investigation Teams (JIT)

4.7.1 JITs are covered by Council Decision 2002/465/JHA. Historically these have not been extensively used by UK policing. The reason for this seems to be nothing more than a lack of knowledge around their use. This is changing though as more and more police units discover the benefits of them.

4.7.2 JITs are legal agreements between two or more states whereby a cross border crime is investigated. They are designed to speed up the investigation and reduce bureaucracy and they are very successful at doing this.

4.7.3 What the JIT does is set up an agreement between the states whereby each country investigates the crime in their own country by using their own domestic powers without having to resort to letters of request. For example, consider a murder investigation JIT between England, Germany and France. If the investigator in England decides that they need some banking evidence from France and a search to be conducted in Germany, they simply picks up the phone to their counterparts in those countries who have signed the JIT and they go and do it: no letters of requests, no unnecessary delays. The benefits for speedy investigations are immediately obvious to anyone who has had to deal with letters of requests. Decisions around prosecution can easily be made so that suspects can be indicted in the most suitable jurisdiction to ensure that court time is most effectively utilised and uses a single court process instead of many.

**Operation Veerde**
Operation Veerde was a JIT with the Czech Republic and Eurojust. It was an investigation into human trafficking, prostitution and rape of females brought to the UK by a criminal network. 33 victims were located in the Czech Republic. A JIT was agreed so that the UK and Czech police could quickly gather evidence using domestic laws. Nine suspects were indicted in England on behalf of both states; all were convicted of trafficking offences and sent to prison.

**Operation Romabank**
Current ongoing operation with Poland. 485 victims have been located in Poland and
the UK with 47 suspects located across Europe. As a result of the JIT, although the cases could be prosecuted all over the EU, Poland have taken primacy and charged and prosecuted all 47 suspects saving a huge cost across the EU.

**Operation Golf**
This is a long term JIT between the Metropolitan Police, the Romanian National Police and Europol. One part of the operation was to tackle a Romanian gang that was trafficking children into the UK and it has so far resulted in the arrest of 126 suspects for a wide range of offences. These offences have included human trafficking, benefit fraud, theft, money laundering and child neglect offences.

4.8 **Eurojust and Europol**

4.8.1 In total, there are five TPMs (2009/968/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/948/JHA) that are concerned with membership of Eurojust or Europol. In addition 2002/187/JHA and 2009/371/JHA deal with the setting up of Eurojust and Europol respectively.

4.9 **Eurojust**

4.9.1 Membership of these organisations is a pre-requisite for certain other measures. One of these is the JIT. As stated, it is a measure that we consider it vital we opt back into. In theory, we do not have to be a member of Eurojust to form a JIT however Eurojust control JIT funding. One of the many benefits of the system is that Eurojust can (and normally do) provide significant funds to run the JIT. This money includes equipment, travel, outside resources and the like.

4.9.2 As such, although membership of Eurojust is not necessary to use the JIT process, without it the process would move from being free to UK policing to becoming expensive and unworkable.

4.9.3 For these reasons it is considered that we should remain within Eurojust.

4.10 **Europol**

4.10.1 Europol performs many functions such as the exchange of intelligence between police, customs and security services. From 2013, they will also host the European Cyber-crime Centre – EC3. This will lead on cyber-crime co-operation and will be the first attempt at a joined up approach in this difficult area. The remit is to provide a response not only against cyber-crime but also cyber-attacks by terrorists and foreign intelligence agencies.

4.10.2 In addition, Europol are an integral part of SIS. This is a measure that the UK (and the rest of the EU) has invested considerable time and money in and to fully utilise it, we need to be a member of Europol.

4.10.3 Although other parts of Europol are underused by the UK (Europol analyst files for instance), these are growing and provide a strong benefit to international criminal investigations.
4.10.4 As a final point, both of these organisations are generally a force for good in terms of public safety and for combating crime. Crime gets more international with each passing year, making it harder for countries to act in isolation. This is recognised in the UK’s organised crime strategy, Local to Global: Reducing the Risk from Organised Crime, where it is recognised that the UK must work to “develop our international cooperation” to combat organised crime. In the rest of the world, such matters are dealt with under a raft of bilateral and multilateral treaties that are more complicated than the EU agreements. Much of our international crime and transient criminals come from Europe and membership of these organisations makes it far easier to target them. Removing ourselves from these measures and putting ourselves in the position of having to re-negotiate 26 treaties on each and every topic, would be a massive step back for UK policing that would benefit no one.

4.11 Data Protection

4.11.1 As mentioned in appendix B, this concerns the transfer of sensitive material about persons involved in criminal investigations. This could include suspects, witnesses, victims and police officers.

4.11.2 It deals not only with the transmission and use of the data, but also with its retention and ultimate destruction. The safe and justified retention of personal data by UK policing is always a matter of public interest. The issue around how a foreign jurisdiction deals with our data is even more vital.

4.11.3 Although these areas are met already under domestic legislation, the UK needs to remain a part of this measure. The reason is that other states may not agree to share such data with any other state under these provisions unless they remain within it. More importantly, they would not be bound to apply these safeguards to the data we sent them if the UK ceased to be a part of this measure. The lack of such a universal safeguard would be unacceptable.

5 TPMs that we should Opt back into

5.1 In addition to the 13 TPMs that it is vital that we opt back into, there are a further 16 that we should opt back into. These are listed in brief terms on Appendix B and we will cover just one of them (CEPOL) in more detail.

5.2 CEPOL

5.2.1 CEPOL is the European Police College which is located at Bramshill. It deals with exchange training of senior police officers in the EU.

5.2.2 It is not necessary to examine each course and exchange programme that CEPOL offers, instead it is more sensible to consider its net worth. Given the global nature of crime any facility that assists in training and the sharing of experiences and ideas across the EU is intrinsically a good thing and a positive force in UK policing.

5.2.3 With the college being located in England, it allows UK policing an influence on the way that policing is taught at a senior level across the EU. It also enhances the reputation of UK policing across the EU.
5.2.4 If the UK were to leave CEPOL, then under the terms of the Lisbon treaty, we may be responsible for the costs of relocating this college to another EU state. Given that this will include the cost of the land, planning permission, building the premises, installing IT and other equipment and hiring new staff, this could run into many millions of pounds.

6 **TPMs that we do not have to consider**

6.1 As mentioned in paragraph 3.2.2, there are 12 TPMs that have or will be repealed by post Lisbon measures. Most of these do not to be considered here, but those that concern MLA need to be covered because at the moment, they are vital to us.

6.2 **Mutual Legal Assistance (MLA) TPMs**

6.2.1 There are five TPMs that come under the general grouping of MLA. A full consideration of these measures would be lengthy although the importance of them cannot be understated.

6.2.2 However, all of these measures are soon to be superseded by the European Information Order (EIO). The EIO is a post Lisbon measure that the UK has signed up to and as such it is outside of the TPM considerations. As a result, when the EIO comes into force (2014), then all of these MLA measures cease to apply and as a result they need not be considered here.

7 **Conclusions**

7.1 This paper is written on the assumption that HMG will exercise its block opt out of the TPMs. The question therefore is what (if any) TPMs the UK should opt back into?

7.2 As described above in some detail, there are 13 TPMs which are deemed vital to UK policing and the reasons for this position have been given in detail ante. To repeat the position :-

- There are 13 TPMs that it is vital that we opt back into.
- There are 16 TPMs that we should opt back into.
- There are 55 TPMs that would make no difference whether we opt back into or not and as such ACPO has no view on them.
- There are 12 TPMs that we should not opt back into
- There are 12 TPMs that are due to (or have been) repealed by post-Lisbon measures

7.3 The main instrument under threat is the EAW. The position from an ACPO view is that we should opt back into the EAW. The EAW is not perfect and as stated, some areas should be considered further but negotiation should be carried out from within the system rather than outside of it.
7.4 To opt-out would adversely affect SIS implementation and would undoubtedly herald a slower, costlier and more laborious system that may also end up with the provision of some EU states not being willing to extradite their own citizens.

7.5 As such ACPO could not support such a route. Our view on this could not be clearer: withdrawing from the EAW would be a mistake and could jeopardise justice and public safety.

8 December 2012
Appendix B

TPMs that ACPO consider it vital to opt back into.

1. Convention implementing the Schengen Agreement of 1985. This is the actual SIS agreement and the UK has to be part of this measure to implement SIS.

2. 2002/187/JHA - Setting up Eurojust with a view to reinforcing the fight against serious crime. The UK is a major user of Eurojust. Membership of Eurojust is necessary for JITs and the EIO (which the UK is committed to). Given that, the question of opting back in may be irrelevant as due to our membership of the EIO, we have to be a member of Eurojust anyway.

3. 2002/465/JHA - Joint investigation teams (JITs). Although not greatly used, the provision is extremely useful for large scale multinational investigations in terms of exchanging evidence and using domestic powers to gather evidence as opposed to MLATs. Use is growing; it works well and reduces red tape in such investigations. While in theory there are other ways that JITs can exist (such as the 2nd protocol to the 1959 convention) these have not been universally adopted and as such cannot be viewed as a fall-back position. As such, this is one of the measures (along with the EAW) that we would seek to retain above all others.

4. 2002/584/JHA - European arrest warrant and the surrender procedures between Member States. This is an extremely effective policing measure and to remove it would represent a huge step backwards. See the main report for much more detail on the EAW.

5. 2007/533/JHA - The establishment, operation and use of the second generation Schengen Information System (SIS II). This is the TPM that actually brings SIS2 into force.

6. 2008/675/JHA - Taking account of convictions in the Member States of the European Union in the course of new criminal proceedings. Even though this it is already part of UK law it completely relies upon other states being able to pass this information to us outside of the MLA process. If we were no longer part of it, it may make the obtaining of conviction data protracted, taking the CJ system back many years and running the risk of serial offenders not being identified. See the main report for more details on this measure.

7. 2008/977/JHA - The protection of personal data processed in the framework of police and judicial cooperation in criminal matters. This sets up rules for the transfer of information about persons concerned in criminal investigations.

8. 2009/315/JHA - The organisation and content of the exchange of information extracted from the criminal record between Member States. This is an extremely important provision. Without it we would rely on MLATs (EIOs when they come in) to obtain criminal conviction records. See the main report for more detail on this subject.
Membership of Europol is required and demanded by a number of other measures - not least the EIO which the UK has already signed up to. As such, the UK is obliged to remain a member of Europol so we need to opt back in.

10. **2009/934/JHA - Adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and EC3. See the main report for more information.

11. **2009/935/JHA - Determining the list of third countries with which Europol shall conclude agreements.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and EC3. See the main report for more information.

12. **2009/948/JHA - Prevention and settlement of conflicts of exercise of jurisdiction in criminal matters.** This role is filled by Eurojust which the UK use sparingly. That said, membership of Europol is needed for a number of areas such as JITs, SIS and EC3. See the main report for more information.

13. **2009/968/JHA - Adopting the rules on the confidentiality of Europol information.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and EC3. See the main report for more information.

**TPMs that ACPO consider that we should opt back into**

1. **2000/375/JHA - Combat child pornography (CP) on the internet.** The order is merely a best practice document which the UK already exceeds. There are pluses and minuses in this TPM. On the plus side it requires member states to share information on CP matters quickly and for law enforcement in each state to process requests for information as a matter of urgency. This does not adversely affect the UK as we do this anyway, but it is useful to have as it ensures that other states do the same with our requests. If we left this then the rest of the EU would be under no obligation to treat UK requests as urgent. They may do, but the point is that they are not obliged to and where resources are scarce, if any country is going to be put to the bottom of the pile it will be the countries where there are not mandatory obligations in force. The other side is the requirement to inform Eurojust of all CP matters which is a little cumbersome but in reality it is not done in every case anyway. Another plus is that it requires close coordination of states when it comes to the removal of CP material from the internet. Again, a most useful provision given the international nature of on-line CP. Finally it makes requirements for the retention and interception of communications data for the prosecution of CP matters. This ensures a common standard that is continually updated as technology evolves. Although there are some minuses, on the whole this is a positive TPM and we should opt back into it.

2. **2000/586/JHA - Establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common**
3. **2000/641/JHA - Secretariat for the joint supervisory data-protection bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders.** This actual Decision has little effect on the UK either way. However, this measure forms a number of bodies which have far reaching powers into other TPMs - some of which we would seek to retain, most notable the SIS2 system, the EAW and the EIO which the UK are already committed to.

4. **2001/419/JHA - The transmission of samples of controlled substances.** Without it, case by case agreements would have to be in place to permit the transfer between labs and policing entities to avoid breaking various national laws around the import/export of controlled substances. This would create unnecessary additional bureaucracy.

5. **2002/348/JHA - Concerning security in connection with football matches with an international dimension.** This decision not only sets up SPOCs for football intelligence, it also mandates the exchange of information to other members. If the UK moved out of this measure then although we could choose to pass information to other EU states, there is no obligation on the other EU states to do the same for the UK. It is not that other states are not co-operating, it is simply that if we are not in it, other states may not be able (or willing) to co-operate with UK policing in the same terms.

6. **2003/170/JHA - Common use of liaison officers posted abroad by the law enforcement agencies of the Member States.** This is concerned with police liaison officers being posted to other countries or to the EU. In the main, this role is taken up by SOCA. The system is heavily underused when compared to other countries. If the UK left this measure, there is nothing to stop us continuing to send liaison officers to other states, although we would not be able to have any at the EU (Eurojust or Europol) which would have a knock on effect on our ability to operate in other areas. As such it should be retained.

7. **2005/222/JHA - Attacks against information systems.** Cybercrime is a growing threat to the economic wellbeing of all states and also to critical infrastructures. The rapid exchange of information and intelligence should be made available outside of other criminal matters due to the time dependant nature of such matters.

8. **2005/681/JHA - Establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA.** The college at Bramshill deals with the exchange training of EU senior police officers. A proposed post-Lisbon decision is likely to remove this from the TPM list before December 2014.

10. **2006/960/JHA - Simplifying the exchange of information and intelligence between law enforcement authorities of the Member States.** The UK would still be able to pass information to other EU states and we do not use Europol to transmit intelligence or evidence as a rule. This may change though when the EIO comes in and so it would be wise to retain this measure.

11. **2007/412/JHA - Amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension.** Only amends 2002/348/JHA ante which we wish to remain a part of.

12. **2007/845/JHA - Concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime.** The UK has met its obligations by enacting the Proceeds of Crime Act 2002. The information sharing network though is useful and there is no reason to cease being a member as further intelligence sharing would require state by state agreements.

13. **2008/615/JHA - Stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.** This Decision is to do with the exchange of information, most notably DNA data. Although the word 'terrorism' is in the title, this measure also has wider implications for general criminal investigations. The reality of the measure is that it is impossible to implement before 2014 in any case. Despite this, from a UK policing perspective it is an important measure that we should remain a part of, even though it has not come into force as yet.

14. **2008/616/JHA - The implementation of Council Decision 2008/615/JHA on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.** This Decision set up the mechanisms by which Decision 2008/615/JHA would operate.

15. **2008/617/JHA - The improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations.** This allows for the deployment of rapid reaction forces to other countries. Where country A seeks the assistance of country B in a crisis, this sets up the legal framework for this to operate. It covers serious physical threats (terrorism, hostage taking etc) and not natural disasters. It would make little sense to remove this sensible provision - especially given the ongoing threat of organised crime, cybercrime, terrorism and civil unrest due. It is designed to protect the citizens of the EU from the gravest threats and as such it would be unwise to remove it. On balance this TPM is a good measure that does not need to be re-negotiated.

16. **2009/426/JHA - The strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime.** Eurojust is integral to the JIT process and will be at the
centre of the EIO (which we have signed up to post-Lisbon) and so in all likelihood we cannot opt out of this measure. Although we can operate JITs without Eurojust and there is a chance that funding for them will be moved to Europol or another agency in the future, there is no reason not to retain this TPM.

**TPMs that have no impact on UK policing whether we opt back in or not. ACPO has no view on these measures**

1. **1996/610/JHA - Creation and maintenance of a Directory of specialised counter-terrorist competences.** This measure is in relation to a database of CT contacts in Member States. It is no longer used or kept up to date. As such we have established effective cooperation through our network of liaison officers abroad, other countries' liaison officers in London and other networks. This measure is not considered essential

2. **1996/698/JHA - Cooperation between customs authorities and business organisations in combating drug trafficking.** Is merely a central database of drugs related matters. No evidence could be found of this being used by ACPO Forces so loss or retention would have no impact.

3. **1996/699/JHA - Exchange of information on the chemical profiling of drugs to combat illegal trafficking.** Information can still be exchanged. Along with other measures, it is one of the Swedish Framework Decisions and could be replicated with ease if need be.

4. **1996/750/JHA - Approximation of the laws and practices of the Member States of the European Union to combat drug addiction and to prevent and combat illegal drug trafficking.** The UK could maintain this position outside of this measure if it wished to and met the criteria prior to adoption in any case.

5. **1997/339/JHA - Cooperation on law and order and security.** This function is a duplication of the Interpol Green and Orange notices. Part of the Swedish Framework Decision

6. **1997/372/JHA - Refining of targeting criteria, selection methods and collection of customs and police information.** The UK could maintain this position outside of this measure if it wished to. Part of the Swedish Framework Decision.

7. **1997/827/JHA - Establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime.** The UK could maintain this position outside of this measure if it wished to, it is a mechanism that sounds good but in reality has little practical effect

8. **1998/699/JHA - Money laundering, the identification, tracing, freezing, seizing and confiscation of instruments and proceeds from crime.** This TPM concerns the informal exchanging of information on financial crime and is part of the Swedish Framework Decision. If the UK opted out there would be no realistic difficulty in continuing to share information. That said, membership of this TPM does
not saddle the UK with any problematic measures and so while membership is not necessary, there is no reason to actively seek the UK’s removal from it.

9. **1998/700/JHA - Concerning the setting up of a European Image Archiving System (FADO).** This has been overtaken by technology. High speed internet connections and the routine use of email by UK policing across the EU have reduced the need for this measure. It should be noted that the UKBA use this system so their views should be sought on retention.

10. **2000/642/JHA - Arrangements between financial intelligence units of the Member States in respect of exchanging information.** It is likely that this could maintained on a police to police basis or via the Swedish Framework Decision. We share this kind of information with many other non-EU states without any problem.

11. **2001/413/JHA - Combating fraud and counterfeiting of non-cash means of payment.** This Decision places a number of legal obligations on members in terms of creating criminal offences and suitable penalties for a range of conduct and also to permit extradition for such matters (although the EAW provisions supersede these). Although it imposes legal obligations on the UK, these are already in force.

12. **2001/500/JHA - Money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.** Given the international nature of much financial crime, the ability to identify, track and seize assets (where required) is vital to effectively investigate such crimes. It may be that this eventually falls under the EIO but this is not certain at this time. In addition there is a post Lisbon measure being discussed that would take this out of the TPM area (although the UK has not made a decision on that new measure). As a result of this Decision, the UK brought in the Proceeds of Crime Act 2002. As such the UK has more than fulfilled its obligations around it and is hardly likely to repeal it. As such this is largely an irrelevant measure for the UK now.

13. **2002/494/JHA - European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.** This measure is of little impact either way. The group meets on a regular basis and attendance is paid for one (non-police) representative. The network, whilst imposing no responsibility upon Member States to cooperate, does create a mechanism by which those with responsibility for war crimes share information and best practice. It should noted however that the Crown Prosecution Service do support the continued membership of this TPM.

14. **2002/946/JHA - The strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.** This decision required that states create a large number of offences. As these are now part of UK law, if we left this measure it would have no impact on the UK as these offences would remain.

15. **2003/335/JHA - The investigation and prosecution of genocide, crimes against humanity and war crimes.** Although a serious matter, the jurisdiction
for these crimes is a matter for the UK. Agreements to determine primacy are helpful but not vital.

16. **2003/568/JHA - Combating corruption in the private sector.** This decision required that states create certain offences. As these are now part of UK law (for example the Bribery Act), if we left this measure it would have no impact as these offences would remain.

17. **2004/731/EC - Concerning the conclusion of the Agreement between the European Union and Bosnia and Herzegovina on security procedures for the exchange of classified information Agreement between Bosnia and Herzegovina and the European Union on security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

18. **2004/843/CFSP - Concerning the conclusion of the Agreement between the European Union and the Kingdom of Norway on security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

19. **2005/069/JHA - Exchanging certain data with Interpol.** Membership of this TPM is not necessary here as the UK is a member of Interpol in its own right.

20. **2005/212/JHA - Confiscation of Crime-related Proceeds, Instrumentalities and Property.** The UK has already fulfilled its obligations here by enacting the Proceeds of Crime Act 2002. It is inconceivable that the Act would be repealed if we left this measure and as such it is largely irrelevant.

21. **2005/296/CFSP - Concerning the conclusion of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information Agreement between the former Yugoslav Republic of Macedonia and the European Union on the security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

22. **2005/387/JHA - The information, exchange, risk-assessment and control of new psychoactive substances.** If the UK left this provision, we would still exchange intelligence with other countries. (EU or otherwise)

23. **2005/481/CFSP - Concerning the conclusion of the Agreement between the European Union and Ukraine on the security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

24. **2005/511/JHA - Protecting the Euro against counterfeiting, by designating Europol as the Central Office for combating Euro-counterfeiting.** Not being part of this agreement will not affect the UK as the Euro is not our national currency. Currently Europol have primacy to combat counterfeiting of the Euro.
25. **2005/671/JHA - The exchange of information and cooperation concerning terrorist offences.** This Decision is concerned with further terrorism definitions, matters around jurisdiction, MLA requests and the use of JITs in CT matters. This creates a duty on Member States to share information with Europol, Eurojust, and other Member States. Again, when examining whether this measure is essential, it was felt that we already share information and would continue to do this, whether duty bound or not.

26. **2006/317/CFSP - Concerning the conclusion of the Agreement between the European Union and the Republic of Croatia on security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

27. **2006/467/CFSP - Concerning the conclusion of the Agreement between the European Union and the Republic of Iceland on security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

28. **2006/783/JHA - The application of the principle of mutual recognitions to confiscation orders.** The UK has met its obligations by enacting the Proceeds of Crime Act 2002. It is possible that this may fall under a post Lisbon measure pre-2014.

29. **2007/274/JHA - Concerning the conclusion of the Agreement between the European Union and the Government of the United States of America on the security of classified information.** The UK does not use this. Exchange is done directly.

30. **2008/568/CFSP - Concerning the conclusion of the Agreement between the European Union and the Swiss Confederation on security procedures for the exchange of classified information.** The UK does not use this. Exchange is done directly.

31. **2008/841/JHA - The fight against organised crime.** Although this decision is largely a legislative one, it requires the proscription of matters (conspiracy) that has long been an offence in the UK anyway. There is nothing to be gained by opting back into it.

32. **2009/820/CFSP - Agreement on Extradition and MLA between the European Union and the United States of America.** The US signed this treaty with the EU in 2003 and as a result the UK signed its treaty with the USA in December 2004. The EU treaty required each member state to negotiate a treaty with the USA and the UK has done so.

33. **2009/902/JHA - Setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA.** This is in effect an EU crime prevention body. It brings together subject matter experts in the field and encourages ongoing good practice. Information from the ACPO lead confirms that this is not used by ACPO forces.
34. **2009/905/JHA - On accreditation of forensic service providers carrying out laboratory activities.** This ensures that labs in member states conform to ISO 17025. The UK is one of the leaders in the forensic world and it is inconceivable that if we left this Decision that the UK would suddenly cast aside all their minimum standards. All police computer and phone forensic labs need to meet this by 2015 and so the UK is clearly committed to this in any case. As such this ruling has little effect on the UK and arguably the UK should be free to set its own standards in line with the rest of the world and not just the EU.

35. **2009/933/CFSP - The extension, on behalf of the European Union, of the territorial scope of the Agreement on Extradition and MLA between the European Union and the United States of America.** The UK has its own extradition treaty with the USA and does not rely upon the EU-US one. As such, this measure is unnecessary.

36. **2003 Agreement on mutual legal assistance between the European Union and the United States of America.** The 2003 treaty was signed between the EU and the USA which required individual states to negotiate an MLA treaty with the USA. As such the UK signed its own treaty with the USA in December 2004 and so leaving this measure would be of little consequence.

In addition the measures above, there are a large number of SIS related measures, listed below, that ACPO does not have a view upon. Some of these are simply statements of intent, some are defunct, some are not used and some simply outside of the scope of UK policing. That does not mean that they should be discarded – their retention is simply not a matter for ACPO.

37. **2003/725/JHA - Amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.**

38. **2004/849/EC - On the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen Acquis.**

39. **2004/919/EC - Tackling vehicle crime with cross-border implications.**

40. **2005/211/JHA - Concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism.**

41. **2006/228/JHA - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism.**

42. **2006/229/JHA - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions**
for the Schengen Information System, including the fight against terrorism.

43. 2006/631/JHA - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism.

44. 2007/171/EC - Laying down the network requirements for the Schengen Information System II (third pillar).

45. 2008/149/JHA - The conclusion, on behalf of the European Union, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen Acquis.


47. 2008/328/EC - Amending the Decision of the Executive Committee set up by the 1990 Schengen Convention, amending the Financial Regulation on the costs of installing and operating the technical support function for the Schengen Information System (C.SIS).

48. 2009/724/JHA - Laying down the date for the completion of migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II).

49. SCH/Com-ex (96) declaration 6 - Declaration on Extradition and MLA.

50. SCH/Com-ex (98) 26 def - Setting up a Standing Committee on the evaluation and implementation of Schengen.

51. SCH/Com-ex (98)52 - Handbook on cross-border police cooperation

52. SCH/Com-ex (99)11 - Agreement on cooperation in proceedings for road traffic offences.

53. SCH/Com-ex (99)6 - Schengen Acquis relating to telecommunications.

54. SCH/Com-ex (99)7 - Rev 2 on liaison officers.

55. SCH/Com-ex (99)8 - Rev 2 on general principles governing the payment of informers.

TPMs that ACPO do not wish to opt back into

1. Council Act of 17 June 1998 - Convention on Driving Disqualifications (DD). This was designed to ensure that DDs are valid in each member state.
However, only the UK and Ireland have agreed the measure so in reality it is a bilateral which at this time suits the UK.

2. **1999/615/JHA - Defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties.** The UK can proscribe whatever drugs it wishes and is free to follow or ignore other states. As with the other drugs prohibition measures, it is not in the interests of the UK to be beholden to by the EU as to what should be proscribed. Although this has not caused any harm to the UK so far, in the interests of transparency it would be better for the UK to rely on the Drug Advisory Board and the emergency proscription measures that Parliament currently has in respect of drugs rather than be dictated to by an EU-wide measure.

3. **2000/383/JHA - Increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro.** In the UK, the Euro is treated the same as any other currency that is counterfeited and not as a special case.

4. **2002/188/JHA - Concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA.** See 1999/615/JHA, ante.

5. **2002/475/JHA - Combating terrorism.** This Decision relates to the adoption of common CT legislation and definitions. Most CT legislation in the UK is far stronger than other Member States and it is unlikely that any legislation agreed across the EU would be more robust than existing UK legislation. For this reason, it was advised that adoption would bring no benefit, as it may mean a potential weakening of UK legislation. In the area of proscribing terrorist organisations it is not helpful as it is not in the interests of the UK to have other states determining what organisations should be proscribed in the UK. ACPO take the view that this measure should not be adopted.

6. **2008/919/JHA - Amending Framework Decision 2002/475/JHA on combating terrorism.** This Decision only amends small parts of 2002/475/JHA so see above for details on why this TPM should be adopted.

7. **2002/996/JHA - Establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.** This establishes a working group EU wide for the oversight of the way that CT matters are developed and to monitor expertise in various areas. There is a view that states where CT infrastructure is weaker than the UK’s could benefit from our inclusion however, the correlation between this aim and the measure is tenuous. We do not use this measure at present; it would commit us to a working group for peer evaluation on CT structures and could create a burden in terms of staff abstraction and bureaucracy.

8. **2003/847/JHA - Concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2.** See 1999/615/JHA, ante.
9. **2004/757/JHA** - Laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking. UK legislation already exceeds the issues raised in this TPM which makes it largely irrelevant.

10. **2008/206/JHA** - Defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions. See **1999/615/JHA**, ante.

11. **2009/936/JHA** - Adopting the implementing rules for Europol analysis work files. This is an unnecessary measure that is not required for our membership of Europol or Eurojust.

12. **2010/348/EC** - Concerning the conclusion of the Agreement between the Government of the Russian Federation and the European Union on the protection of classified information. ACPO forces have their own rules on the exchange of information with Russia. We do not use this measure and ACPO recommend against implementation as is in the interest of national security and good law and order that the various branches of UK policing decide both the general and precise ways that information is shared with Russia.

**TPMs that have been replaced by post Lisbon measures or are likely to be before December 2014**

1. **1996/747/JHA** - Creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international organized crime. This directory was closed down in February 2012.

2. **1998/427/JHA** - Good practice in mutual legal assistance in criminal matters. This measure basically required the member states to provide a statement of intent on how MLA matters would be dealt with. When the EIO comes into force at the end of 2014 (likely to be the same time as the TPMs move across) it will repeal all of the MLA TPMs. As the UK is signed up to the EIO, it makes these TPMs largely academic.

3. **2000/261/JHA** - Improved exchange of information to combat counterfeit travel documents. This is a defunct system that is no longer in use.

4. **2001/220/JHA** - The standing of victims in criminal proceedings. This Decision has been superseded by PE-CO S 37/12 and so no longer resides within the TPM.

5. **2003/577/JHA** - Execution in the European Union of orders freezing property or evidence. It is important to be able to quickly seize physical evidence and evidence although the current measures will be superseded once the EIO comes into force, removing this measure from the TPM list. As such, the issue of opting in/out is not a live one.
6. **2004/68/JHA - Combating the sexual exploitation of children and child pornography.** This Decision has been replaced by the post Lisbon measure Directive 2011/92/EU. As such it is no longer a TPM.

7. **2008/651/CFSP/JHA - The signing, on behalf of the European Union, of an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service.** No longer relevant. Replaced by the post-Lisbon decision on the 29th September 2011.

8. **2008/978/JHA - The European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters.** Was never in force and will be replaced by the EIO.

9. **Council Act of 16 October 2001 - Establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member states of the European Union.** This ultimately led to the Crime (International Co-Operation) Act 2003. However, when the EIO comes into force at the end of 2014 it will repeal all of the MLA TPMs.


11. **Agreement between the European Union and the United States of America on the processing of Passenger Name Records (PNR) data by air carriers to the United States Department of Homeland Security.** Without this provision, the UK would be free to continue to exchange with the US. The post-Lisbon decision OJ 2012/472/EU supersedes this measure and the UK has signed into it thus removing this TPM from the list.

12. **2008/334/JHA - Adopting the SIRENE Manual and other implementing measures for the second generation Schengen Information System (SIS II).** This has been replaced by post Lisbon measures.
With regard to your Call for Evidence concerning the above and your request for comment, the Association of Chief Police Officers Scotland (ACPOS) would like to submit this response.

There are currently 133 measures which would be removed under opt-out, the most impactful of which being the European Arrest Warrant (EAW), Europol, Schengen Information System II (SIS II) and Joint Investigation Teams (JIT). These measures provide efficient processes and clear communicative lines, allowing Scottish Law Enforcement to carry out investigations effectively, both within the confines of our jurisdiction and that of fellow Member States. Opt out will mean these measures will become unavailable to UK Law Enforcement.

With the transient nature of criminals in today’s society, incidents involving Foreign Nationals are now a daily occurrence. It is assessed that should there be opt out, removing access to the measures referred to, officers within Scotland would be disadvantaged and would experience bureaucratic processes, effectively removing them from front line duties for prolonged periods. In recognition of this issue, Scotland has announced the establishment of their first dedicated Fugitive and Extradition Unit.

On 15 October 2012, UK Government announced that their current thinking was to Opt-out of all Pre-Lisbon measures and to negotiate to opt back into a selection of Pre-Lisbon measures, which they consider to be in the UK’s interests. It is not clear if the EU would agree to selective opt-in at a later stage. There is, therefore, the risk that all measures would be permanently unavailable.

Consultation between Scottish Forces has resulted in an informed consensus that opting out would leave the UK vulnerable, seriously impacting on our ability to tackle criminality committed by Foreign Nationals, especially as this relates to Serious Organised Criminality.

**Detail**

**Background**

Forces throughout Scotland have come to expect a degree of efficiency when dealing with investigations in the international arena. Recent enquiries have proven the need for cooperation with primarily European partners, and with the current mechanisms in place matters can be dealt with in an efficient and effective manner. Reverting to the processes previously utilised would be cumbersome and unwieldy; effectively, a retrograde step in modern policing.

Whilst there are approximately 133 Directives incorporated in this discussion, there are a number of key measures which would significantly impact on the daily business of front line officers.
Issues

European Arrest Warrant

The European Arrest Warrant (EAW) is perhaps the most important of the measures that fall within the 2014 decision. For the past eight years it has been an effective tool in policing, which enables us to deal with transnational crime and criminals more effectively. It is a simpler, faster, cheaper and more reliable system than those that pre-dated its introduction.

Within Scotland we have seen an increase of 35% in EAWs issued from 2011 to 2012. Whilst this only represents an increase of 11 warrants, it indicates the increase in awareness of the transient nature of our criminals.

One of the major reasons why it would be undesirable to return to the 1957 European Convention on Extradition is the changing nature of crime within the UK. Organised Criminality does not respect geographical boundaries and with the ease of travel throughout Europe, the trans-national criminal is far more prevalent than ever before.

Forces across Scotland have welcomed the reduction in bureaucracy through the introduction of the EAW process. An Opt out of the current agreement would significantly increase bureaucracy, operational inefficiency, the time taken to extradite a suspect and ultimately cost to the public purse.

Europol/JITs

Current Europol’s role allows for a timeous exchange of intelligence, information allowing investigators to work collaboratively across jurisdictions.

Recently Forces have obtained electronic access to the European Intelligence System which allows individuals to be checked and an indication obtained as to which member states hold information about that individual. This is an invaluable tool to law enforcement. Again it would not be beneficial if the UK Government were to opt-out of this measure as it would frustrate the ability of UK law enforcement to effectively tackle organised trans-national crime.

Under the Europol arrangements we have seen the emergence and growth of Joint Investigation Teams (JITs) to tackle specific cross border crimes or organised crime groups affecting member states. These working arrangements have proved effective and successful. JITs, by bringing together investigators from different countries who retain their powers in their jurisdictions and their access to information and systems, are able to work more quickly and efficiently. Things that previously would have required international letters of request to get done can now be undertaken using investigators and prosecutors from within the JIT.

Opting out en bloc could mean an end to the UK’s ability to access Europol’s policing databases and prohibit the exchange of police information in the way that we see now.
**The European Criminal Record Information System (ECRIS)**

ECRIS enables the UK to notify other member states of an individual’s previous conviction. This is a reciprocal process. Its operation is underpinned by pre-Lisbon measure which requires courts within a member state to take into consideration any previous convictions the offender has obtained in another member state. It is clearly logical that the UK’s courts should be fully sighted on an offender’s criminal past when dealing with them.

Opting out of this measure would severely impact on the ability of UK law enforcement to fully assess the risks and criminal history of foreign nationals residing in the UK.

**Schengen Information System II (SIS II)**

SIS II will go live in October 2014. SIS II is an EU-wide, IT enabled, business change Programme that will enable all participating States to share real-time information on persons and objects of interest to law enforcement via a series of “Alerts”. These “Alerts” will be made available via the national police system, in the UK’s case this will be the PNC.

There are five types of alerts that law enforcement officers can either create or respond to depending on the circumstances and policy:

- Persons wanted for extradition to another member state (i.e. for whom and EAW has been issued)
- Missing persons
- Requests for a locate report on witnesses and people for court appearances
- Request information reports on major criminals and linked vehicles
- Stolen vehicles, trailers, firearms, identity documents and registered banknotes

The UK has been planning for the implementation of SIS II for a number of years and has invested millions of pounds in the project. To opt out now would not make any sense financially or operationally given the importance attached to protecting our borders and our problems with foreign national offenders.

**Prüm Convention**

Although this measure has not yet been implemented due to financial pressures, given the cross-border nature of organised crime and open border policing within the European Union, the ability to share DNA, fingerprint and vehicle information on a hit or no hit basis would be extremely advantageous in the investigation of crime and the protection of national security.

The impact of opting out of Prüm will need to be assessed by Forensic specialists. However, given that the Convention has not been implemented in the UK the detriments to policing associated with an opt-out may not be so great.
**Conclusion**

ACPOS believe that opting out would leave the UK vulnerable to an increased risk of foreign criminals and criminality. In doing so, Scottish officers will encounter complex and protracted processes when dealing with offenders effectively both within the Scottish and European Criminal Justice process and partner agencies.

This could effectively isolate the UK in respect of serious and organised cross border crime, thus providing a refuge for foreign criminals within our borders.

*9 January 2013*
1. This is the response of the General Council of the Bar of England and Wales (the Bar Council) to the House of Lords’ Select Committee on the European Union, Sub-Committee E (Justice, Institutions and Consumer Protection) Sub-Committee F (Home Affairs, Health and Education) Call for Evidence on the UK’s 2014 Opt out decision (Protocol 36).

2. The Bar Council represents over 15,000 barristers in England and Wales. It promotes the Bar’s high quality specialist advocacy and advisory services; fair access to justice for all; the highest standards of ethics, equality and diversity across the profession; and the development of business opportunities for barristers at home and abroad.

3. A strong and independent Bar exists to serve the public and is crucial to the administration of justice. As specialist, independent advocates, barristers enable people to uphold their legal rights and duties, often acting on behalf of the most vulnerable members of society. The Bar makes a vital contribution to the efficient operation of criminal and civil courts. It provides a pool of talented men and women from increasingly diverse backgrounds from which a significant proportion of the judiciary is drawn, on whose independence the Rule of Law and our democratic way of life depend. The Bar Council is the Approved Regulator for the Bar of England and Wales. It discharges its regulatory functions through the independent Bar Standards Board.

4. The Bar Council’s EU Law Committee held a debate on the issue of the UK 2014 opt-out decision, as part of its workshop at the Annual Bar Conference in November 2012. The decision to devote the majority of the workshop to the opt-out decision was taken many months ago, and reflects the Bar’s concern that any opt-out decision should be taken on an informed basis. To that end, we are among the stakeholders that have called for a full public consultation to be undertaken prior to the Government’s decision on the opt-out, and any possible consequent decisions to opt-back in.

5. We thus welcome the initiative taken by this Committee to issue a call for evidence, and are delighted to contribute to the debate by means of written and oral evidence. In the interests of exploring thoroughly the issues within the Bar’s expertise and experience, this paper is slightly longer than requested. If we may, rather than add further to its length, we refer you to our answer to question 1 below, which serves also as a summary of our views.

6. In preparing this response, the Bar Council has benefited from attendance at conferences on the topic throughout 2012, and from reference to various papers. We would wish to highlight in particular the authoritative paper produced in September 2012 by the Centre for European Legal Studies in Cambridge, entitled “Opting out of EU Criminal law: What is actually involved?”[^4]. The Bar expressly endorses that paper.

The 2014 opt-out decision

Question 1: Should the Government exercise its block opt-out?

[^4]: [http://www.cels.law.cam.ac.uk/Media/working_papers/Optout%20text%20final.pdf](http://www.cels.law.cam.ac.uk/Media/working_papers/Optout%20text%20final.pdf)
7. Emphatically no. The Bar Council has considered carefully the arguments that have been raised both in support of exercising the block opt-out and against it. The only rational legal (as opposed to political) reason in favour of exercising the block opt-out is that it would ‘clear the undergrowth’ of measures that are obsolete, either because they were never implemented or because they have been superseded. By contrast there are many reasons not to exercise the block opt-out which are explored in more detail below. They include protection of our citizens at home and abroad, efficient court processes, effective police and judicial co-operation, promotion of the rule of law and the protection of human rights, and the importance of maintaining the UK’s good name and influence in Europe. It is our considered view that the interests of the UK are best served by not exercising the block opt-out.

8. It should be recognised at the outset that the opt-out affects only 130 odd measures (the precise number varies, because any measure which is amended before 2014 falls out of the frame). Of those, it seems that 60 are recognised by all parties as useful, and thus as measures that the UK would need to opt back into (see Dominic Raab’s Open Europe report ‘Cooperation not Control: the Case for Britain Retaining Democratic Control over EU Crime and Policing Policy’ October 2012). In addition, there exists a substantial number of measures that the UK has either signed up to in the Lisbon Treaty, or specifically opted into since 2009. If the Government is truly concerned to sever relations with Europe in the criminal justice field, it would need a far more wide-reaching decision than this, which is in our view partial, cosmetic, and liable to lead to legal chaos.

9. All 130 measures are ones which required unanimity among the Member States at the time of adoption. They were thus measures which the UK considered to be required at the time, or they would have vetoed them. The measures concerned now fall into two general categories: those that remain relevant and operational, and those that have become redundant.

10. We see no merit in opting out of measures that are relevant and operational. It is however, common ground that some require considerable improvement, either through a revision of the underlying EU text, or by focusing on their application and enforcement in the Member States. The European Arrest Warrant is in this category (as to which, see further below). The Bar Council’s view is that the UK’s interests are best served by continuing its long tradition of playing a full, leading role in negotiations to improve the texts, implementation and/or operation of those measures, and doing so not from the side-lines, but as a signatory to the measures. By contrast, placing ourselves outside the decision-making process will put the UK at a distinct negotiating disadvantage, both in the practical sense of day to day involvement in amendments, and in the more amorphous loss of influence and indeed creation of antipathetic feeling.

11. As regards measures that have become redundant, they have either never been implemented or have been superseded. But if they are redundant they are also harmless. Withdrawing from measures that are just gathering dust may have a certain legal neatness, but should be undertaken with caution given the negative implications that seem likely to follow.

12. In addition, the Bar Council takes the view that withdrawing from these measures is likely to have disproportionately negative legal, political and financial implications for the UK,
which we explore further in answer to relevant questions below. Some of the consequences were not necessarily inherent in the block-opt-out decision per se, but rather flow from the high profile that this decision has been given in recent months, and the manner in which it has been politicised. The Bar Council’s Brussels Office has been well placed to monitor the upsurge in irritation, exasperation and bewildered incomprehension with which the UK Government’s recent pronouncements have been met by other Member States, and on occasion, EU institutions; and to note also the effect on the UK’s negotiations in wholly different areas of legal policy.

**Question 2: What are the likely financial consequences of exercising the opt-out?**

13. The Bar Council believes that there are several different ways in which the opt-out could have negative financial consequences for the UK, some out of all proportion to the potential gains.

14. In general terms, the potential loss of status and negotiating strength is likely to have a knock-on effect on UK – EU relations in other areas, some of which may be critical to the UK in economic terms. There is already some evidence for this in Brussels. Such risk is difficult to quantify, but should not be ignored. We will return to this later.

15. More specifically, there are two ways in which exercising the opt-out is likely to have direct financial consequences for the UK. First, Article 10(4) para 3 of Protocol 36 makes specific provision for the UK to be made liable for the consequential costs of its decision to other Member States:

16. “The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts.”

17. There is of course no precedent to assist in defining the scope of “direct financial consequences”; nor “necessarily and unavoidably incurred” in this context. One can expect that the Commission will apply these terms in a manner which is straightforward, but certainly shows the UK no favours.

18. On the contrary, there is likely to be at least argument and quite possibly litigation, as to the scope of those phrases. For some Member States, the UK’s exit from these measures will require amendment to treaties and/or to domestic law (especially in monist states); and quite possibly amendment also to their Constitutions.

19. The Council will (by Art 10 (4) para 2) “determine the necessary consequential and transitional arrangements” of the opt-out – the UK is expressly excluded from participating in that determination. So far as the Bar Council is aware, no draft provisions are yet available.

20. Furthermore, any transitional provisions may have to take account of a request by the UK to opt back in to particular measures and this is likely to carry further costs. Is an amendment consequent on a request to opt back in, a “direct financial consequence… necessarily and unavoidably incurred” in the opt out?
21. Alternatively, if for instance the UK accepts that extradition arrangements are essential but does not achieve the amendments it seeks to the EAW; and thus wishes either to fall back on the 1957 European Convention on Extradition, or negotiate fresh bilateral or multilateral arrangements, are the costs to other Member States of those arrangements, a “direct financial consequence…necessarily and unavoidably incurred” in the opt-out?

22. Second there is the issue of costs incurred within any transitional period, both in Member States and domestically. The Bar Council understands that there are differing legal views as to when the UK may notify the Council of a desire to opt back in to specific measures; and further that there may be practical issues with how soon that desire could be accommodated. Article 10(5) of Protocol 36 provides that:

22.1 “The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph [the exercise of the block opt-out].”

23. On one interpretation, the UK could notify a desire to opt back in to particular measures immediately upon notification of a desire to exercise the block opt out; and thus at any time between now and 1 June 2014. However, the wording allows notification of a wish to participate in acts “which have ceased to apply to it pursuant to paragraph 4”; and by paragraph 4 acts cease to apply to the UK only “as from the date of expiry of the transitional period”, on 1 December 2014.

24. Even if the former interpretation is correct, a question arises as to when the Government will reach agreement as to each and every measure it wishes to opt back into; and whether it will be able to notify the Council of all measures at one time. It is at least foreseeable that agreement may be difficult to achieve politically, and there will be staggered notifications.

25. Whatever the date or dates when the UK notifies a desire to opt back in, its wishes are not automatically granted. It seems inevitable that there will be a period or periods of legal limbo between the opt-out taking effect and either the opt in being negotiated and/or formally concluded; or the alternative arrangements with each of the 26 other Member States being finalised.

26. That would lead to:

- Legal uncertainty for lawyers and clients alike. In financial terms, that would mean that the bill for legal advice and representation would rise
- In cases where extraditions are delayed due to the absence/temporary abeyance of the EAW, there are likely to be increased applications for release on bail or for writs of habeas corpus; alternatively actions for damages for wrongful imprisonment, or for outright release where time limits are missed
- There will be costs consequent upon the delay to domestic trials of mutual assistance measures being suspended/interrupted
- There will be a cost to the public purse in the time and resources of government staff required to negotiate the terms of the individual opt-ins; and the diversion of government resources to those negotiations when other, possibly more urgent matters are on the table
• Similarly, there are cost implications of negotiating bilateral or multilateral agreements to replace measures such as the EAW, with individual Member States or groups of Member States, for those measures into which we do not opt-back in, and
• There is the question of the waste of costs already incurred, such as in preparation for the long-planned SISII, in which the UK is said to have invested upwards of £39 million to date.

27. Another important area is police cooperation. Europol was set up under a Convention which came into force in 1998, in order to improve cooperation between Member States seeking to combat serious transnational crime. It has a British Director. It is currently supporting 700 investigations into organised crime and terrorist networks in Europe; and the UK is actively involved in over 200 of those 700. The European Police College has been established at Bramshill.

28. Eurojust has had two British Directors to date. It operates to liaise between Member States often at very short notice, and in the most practical manner - such as the obtaining, overnight, of a certificate of conviction from a Member State, translated and in a form admissible in the UK, where the previous conviction is relevant to bail, or to a bad character application, or to sentence; or even to negate a defence of accident or mistaken ID.

29. Further, the opt-out would potentially block the swift access currently enjoyed by UK police forces to information systems (both obtaining information and posting alerts for wanted people); and prevent them from taking part in Joint Investigation Teams such as that which is currently investigating the murders of a British family near Annecy and the serious injury to one of the daughters.

30. We are not in a position to quantify the cost, in financial terms, were the other Member States to insist that the Police College should be moved, or were the British police to have to fall back on mutual assistance measures in place of the more efficient systems just described, but it is clear that they could be considerable. There would furthermore be an effect on the efficient administration of trials. These measures were all brought into effect on the basis that they were more effective than what was previously available. It is true that plans are afoot to replace some of these key cooperation measures with directives in the coming years, but there is no guarantee that the new measures will be in place in time to prevent the block-opt-out from affecting, even temporarily, these important operational systems.

Question 3: What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

31. The UK is the third most populous Member State in the EU and has been at the forefront of the development and implementation of international criminal law since the Nuremberg Trials. Against that background, we believe that the opt-out would have practical and diplomatic consequences for the UK, as well as a loss of influence.

32. It is important to bear in mind that legal professionals in other Member States regard UK precedents, and instruments such as the Police and Criminal Evidence Act 1984, as the benchmark in terms of securing defence rights. Lawyers abroad are sometimes surprisingly well-informed of UK court decisions. UK lawyers have a very real influence in raising standards by contributing to training programmes, by participating in exchanges and
disseminating information abroad. UK justice acts as a touchstone to many states on the periphery of the Union, not because it is isolationist and exclusionary; but because it is seen as an ideal at the heart of and co-existing with EU ideals of fair trial and basic human rights.

33. It should not be forgotten that while UK influence abroad assists in upholding the rule of law, equally there are domestic advantages. Queen’s Counsel in particular benefit from the recognition abroad (and not just in the Commonwealth) of the excellence but also the universality of British justice.

34. UK decisions not to opt in to individual criminal justice measures in recent years (for example, Measure C on access to a lawyer for suspects and defendants, currently in protracted negotiations), have been greeted with concerned surprise by other Member States, precisely because of our preeminence in the field. The UK may choose to opt-in at the end of negotiations, but it is relying on its ability to influence the debate during the negotiations, to ensure that the text allows it to take part at the end. Exercising the block opt-out risks further undermining such influence.

35. The Bar Council is also concerned about other potential knock-on effects. There is a tendency among many in the UK to view the opt-out debate in isolation, but that is not the case in Europe, where it is seen in the wider context of the UK’s other opt-outs from the EU project. The UK cannot make a decision in one area and expect it not to have an impact in other areas, especially in the current political and financial climate, and in light of recent opt-out decisions on individual files (also in the civil law field) where the UK’s stance was not welcomed in Brussels.

36. Thus, we should be aware that this decision could disproportionally undermine the UK’s ability to influence EU negotiations on legislative and other measures. Apart from the field of criminal justice, there are several important negotiations that are ongoing or soon to be launched, and on which the UK will need and want to have a strong voice – including financial regulation and its impact on the Internal Market; review of data protection rules; public procurement and the Common European Sales law to name but a few. Even in the criminal justice field, there are key proposals in the offing, including one on legal aid due out next year (which is unlikely to be limited to cross-border cases only); and one on the creation of the European Public Prosecutor’s office. The UK will want to be able to influence the outcome on all these files, whatever their legal basis.

37. There are many possible ways in which a wider loss of status could manifest itself, some more concrete and significant than others. To take just one example, the Lisbon Treaty significantly increased the role of the European Parliament (“EP”) in the adoption of measures in the Justice area, including in criminal justice. There have been signs that it is becoming harder for UK MEPs to play a leading role within the Parliamentary committees that develop the EP’s resolutions on individual files, in particular as rapporteurs responsible for the drafting of reports and opinions. This shift has occurred merely in the context of decisions to opt-in or not to individual negotiations. We are concerned that such pressure will be increased if the block opt-out is exercised.

The UK’s current participation in PCJ measures
Question 4: Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

38. The Bar Council wishes to adopt the analysis provided in the CELS September 2012 report, linked to this paper at footnote 1 above.

39. In particular, we would highlight the EAW; the European Supervision Order (due to be implemented by Member States by 1.12.12 but which the UK has (uncharacteristically) not yet implemented due to question marks over the opt-out decision; the measures concerning mutual assistance, including the tracing freezing and confiscation of assets; the measures establishing Eurojust, those concerning previous convictions in Member States and transfer of prisoners; and the CEPOL, JIT and other police cooperation measures set out in paras 22-24 above.

40. Many of the measures under consideration have not been in force (or not been implemented) for long enough for their full value to be felt. Many members of the Bar are, for instance, unaware of the assistance that can be sought from Eurojust. The benefits of the measures are increased cooperation and thus trust between Member States, leading to the real advantages of swift administrative and evidential assistance. In each case the measures either filled a lacuna or replaced a measure that was felt to be inefficient or inadequate.

41. The Bar Council is unaware of any significant disadvantage resulting from the UK’s participation in any measure. There must presumably be some cost to assisting other states, but it is likely to be outweighed by the advantages received in return.

Question 5: In her 15 October statement the Home Secretary stated that “...some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

42. Again, the Bar Council wishes to adopt the analysis provided in the CELS September 2012 report, linked to this paper at footnote 1 above.

Question 6: How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

43. See answer to Q 10 below.

Question 7: Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

44. The UK has not implemented the European Supervision Order for the reasons set out above at paragraph 34, nor the Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions. However, the UK is unlikely to fall foul of the CJEU as it has already implemented almost all of the measures in question, and done so satisfactorily.
Question 8: What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

45. The Bar would like to take the opportunity afforded by this question to clarify the CJEU’s role in such cases. We are among many stakeholders who view recent political and press statements on this particular aspect of the debate as misleading, in particular in overstating the role that the CJEU can play.

46. The Lisbon Treaty, which entered into force in December 2009, introduced for the first time in the area of judicial cooperation, the possibility for all national courts to apply to the CJEU for preliminary rulings on interpretation of a piece of EU law. This was entirely new for criminal justice measures, owing to the new Union competence in the field, and extended from courts of final appeal only, for civil justice measures. It may be helpful here to refer to the Court’s own guidance to national courts:

i. “The preliminary ruling system is a fundamental mechanism of EU law aimed at enabling national courts to ensure uniform interpretation and application of that law in all the Member States.”

and

ii. “The role of the Court of Justice in the preliminary ruling procedure

iii. Under the preliminary ruling procedure, the Court’s role is to give an interpretation of European Union law or to rule on its validity, not to apply that law to the factual situation underlying the main proceedings, which is the task of the national court. It is not for the Court either to decide issues of fact raised in the main proceedings or to resolve differences of opinion on the interpretation or application of rules of national law.

47. In ruling on the interpretation or validity of European Union law, the Court makes every effort to give a reply which will be of assistance in resolving the dispute, but it is for the referring court to draw the appropriate conclusions from that reply, if necessary by not applying the rule of national law in question.”

48. Thus, the CJEU does not deliver final rulings on the case before the national court, either in fact or in law, but merely interprets the applicable EU law provisions. Moreover, in the field of judicial cooperation in criminal matters it has been careful to act within clearly specified EU competence. See, for example, Case C-27/11 Vinkov v Nachalnik Administrativno-nakazatelnal deynost (7th June 2012) (unreported) where the failure in Bulgarian law to provide an appeal from the imposition of penalty points for administrative driving matters was not considered admissible by the CJEU, despite the right to a hearing enshrined in Article 47 of the Charter of Fundamental Rights (CFR). This is because EU competence currently only extends to mutual recognition of decisions in another Member State. Further, Case C-507/10 Criminal proceedings against X (21 December 2011)

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(unreported) where an application for special measures could not be enforced, despite provision in the Council Framework Decision on the standing of victims and the right to a hearing in article 47 CFR, where the prosecution had decided to discontinue proceedings.

49. It is also important to note here, that the CJEU already has such jurisdiction on all measures adopted in the criminal justice field since the Lisbon Treaty entered into force. That competence extends to the UK for all those measures into which it has opted. As at the time of writing, this includes, but is not limited to, Measures A and B of the Roadmap of measures on criminal defence rights (the right to interpretation and the right to information); the recently-adopted directive on minimum rights for victims; the directive on combating the sexual abuse and sexual exploitation of children; the European Protection Order and the European Investigation Order (arguably more procedurally invasive than the EAW) which is still in negotiations, but into which the UK has already opted.

50. The UK government decided to opt-into each of these post-Lisbon measures even knowing that the decision would trigger the application of the extended competence of the CJEU to these measures, and within its own jurisdiction. For the sake of completeness, though it is not entirely central to the present debate, we also note that the government could have availed of, but did not, the procedure applying the emergency brake (Articles 82(3) and 83(3) TFEU) or Protocol 1 on the role of the national parliaments, which provides the possibility to send a reasoned opinion objecting to a proposal on the grounds of breach of the principle of subsidiarity, to try to stop it from advancing further.

51. It does not, therefore, seem that the Government recognised the extension of the CJEU competence in the criminal justice field, as the potent threat to the independence of the UK common law that some involved in this debate would have us believe. If it had, it would presumably have used one of the three Treaty-based devices in relation to existing post-Lisbon measures.

52. It is also informative to note that of the remaining 26 Member States, most have chosen to override the transitional provisions, and have the extended competence of the CJEU apply to pre-Lisbon Treaty measures. Far from discouraging recourse to the CJEU on these measures, there have been many calls, including from UK stakeholders, for national courts in these Member States to apply for more preliminary rulings, particularly on the application and interpretation of those existing Framework Decisions which are in use, but whose use by certain Member States is causing difficulties. A case in point is the EAW, on which there are increasing calls for clarification of the application of the principle of proportionality thereto.

53. On the subject of the EAW, the CJEU has to date had a beneficial effect. Inevitably some decisions attract criticism, but others can assist greatly in the proper, proportionate and fair implementation of the measure. In October 2012 AG Sharpston QC rendered an opinion in the case of Radu, and judgment is awaited. If the Court follows the opinion of the Advocate General, many commentators believe that the operation of the EAW will improve significantly, to the benefit of all including the UK, and without the need to amend the measure itself.

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6 Case C-396/11 Ministerul Public - Parchetul de pe lângă Curtea de Apel Constanța v Ciprian Vasile Radu
Question 9: If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission's enforcement powers and the jurisdiction of the Court of Justice?

54. As stated in response to question 7 above, the UK is among the Member States that has been the most assiduous in implementing the measures, fully and in a timely manner. To all intents and purposes, we see no effect arising from the UK becoming subject to the Commission's enforcement powers as regards these measures. Some of them are redundant in any event, and no interest would be served in the Commission spending further time and resources on those.

55. As regards the jurisdiction of the CJEU, it is true to say that there have been concerns voiced about the ability of the Court to cope with the increase in the number of cases that will be referred to it as a result of the widening of its jurisdiction, with the inevitable delays that would result. Since there is a fast-track procedure for parties in custody, if applications in the criminal field increase, there will be a knock-on effect in other areas; unless further resources can be found at the CJEU. Commentators also note the general lack in experience of criminal law among CJEU judges.

56. However, efforts are already being made across the board to deal with these concerns, whether it be through the revision of the procedural rules and practice of the CJEU; or through judicial training of judges at national level. The Judicial College is rolling out a programme of training Crown Court Judges and Recorders in EU Criminal Law. The legal profession will also need training on how to recognise a ‘Euro-point’ and how and when to take it. The Bar Council has been involved in such training in the recent past, and has plans to expand that training as far as resources permit. The Bar Council is supporting a new system of senior or silk level pupillage between a European law and a criminal law set, to improve awareness on both sides. We call on the UK to continue to play as full a role as possible in these areas, the beneficial effects of which will be felt across the range of EU law, and not only in the criminal justice field.

57. A further practical observation would be that, by the end of 2014 when the full competence of the CJEU will apply to these measures in the UK (unless the government exercises the block opt-out), there will have been a number of other post-Lisbon Treaty criminal justice measures adopted and applicable to the UK, such that the possibility of a few more preliminary rulings on the remaining operational pre-Lisbon measures is unlikely materially to change matters.

The potential consequences of exercising the opt-out

Question 10: The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

58. In our view, there is a strong case for saying that the European Arrest Warrant (“EAW”) is the most important provision which would be caught by the block opt-out. The EAW owes its life to a Framework Decision of 2002. The UK implemented its provisions by means of Part 1 of the Extradition Act 2003. Put briefly, it allows a speedy return of those wanted for trial or to serve a sentence in any of the 27 Member States. There is one single
form to fill in, no requirement for prima facie evidence (that had been largely abolished anyway within Europe, under the 1957 Convention), and limited grounds for non-execution. The Executive no longer plays any part in the decision.

59. It is difficult to see why the EAW is viewed as a centralist federalist measure when its purpose is to return a suspect to a national court, thus facilitating the exercise of national sovereignty over crimes within that nation’s jurisdiction. The EAW was declared a success by the European Commission in 2007. The statistics available reveal its growing application amongst the member states. It was the subject of careful and detailed review in the Scott Baker Report of 2011. In 2009 the UK received some 4000 EAW requests; in 2010 that number rose to 4578. Note too that, contrary to some of the statements being made about its abuse, it is our understanding that only a relatively small number of cases requesting extradition from the UK involved UK nationals.

60. There is broad agreement among practitioners, the Member States and the EU institutions that the EAW could and should be improved. The lack of a de minimis rule means that Courts in this country have seen requests for the return of fugitives over such minor crimes as theft of a chicken (or in one case a piglet; in another a wheelbarrow), or failure to pay the last Hire Purchase installment on a second hand vacuum cleaner. Clearly it may be thought inappropriate to use the panoply of international law in such cases. In addition, the implementation of proper cross border bail provisions (the European Supervision Order already referred to) would alleviate what can amount to real hardship. There are also calls for the inclusion of a requirement of legal representation of the suspect or defendant in both the issuing and executing state, and for the possibility of costs orders to discourage issuing states from frivolous use of the measure. The EAW is not perfect, but there are moves afoot to improve it.

61. The EAW however replaced a much more cumbersome structure. It has substantially cut down the average time an extradition request takes, while increasing the numbers of fugitives returned. The earlier arrangements were, by definition, acknowledged to be imperfect when they were replaced by the EAW. It would be a retrograde step to revert to them and (particularly as regards Executive involvement) out of keeping with current extradition thought.

62. If the EAW were unavailable, the UK would need to rely on pre-EAW extradition arrangements, in so far as they still exist; and if not, create new ones between the Member States. In the first instance, that would mean falling back on the Council of Europe’s 1957 Convention on Extradition. However, although the UK may be able to rely upon it, other Member States (particularly monist states) are likely to have repealed the Convention following the adoption of the EAW Framework Decision. Therefore, the opt out may require the UK to conclude bilateral or multilateral agreements with each Member State.

**Question 11:** What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out?

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Would there be any consequences for other Member States in their efforts to combat cross-border crime?

63. This question is not within our area of expertise.

Question 12: Which, if any, PCJ measures should the Government seek to opt back in to?

64. Once again, the Bar Council relies on the analysis provided in the CELS September 2012 report, linked to this paper at footnote 1 above. The important measures are those highlighted in answer to Q4 above – together perhaps with the ne bis in idem (Schengen) and conflict of jurisdiction measures.

Question 13: How straight forward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

65. Article 10(5) of Protocol 36 governs the terms on which the UK can seek to opt-back-in. It refers to two other protocols which may apply:

“the relevant provisions of the Protocol on the Schengen acquis integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply.”

66. Thus reference is to separate protocols to find out how participation will be arranged, and those protocols refer to relevant sections of the Treaties. In brief therefore, for Schengen, the Council decides on our participation (protocol 19(4)); and for anything falling under Title V of the TFEU, the Commission can impose conditions. If we cannot agree or do not comply, the Council will decide how to proceed. (protocol 21(4) which refers to article 331(1) TFEU which provides for enhanced cooperation arrangements).

67. Article 4 of the Protocol on the Schengen acquis provides that the UK may opt-in to a Schengen measure, but it needs the unanimous support of the Member States that are signatories. We have already seen examples of that support not being given when the UK applied to join Frontex, the EU’s border agency, and the Visa Information System, a database of Schengen visa records. We would not expect the exercise of the block opt-out to endear the UK to the other Schengen Member States.

68. There is however an important rider in Protocol 36, that ties the hands of the EU institutions and other Member States when responding to a UK request to opt-back in. The relevant part of Article 10(5), reads as follows:

68.1 “When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while

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69. In practice therefore, the UK’s participation is likely to be facilitated save where the opt-in decisions appears inconsistent or lacking in coherence.

**Question 14:** What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

70. The Bar Council refers again to the comprehensive analysis of the possible options available to the UK set out in the CELs paper, referred to elsewhere in this paper and linked to footnote I above. We would thus wish to add only a few summary comments.

71. For reasons already stated, the Bar Council takes the view that it would be neither practical nor desirable for the UK to rely upon alternative international agreements. The starting point is a simple one – if those agreements had been sufficient, there would have been no need to adopt the EU measures replacing them in the first place.

72. Bilateral provisions are cumbersome, subject to local variation, and often inconsistent; all of which inevitably causes delay and confusion. The great advantage of the EU-wide measures (and this is an advantage that should become ever more apparent as the measures become familiar) is that they provide a single framework governing all 27 Member States. All parties (and this is especially true for accession states) can become accustomed to a single document, or a single procedure, and set of time limits and apply them across the board. The result is an infinitely more efficient system.

73. It is worth remembering that the EU’s increasing competence in the justice area was intended to meet the needs of an EU population that increasingly exercises its Internal Market freedoms, through cross-border travel for work or pleasure; cross-border purchasing of goods and services etc. That the EU’s borders have become porous to criminals as well as to law-abiding citizens is a reality that the UK is better able to face in cooperation with its EU partners, than alone. Equally, citizens who are caught up in the criminal justice system of another Member State, whether through fault of their own or otherwise, reasonably expect to be able to rely on certain minimum rights and minimum levels of protection. It is our view that alternative international agreements, which bind other states that are not EU Member States, cannot deliver the level of mutual recognition and cooperation that is necessary if UK citizens are to avail of all the benefits of EU membership.

**Question 15:** Is Article 276 TFEU, which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

74. This provision should give considerable reassurance to those concerned by the role of CJEU in criminal justice. It provides express legal force to some of the points already made in answer to Question 8. It merely reflects the current exception to EU competence in article 72 TFEU, contained within part V TFEU on the area of freedom, security and
justice, where the competence for judicial and police cooperation in criminal matters is found, and which provides:

“This Title shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security”.

**Question 16:** If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

75. There would no doubt be considerable impact upon the Republic of Ireland, but this is a topic that is probably better addressed by others.

21 December 2012
Decisions of the Court of Justice of the European Union in the field of EU police and criminal justice

In the context of an inquiry into the United Kingdom's 2014 opt-out decision (Protocol n° 36 of the Treaty of Lisbon), the House of Lords EU Committee asked the Court of Justice of the European Union for information on decisions of the Court in which issues relating to EU police and criminal justice measures have arisen.

In answer to that request, the following list sets out the principal decisions of the Court of Justice and the General Court in which EU police and criminal justice measures, including Schengen-related measures, have been examined. A direct link to the text of the decisions is provided.\footnote{To access each link, it is necessary to place the mouse on the link, press Ctrl and click at the same time.}

In the final section of the list, other cases which relate more broadly to the determination of the framework of Schengen co-operation beyond the specific field of police and criminal justice are included for the sake of completeness. Direct links to the text of these decisions are also provided.


- [Judgment of the Court of 28 June 2007, Case C-467/05 Dell'Orto [2007] ECR I-5557](Council Framework Decision 2001/220, Art. 1, a), 2, para. 1, and 8, para. 1)


- [Judgment of the Court of 21 October 2010, Case C-205/09 Eredics and Sápi [2010] ECR I-10231](Council Framework Decision 2001/220, Art. 1, a), and 10)

- [Judgment of the Court of 15 September 2011, Joined Cases C-483/09 and C-1/10 Gueye and Salmeron Sanchez, not yet reported](Council Framework Decision 2001/220, Art. 2, 3, 8 and 10, para. 1)

- [Judgment of the Court of 21 December 2011, Case C-507/10 X, not yet reported](Council Framework Decision 2001/220, Art. 2, 3 and 8)

- [Judgment of the Court of 12 July 2012, Case C-79/11 Giovanardi, not yet reported](Council Framework Decision 2001/220, Art. 1 and 9)
- **Order of the Court of First Instance of 1 April 2008, Case T-412/07 Ayyanarsamy v Commission and Germany, not reported**
  (Application for legal aid; Manifest inadmissibility; Action for annulment; Framework Decision 2001/220. Appeal rejected by order of the Court of 17 March 2009, C-251/08 P Ayyanarsamy v Commission and Germany, not reported)

**Council Framework Decision 2002/584/JHA of 13 June 2002 (European Arrest Warrant):**

  (Council Framework Decision 2002/584, Art. 1, para. 3, Art. 2, para. 2 and Art. 31)

- **Judgment of the Court of 18 July 2007, Case C-288/05 Kretzinger [2007] ECR I-6441**
  (Convention implementing the Schengen Agreement (CISA), Art. 54 - principle of ne bis in idem; Framework Decision 2002/584, Art. 3, para. 2 - see also below under CISA)

  (Council Framework Decision 2002/584, Art. 4, para. 6)

- **Judgment of the Court of 6 October 2009, Case C-123/08 Wolzenburg [2009] ECR I-9621**
  (Council Framework Decision 2002/584, Art. 4, para. 6)

  (Council Framework Decision 2002/584, Art. 31 and 32)

- **Judgment of the Court of 1 December 2008, Case C-388/08 Leymann and Pustovarov [2008] ECR I-8993**
  (Council Framework Decision 2002/584, Art. 3, 4 and 27, para. 2, 3, and 4)

  (Council Framework Decision 2002/584, Art. 4, para. 6, and 5, para. 1 and 3)

- **Judgment of the Court of 16 November 2010, Case C-261/09 Mantello [2010] ECR I-11244**
  (Convention implementing the Schengen Agreement, Art. 54 - principle of ne bis in idem; Framework Decision 2002/584, Art. 3, para. 2. See also below under CISA)

- **Judgment of the Court of 5 September 2012, Case C-42/12 Lopes Da Silva Jorge, not yet reported**
  (Council Framework Decision 2002/584, Art. 4, para. 6)

- **Judgment of the Court of 28 June 2012, Case C-192/12 PPU West, not yet reported**
  (Council Framework Decision 2002/584, Art. 28, para. 2)

**Council Framework Decision 2005/214/JHA of 24 February 2005 (Financial penalties):**
Court of Justice of the European Union –Written evidence

- Judgment of the Court of 7 June 2012, Case C-27/11 Vinkov, not yet reported
  (Manifest inadmissibility of the request)

Council Decision 2002/187/JHA setting up Eurojust:

  (Council Decision 2002/187/JHA setting up Eurojust, Art. 30 - Staff; Staff Regulations of EU officials)

Convention implementing the Schengen Agreement (CISA):

  (CISA, Art. 54, 55 and 58 - principle of ne bis in idem)

  (CISA, Art. 54 - principle of ne bis in idem)

  (CISA, Art. 54 - principle of ne bis in idem)

  (CISA, Art. 54 - principle of ne bis in idem)

  (CISA, Art. 54 - principle of ne bis in idem)

  (CISA, Art. 54; Framework Decision 2002/584, Art. 3, para. 2 - principle of ne bis in idem. See also above under the Framework Decision on the European Arrest Warrant)

- Judgment of the Court of 18 July 2007, Case C-367/05 Kraaijenbrink [2007] ECR I-6619
  (CISA, Art. 58 and 71 - principle of ne bis in idem; narcotic drugs)

  (CISA, Art. 54 to 58 - principle of ne bis in idem)

  (CISA, Art. 54 - principle of ne bis in idem)

  (CISA, Art. 54; Framework Decision 2002/584, Art. 3, para. 2 - principle of ne bis in idem. See also above under the Framework Decision on the European Arrest Warrant)
- Judgment of the General Court of 13 July 2011, Joined Cases T-144/07, T-147/07, T-148/07, T-149/07, T-150/07 and T-154/07 ThyssenKrupp Liften Ascenseurs and Others v Commission, not yet reported
  (CISA, Art. 54, principle of ne bis in idem in Commission cartel proceedings)

Other judgments of the Court of Justice relating to the determination of the framework of Schengen co-operation:

  (Regulations 789/2001 and 790/2001 - Visa)

  (Directive 64/221 - Freedom of movement for persons, Schengen Information System)

- Judgment of the Court of 3 October 2006, Case C-241/05 Bot [2006] ECR I-9627
  (CISA, Art. 20 – Visa)

- Judgment of the Court of 18 December 2007, Case C-77/05 UK v Council [2007] ECR I-11459
  (Regulation 2007/2004 - FRONTEX)

- Judgment of the Court of 18 December 2007, Case C-137/05 UK v Council, [2007] ECR I-11593
  (Regulation 2252/2004 - Passports and travel documents)

  (CISA, Art. 6b and 23; Regulation 562/2006 - Schengen Borders Code)

  (Regulation 562/2006 - Schengen Borders Code)

- Judgment of the Court of 26 October 2010, Case C-482/08 UK v Council [2010] ECR I-10413
  (Decision 2008/633/JHA - Access for consultation of the Visa Information System, VIS)

- Judgment of the Court of 14 June 2012, Case C-606/10 ANAFE, not yet reported
  (Regulation 562/2006 - Schengen Borders Code)

- Judgment of the Court of 19 July 2012, Case C-278/12 PPU Adil, not yet reported
  (Regulation 562/2006 - Schengen Borders Code)

11 December 2012
Crown Office and Procurator Fiscal Service –Written evidence

The 2014 opt-out decision

As the sole prosecuting authority in Scotland, it is neither appropriate nor desirable for Crown Office and Procurator Fiscal Service (COPFS) to address all of the questions asked within this paper. Our answers are firmly focussed on the measures that affect the day to day business of COPFS. Whether or not the UK Government should remain within the third pillar is not a matter for COPFS. However, Scottish prosecutorial interests are best served remaining fully in the “3rd pillar”.

The UK’s current participation in PCJ measures

Questions 4, 5

There are two main measures which form part of the day to day business for COPFS, namely, the European Arrest Warrant (EAW) and the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

From the point of view of the Crown Office and Procurator Fiscal Service, the European Arrest Warrant is undoubtedly the success story of all the Framework Decisions. The Scottish Law Officers and the prosecutors in the Crown Office and Procurator Fiscal Service dealing daily with extradition business, do not favour opting out of the EAW scheme. The EAW system works in practice; prosecutors throughout Europe are familiar with its operation; and leaving the system would be fraught with an element of uncertainty, especially while the EAW continues to be operated by our European colleagues as the standard method of conducting surrenders within the EU.

The EAW is very much envisaged as being integral to the operation of SIS II, in which the UK is investing heavily. EAWs will be systematically certified, uploaded on to the system within hours of receipt, and inserted as attachments to SISII alerts. The system is not being designed to work with other forms of extradition request.

Whilst it has been difficult to assess the impact of the Framework Decision on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, in our day to day business they play a significant part in the role of the Prosecutor and this is especially the case when considering the appropriate forum for a particular case to be heard. Being in the receipt of criminal history data at the point of considering the case is essential to ensure that the case is properly prosecuted in the public interest. The effect of the Framework Decision has enabled our organisation to focus on obtaining this data and using it to make informed decisions.

In addition to these measures, it is considered undesirable from COPFS viewpoint to take any action which would result in withdrawal from Eurojust. It is recognised that the volume of purely Scottish business flowing through Eurojust is relatively low; however, in a number of cases, co-ordination meetings have been held which have been beneficial to the prosecution of Scottish cases, and where assistance from Scotland has been requested and
provided to EU partners. The benefits which flow from this are, however, of a nature which is difficult to measure purely in terms of statistics.

**Question 6**

In Scotland, extradition cases are handled by the International Co-operation Unit of the Crown Office. The ICU performs the role of central authority for Scotland, and the Crown Agent has statutory responsibility for certifying incoming EAWs. As a general rule, an EAW will only be issued in a serious case which merits prosecution in the High Court of Justiciary or before a Sheriff and jury. No EAW is issued from Scotland without the specific instructions of Crown Counsel representing the Lord Advocate, and all EAWs from Scotland are signed by a Sheriff.

In the last two years, ICU has received 202 incoming EAWs. In the same period there have been 130 arrests on EAWs (although not necessarily all on EAWs received during that period). Extradition was been ordered in 91 of the cases, with 17 cases still at the extradition hearing stage. A further 6 cases are outstanding because the person failed to appear for a hearing, and 9 cases are at the appeal stage. In 19 cases the person was either discharged or the warrant withdrawn. In the last two years ICU issued 28 EAWs to other Member States. Extradition to Scotland was ordered in 6 cases during that period. Some 70% of Scotland’s incoming EAWs are received from Poland, whereas Spain and Ireland together account for over 35% of outgoing EAWs from Scotland.

Statistical comparisons are difficult, but there is some indication that it takes longer to trace fugitives abroad than it does in Scotland, but that once fugitives are found and arrested, court processes in other member States do not take as long as they do in Scotland under the Extradition Act 2003.

**Question 7**

As far as the EAW and the Framework Decisions on the use of previous convictions in new criminal proceedings is concerned they have both, on the whole been implemented. The EAW Framework Decision has largely been implemented into national law by Parts 1 and 2 of the Extradition Act 2003. The Commission, following a review in 2005, focussed on two main points on the way in which the UK has implemented the Framework Decision. Firstly, the time limits imposed by the EAW are that a decision must be made within 60 days (10 days where an individual consents to their extradition). The statutory right of appeal embedded within the UK legislation which provides for the right of appeal ultimately to the European Court of Human Rights, often means that the timescales imposed are routinely missed. The experience in Scotland is that many of those to be extradited exercise their domestic right of appeal at least.

The “human rights bar to extradition” contained within Part 1 of the Extradition Act 2003 requires a judge to consider whether an individual’s extradition would be compatible with their rights under the Human Rights Act Article 3 and 4 of the Framework Decision, which provide the mandatory and optional bars to extradition. These provisions do not provide a human right bar to extradition. We understand that the UK has in the past argued that Recital 13 requires a Member State should not remove an individual to a State where there is a serious risk that he or she would be subjected to the death penalty, torture of other inhuman or degrading treatment or punishment.
The Framework Decision 2008/675/JHA of 24 July 2008 was enacted into Scottish legislation by way of section 71 of the Criminal Justice and Licensing (Scotland) Act 2010. This enabled the Scottish Courts to take account of European previous convictions as it would a domestic conviction. There are no obvious difficulties with whether this Framework Decision has been transposed, the difficulties lie with the way in which it has been transposed in Scotland. Section 71 of the Criminal Justice and Licensing (Scotland) Act 2010 provides;

71 Convictions by courts in other EU member States
(1) Schedule 4 makes modifications of the 1995 Act and other enactments for the purposes of and in connection with implementing obligations of the United Kingdom created by or arising under the Framework Decision (so far as they have effect in or as regards Scotland).
(2) The Scottish Ministers may by order make further provision for the purposes of and in connection with implementing those obligations.
(3) The provision may, in particular, confer functions—
(a) on the Scottish Ministers,
(b) on other persons.
(4) An order under subsection (2) may modify any enactment.
(5) In this section, the “Framework Decision” means Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

The vires of the powers to legislate are inextricably linked to implementing the UK’s (Scotland’s) obligations under the Framework Decision and if the Framework Decision falls following an opt out, then any provisions enacted in implementation thereof will no longer apply.

Question 8

To assess the practical effects of the Court of Justice (ECJ) having jurisdiction on interpretation of the measures covered by the opt out one has to first consider what measures are covered by the proposed opt out and the nature of those measures. Exercising the opt out would in fact only remove a portion of existing PCJ measures from the court’s jurisdiction. The measures it would remove largely relate to mutual and cross border cooperation between prosecuting and investigative authorities. (See e.g. Centre for European Legal Studies (University of Cambridge) Opting out of EU Criminal Law September 2012 - in particular at Annex 1). These measures don’t readily appear to have the capacity to raise the sort of fundamental issues about the scope or application of the criminal law or its rules of evidence which have proved problematic in relation to some decisions of the ECtHR (which given its existing jurisdiction in criminal matters is the best analogous supra national court to look at to consider possible effects). So whilst on a general level one might have some concerns about ceding jurisdiction to a supra national court, the sort of issues which have occasionally caused concern in the context of the ECtHR don’t seem particularly likely to arise in relation to the measures covered by the proposed opt out. Given the nature of these particular measures there are also definite advantages in obtaining European wide consistency in their application and interpretation which the ECJ should in theory be able to provide.
The general concern with ceding jurisdiction to such a supra national court is that experience with the ECtHR tends to show that having an appellate court which is unfamiliar with your legal system and not responsible for dealing with the domestic consequences of its decisions carries with it the occasional risk of poorly thought through decisions with unintended, broad and potentially disruptive consequences. The breadth of the potential consequences of such ‘disruptive’ decisions are magnified by the terms of the Scottish constitutional settlement which presently make it ultra vires for the Lord Advocate in his capacity as the head of the prosecution system to carry out an act which is in breach of EU law and which even after amendment by the Scotland Act 2012 will make it unlawful for the Lord Advocate to carry out such an act. As already commented on however the measures covered by the proposed opt are not such that they seem particularly likely to generate ‘disruptive’ decisions with broad consequences. Such issues are more likely to arise from some of the more recent directives and proposed directives on Criminal Justice such as the letter of rights and right of access to a solicitor - but those measures are not covered by the present opt out and the ECJ will have jurisdiction over such of those directives as we adopt regardless of the opt out presently being considered.

It might in any event be unduly optimistic to suppose that an opt out would completely insulate the UK from decisions of the ECJ, even in relation to the measures opted out of. In the modern world decisions of supra national and other nation’s supreme courts often prove highly influential to the decision making of national courts and the ECtHR. See e.g. Ambrose v HMA [2011] UKSC 43 and the extent to which the ECtHR and the UK Supreme Court have drawn on the US Supreme Court decision in Miranda v Arizona 384 US (436) (1966)). Accordingly there is no reason to suppose that decisions of the ECJ would not still be influential or even highly influential to decisions of our national courts even if the opt out were exercised.

**Question 9**

The answer to this question is largely dealt with above. At present little or no attempt has been made to use the powers of reference contained in the Criminal Procedure (Scotland) Act 1995. Increased ECJ jurisdiction over such matters could lead to an increase in the use of these provisions, which could be costly and time consuming, although it could also provide the benefit of consistency of application mentioned above. Insofar as the Commission’s enforcement powers are concerned that is not a matter for COPFS to comment on.

**The potential Consequences of exercising the opt-out**

**Question 10, 11 and 12**

The most obvious disadvantage to the European Arrest Warrant is the scope of the Framework Decision, which enables it to be used for trivial cases. Scottish experience, particularly with a high percentage of EAWs coming from Poland, shows by and large that proportionality has not been a particular problem and there has been no flood of trivial cases. Problems are more likely to be caused by the passage of time between offences and extradition procedures, but those can be fully argued and resolved in court hearings.
Scotland has not experienced any problems in practice with the definitions of offences in the Framework list, and no significant difficulties have arisen over dual criminality. Scottish prosecutors are therefore aware of no legal problem with the operation of the EAW that would require or justify the UK opting out of the Framework decision.

Opt-out would create uncertainty, both domestically and in other Member states. It may be reasonable to assume that, after an opt-out, the alternative to an EAW regime would be that all EU Member States would be re-designated as Part 2 territories. Using Part 2 procedure would mean that extradition was not longer purely a judicial process, and Ministers would again have a role to play in all extradition cases. One risk might then be that additional delays could be created by the extra opportunities created for judicial review.

At best, it might be possible to continue to operate a streamlined extradition system with our European partners – perhaps even the EAW system in all but name. At worst, especially if accompanied by a collapse of goodwill, an opt-out would create significant delays both in outgoing and incoming extradition cases. The result might be that Scottish fugitives would remain at large in serious cases while more foreign criminals would remain at large on our streets with little or no information available to the Scottish authorities about the risk they present to the public.

It is also important to note that the United Kingdom and Republic of Ireland have long operated within a common travel area. While both States were parties to the European Convention on Extradition 1957, in recognition of the relationship between the two States, the United Kingdom enacted the Backing of Warrants (Republic of Ireland) Act 1965 to regulate extradition between the two states. This provided that the United Kingdom authorities were able to execute extradition requests from the Republic of Ireland for indictable or summary offences where the sentence that could be imposed was at least six months imprisonment by the Irish warrant being endorsed by a Magistrate and the warrant then executed. There was no requirement for the provision of evidence by the Irish authorities to the United Kingdom. The EAW scheme is a significant improvement on the scheme of convention based extradition as it enables the Irish authorities to order the extradition of own nationals and has removed the erstwhile political exception which previously led to the refusal of requests from the United Kingdom in serious cases.

A UK opt-out from the EAW might also create technical legal problems in other Member States. That will depend on how those states have transposed the Framework decision into their domestic legislation as far as the United Kingdom is concerned.

In our view the UK Government should seek to opt back into both the EAW and the Framework Decision 2008/675/JHA of 24 July 2008.

19 December 2012
Europol – Written evidence

EXECUTIVE SUMMARY

The UK derives significant operational benefits from its engagement with Europol.

- The UK is one of the most active and committed members of Europol, sharing large amounts of criminal intelligence and cooperating in hundreds of cross-border investigations of criminals and terrorist groups each year.

- In 2012 the UK sent approximately 4,500 requests for information to Member States and third parties via the Europol network. It received approximately 3,000 requests for information from other Member States or third parties.

- In the last 12 months law enforcement agencies of the UK have been involved in more than 300 of the 600 major operations against serious and organised crime and terrorism supported by Europol. In other words, more than half of Europol’s major operations are of relevance to, and considered worthy of participation by UK agencies.

- The UK is extracting high value from Europol’s unique intelligence capabilities and the services provided by Europol are important elements of the UK’s strategy to combat organised crime and terrorism.

The decision to opt-out would make it more difficult for UK agencies to investigate crimes with a cross-border element.

- It would mean the disruption of the flow of information between the UK and Europol partners and the possible withdrawal of the UK Liaison Officers from Europol headquarters.

- If this flow of information between Europol and the UK is disrupted, investigative opportunities will be missed with a potential for serious crime to be committed in the UK which could otherwise have been prevented.

- The UK law enforcement community would face a reduced influence in the agency, with the resulting negative impact on operational coordination with European partners.

The Frontex model of cooperation, which includes an ad hoc authorization process for the UK to participate in specific operations, is unlikely to be a workable alternative for cooperation with Europol, due to the difference in scale and nature of operational activity. Europol supports approximately 14,000 cases and 600 major operations annually.

The UK wields strong influence over the development of the EU internal security policy

- A direct consequence of the decision to opt-out may be a loss of British influence and leadership in the further development of Europol and associated areas of interest. Issues of European and international security will continue to affect the interests of the UK irrespective of any decision on opt-out.

The role of the European Court of Justice

- The Court of Justice of the EU does not have jurisdiction to review the validity and proportionality of actions carried out by the police or other law enforcement services of the Member States
The development of the area of freedom security and justice will respect provisions of national laws and specificities of Member State’s criminal justice systems.

**The Europol Regulation**
- Potential adverse effects of any opt-out decision could be mitigated by joining the negotiations on the future Europol Regulation, which are expected to commence in 2013.

**INTRODUCTION:**

Europol is the European law enforcement agency. It was established in 1999 to support the EU Member States in preventing and combating all forms of serious international crime and terrorism. Its role is to help achieve a safer Europe for the benefit of all EU citizens by supporting law enforcement authorities of the Member States through the exchange and analysis of criminal intelligence and the coordination of operational actions.

Europol uses its unique information capabilities and the expertise of over 800 personnel, including Liaison Officers and approximately 100 analysts, to identify and track criminal and terrorist networks in Europe. National law enforcement agencies are represented at Europol by a total of 145 Europol Liaison Officers, who work in conjunction with Europol’s 24/7 operational centre and secure databases. This cooperation has contributed to the disruption of many criminal and terrorist networks, numerous arrests, the recovery of substantial criminal assets and the rescuing of hundreds of victims of crime, including victims of trafficking and abused children. Each year Europol supports approximately 14,000 cross-border law enforcement cases. Amongst those Europol provides active operational, forensic and technical support to around 600 high priority operations.

In 2010 Europol became a fully-fledged European agency, based on the Europol Council Decision (ECD), which is one of the Police and Criminal Justice (PCJ) measures concerned by any UK opt-out decision.

As a consequence of the Treaty of Lisbon, in 2013 the European Commission will present a proposal for a new legal basis for Europol. The new Europol Regulation should be an opportunity to make the Agency better prepared to face the evolving demands of fighting organised crime and terrorism, for example in cyber space. Under the ‘opt-in’ clause the UK will be able to decide whether it intends to participate in the adoption and application of this proposal, either at the commencement of the proposal, or subsequently, prior to the entry into force. Any decision to opt into the new Europol Regulation is also about the operational cooperation which that legislation foresees. If the UK should decide not to participate, its law enforcement community may have a diminished influence on Europol’s development and activities, with the resulting negative impact on its operational cooperation with other European and international partners.

**INDIVIDUAL QUESTIONS RAISED IN THE CALL FOR EVIDENCE**

**THE 2014 OPT-OUT DECISION**

6. How much has the UK relied on PCJ measures, such as the EAW, to date? Likewise to what extent have other Member States relied upon the application of these instruments in the United Kingdom?
In Europol’s view, the UK law enforcement community has always been at the forefront of EU police cooperation. The UK is one of the most active and committed members of Europol, sharing large amounts of criminal intelligence and cooperating in hundreds of cases a year that involve cross-border investigations.

The UK is statistically the 2nd highest contributor to the Europol Information System (EIS) with a total of 30 000 objects submitted by the UK, representing 15% of all available data within the EIS. In addition in 2011 approximately 17 000 SIENA messages were exchanged with the UK via the Europol Secure Information Exchange Network Application (SIENA), which constituted a 30% increase to 2010 and made the UK the third highest user of SIENA after Germany and France.

The International Directorate of SOCA in London hosts the UK Europol National Unit (ENU), which is the liaison body between Europol and the competent authorities of the UK. SOCA is also responsible for the UK Liaison Bureau at Europol which, with 13 members, is one of the biggest and most dynamic Liaison Bureaux. In addition to SOCA staff, the UK Liaison Bureau incorporates representatives of the Metropolitan Police Service, the UK Border Agency, the Scottish Crime and Drug Enforcement Agency, HM Revenue and Customs and the Asset Recovery Office, and therefore allows key regional forces and specialist agencies to bring their cases to Europol. The UK Liaison Officers work closely with Europol analysts and Liaison Officers from the other 26 Member States and twelve other countries and organizations represented at Europol, including i.a. the United States, Canada, Australia and Interpol.

The cooperation between Europol and the UK is mutually beneficial. In 2012 the UK sent approximately 4 500 requests for information via the Europol secure network, while it received around 3 000 requests for information during the same period. Among around 600 major operations supported by Europol in the last 12 months, UK law enforcement agencies have been involved in more than 300 - more than half. To Europol this indicates that the UK is playing an increasingly progressive role in extracting optimal value from Europol’s services. In consistently seeking Europol’s assistance in major cases, the British law enforcement community seems to recognise that Europol offers unique support capabilities, not found elsewhere.

See Annex 1 for concrete operational cases with the UK’s involvement.

The potential consequences of exercising the opt-out

Organised crime and terrorism threats are by their nature transnational. Europol’s Organised Crime Threat Assessment (OCTA 2011) found that organised crime is becoming ever more diverse in its methods and structures. The emerging criminal landscape is increasingly marked by highly mobile and flexible groups that operate in multiple jurisdictions and criminal sectors, and are aided, in particular, by widespread, illicit use of the Internet. More than ever before, strong levels of cooperation exist between different organised crime groups, transcending national, ethnic, and business differences. The connection between

11. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?
terrorism and organised crime networks is also becoming more blurred. These new trends provide a new rationale for the Member States to strive for more effective and coordinated action at the EU level.

In addition to these pan-European observations, the OCTA identified the UK as part of a “North-West” crime hub in which there is a high degree of interdependency between trafficking and other crime activities between the UK and its immediate neighbours France, Belgium and the Netherlands. Furthermore the UK is often a destination country for a variety of trafficked commodities, making cross-border police and customs cooperation indispensable.

The UK certainly derives substantial operational benefits from its engagement in the Area of Freedom Security and Justice, and in particular from its cooperation with Europol. The British law enforcement community has played a leading role in many major transnational criminal investigations supported by Europol. The decision to opt-out of the Europol Council Decision would make it harder for the British police to investigate crimes with a cross-border element.

Should the UK decide to withdraw completely from the Europol Council Decision, all rights and obligations of the UK as a Member State implementing the ECD would expire. These include the right to receive information and analyses concerning the UK, the right to be assisted when conducting national investigations (be it by means of information exchange and analysis reports or by operational, forensic or technical support), the right to receive threat assessments and strategic analyses, the right to benefit from training offered by Europol, the right to post a Liaison Officer at Europol’s headquarters, the obligation to supply information to Europol’s information systems12 and the obligation to maintain a Europol National Unit. Arrangements designed to mitigate the loss of these rights and obligations could be identified but those would be subject to negotiations with EU partners and limited in scope and effectiveness.

For Europol the main consequence of a British opt-out would be the disruption of the flow of information to and from the UK. The legality of sending information to Europol, and Europol’s storage of such information, would no longer have a supranational legal basis, hence might be regarded as legally problematic from a national perspective. The consequential and transitional arrangements issued by the Council on a proposal from the Commission, for the replacement of the ECD with a Europol Regulation, could be difficult to implement in practice and in any event would not substitute the current level of cooperation between Europol and the UK. Therefore there is a risk that crimes could be committed in the UK by nationals of other Member States or by nationals of third states, which might have been prevented if the opt-out had not been exercised and normal flow of information had been maintained between Europol and the UK.

The British law enforcement community is acutely aware of the fact that organized crime and terrorism are becoming more and more transnational, thus requiring a coordinated, international response. Remaining within Europol’s network of contacts and information exchange is a cost-effective mechanism for international law enforcement cooperation. The

12 Europol would have to assess whether the organization would be entitled to keep information previously supplied by the UK to its systems.
fact that the UK and certain other Member States such as Denmark and Belgium, have scaled back their bilateral liaison networks while maintaining (or even increasing, in the UK’s case) their Europol Liaison Bureau, attests to this.

In addition to the adverse consequences a UK opt-out would have on Europol, there would also be consequences for the other Member States and the Union as a whole. Firstly, this would come as a result of no longer being able to exchange criminal intelligence with the UK – among the top three most active Member States - via Europol’s secure network. As an active UK connection is present in half of Europol’s most significant operations, a UK opt-out would bear important consequences for other Member States as well. Secondly, the UK traditionally wields strong influence in the development of EU internal security policies would mean losing an important player in shaping European internal security legislation with a track record of not only serving direct British interests but also to raising the overall standard of law enforcement-related policies would have a generally detrimental effect.

For example, in 2010 the Member States adopted the EU policy cycle, which provides for EU level coordination of Member States’ operational cooperation against serious organised crime. Although adopted under the Belgian Presidency, it benefited from active UK engagement and drew inspiration from the concept of intelligence-led policing (ILP), which was promoted during the British Presidency of the EU in 2005.

The UK is also very active in the implementation phase of the EU Policy Cycle. It is the ‘driver’ of two of the eight EMPACT (European Multidisciplinary Platform Against Criminal Threats) projects, which provide the framework for the implementation of policy cycle actions concerning Trafficking in Human Beings (THB) and crime threats emanating from West Africa.

A decision to opt out of the Police and Criminal Justice (PCJ) measures will have an impact on the UK’s position in this area. However, the security threats which such measures seek to address will continue to affect the UK’s interests irrespective of any decision on opt-out so the net effect would be reduced policy and operational influence over issues that pose a significant security threat to the UK.

12. Which, if any, PCJ measures should the Government seek to opt back in to?

From Europol’s perspective the adverse effects of the opt-out decision described above should be mitigated as much as possible and as early as possible, especially by joining negotiations on the new Europol Regulation in 2013.

THE UK’S CURRENT PARTICIPATION IN PCJ MEASURES

7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

As regards Europol’s legal instruments, the UK has implemented all of them to the extent it was legally required.

13 Council doc. 14998/10 COSI 67 ENFOPOL 286 CRIMORG 178 ENFOCUSTOM 89
8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

The Treaty of Lisbon has brought significant extension of the powers of the Court of Justice of the EU, which is to assume full competence over the entire AFSJ domain (first and former third pillars alike). The only temporary exception exists for former police and criminal justice measures that entered into force before the Treaty of Lisbon, with regard to which, according to Protocol 36, full judicial scrutiny is to come after the end of a five-year transition period from the entry into force of the Treaty of Lisbon.

In practice, this means that regardless of any prior acceptance of its jurisdiction, all national courts or tribunals (not only those whose verdicts are final), will be allowed to refer to the Court of Justice of the EU any questions or issues concerning the interpretation of the Treaties or validity and interpretation of the acts of the institutions, bodies or agencies of the Union (Article 267 of TFEU – preliminary rulings). Similarly, the Commission will be allowed to refer the matter to the Court, if a Member State fails to fulfill its obligation under the Treaties and does not comply with a reasoned opinion within a deadline (Article 258 of TFEU – infringement procedure). Lastly, the European Parliament, the Council or any natural or legal person, alongside the Member States and the European Commission already empowered to do so before the Treaty of Lisbon, will be allowed to trigger legality review of the acts of all bodies, offices or agencies of the EU intended to produce legal effects vis-à-vis third parties (Article 263 of TFEU – legality review).

The Court of Justice of the EU is entrusted with exclusive competence to issue preliminary rulings on the interpretation of the Union law and to pronounce upon the infringements thereof with the exception of the validity or proportionality of operations carried out by the law enforcement services of the Member States, or the exercise of responsibilities incumbent upon the Member States with regard to the maintenance of law and order, and the safeguarding of internal security (Article 276 of TFEU).

National courts may, on their own initiative, raise questions for preliminary rulings to the Court of Justice of the EU. As a matter of principle the assessment of the relevance and necessity to pose a question for preliminary ruling each time falls under the discretion of the national courts that are responsible for ensuring the clarity and certainty of legal provisions. Though sometimes, especially when the act in question would give rise to individual rights, it is the individual who may trigger preliminary reference. There are several criteria to be met before the Court of Justice can assume jurisdiction over the case. The Court of Justice is vested with the power to pronounce upon the validity and interpretation of the acts of the institutions, bodies, offices or agencies of the Union.

**Obligation to respect legal systems of the Member States**

The obligation to respect legal systems of the Member States it is provided for in **Article 67 TFEU**, as an opening article establishing the AFSJ. It provides that the Union shall respect
fundamental rights and different legal systems and traditions of the Member States. In the event that a Member State would consider a draft to affect fundamental aspects of its criminal justice system, it may request the referral of the draft to the European Council, effectively suspending the whole legislative procedure. In principle, where a draft is adopted, it should be believed that it adequately reflects the Member States’ common approach and that that common approach is compatible with the diversity of legal traditions and systems of those Member States who are to be bound by the legislation.

14. What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

**Frontex model is not a suitable alternative for cooperation**

The ‘Frontex model’ has been suggested by some observers as an alternative to full membership of Europol, in case of a UK opt-out. It is therefore worthwhile to explore this cooperation model in comparison to full agency membership.

Although the UK is not bound by the Council Regulation establishing Frontex, it enjoys a special legal status in this agency. This is the result of deciding not to participate in parts of the Schengen Acquis of which Frontex is a development. Nevertheless, due to the importance of the UK for security at the EU’s external borders, Frontex is supposed to facilitate the participation of the UK to operational actions managed by the agency for which the UK is willing to lend its support, in accordance with the modalities to be decided on a case-by-case basis by the Frontex Management Board.

In practical terms the UK must first apply for general participation to operations planned in the Agency’s annual work programme and, as a second stage, the UK must be granted specific authorisation by the Management Board to join a particular operation. The UK delegation is invited to attend the meetings of the Management Board dealing with the preparation of operational actions in which the UK may wish to participate. However, the representatives of the UK are not allowed to vote and therefore have little real influence over the ultimate outcome of the planning exercise. The Management Board needs to consider whether the participation of the UK would contribute to achieving the objective of the operation in question. It also sets out the UK’s financial contribution to the activities to which a request for participation has been made by an absolute majority of its voting members.

In principle the UK, as a non-participating State, is not allowed to benefit from special measures of cooperation such as the increased technical and operational assistance or deployment of a Rapid Border Intervention Team. However, depending of the needs of the other participants, the Agency may try to create an *ad hoc* solution to streamline mutual action, if needed.

Lastly, UK border guards cannot be deployed as ‘guest officers’ to other participating States, except as observers, whose status is usually dealt with bilaterally between the interested State and the UK.

**From Europol’s perspective the so-called ‘Frontex model’ is not a suitable alternative for cooperation for practical reasons, related mainly to the nature**
and scale of Europol's activities. In 2012, Frontex coordinated approximately 25 operations and 3 or 4 simultaneously. In contrast, Europol supported around 14,000 cross-border law enforcement cases and provided active operational, forensic and technical support to approximately 600 police and customs operations. The UK was involved in more than 300 of these operations. Subjecting each and every operation to an explicit authorisation procedure is clearly not an efficient option and would greatly reduce the appetite of UK investigators to cooperate with Europol. Other, less restrictive alternatives are possible in theory but if the Frontex experience is any reliable measure of the expected consensus on such matters from other Member States, all credible options are likely to include significant restrictions based on current arrangements.

**Conclusion**

From Europol's perspective, the decision to opt-out and (especially) to opt back into the selected acts of the Union within the field of police and judicial cooperation in criminal matters that entered into force before the Treaty of Lisbon, will have to be made in such a way that there is little, if any, interim period during which the Europol Council Decision shall cease to apply to the UK. If such an interim period were to prove unavoidable, cooperation could be bolstered by transitional arrangements decided upon by the Council, even if this would be technically complicated.

From Europol's perspective any adverse effects of the block opt-out should be mitigated as much as possible and as early as possible, especially by joining the negotiations on the Europol Regulation.

The United Kingdom is a valued and substantial partner of Europol without which Europol would lose a significant amount of expertise, information and assistance, as would consequently the other Member States. Equally, the United Kingdom is likely to find it difficult to replace the unique skills, infrastructure and added value that Europol can provide to its investigations – with the overall result of a lessening of the required concerted and coordinated efforts of all Member States to tackle serious and organized crime, within the Union and beyond.

18 December 2012
ANNEX I: RECENT OPERATIONS SUPPORTED BY EUROPOL AND INVOLVING UK LAW ENFORCEMENT AUTHORITIES

OPERATION GOLF

Background:

Operation GOLF was a Metropolitan Police Service investigation involving a Romanian criminal group based in the UK and Romania. The criminal group was involved in the trafficking and exploitation of Romanian children. Romanian children were “acquired” in Romania, brought to the UK and then used to produce money by carrying out thefts and begging, mainly in London. Their identities were also used to carry out benefit frauds. From intelligence, the Metropolitan Police Service was aware that the criminal group valued each child at about 20,000 Pounds Sterling. On average, the criminal network made roughly 160,000 Euros of illicit income per annum per child.

The visible criminal activity was taking place in the UK: exploitation of children who were treated badly and abused, thefts and street crime on the streets of London, benefit fraud totalling millions of Pounds. However the group itself was based across several countries, including the UK, Romania, France and Spain.

The Role of Europol:

Over a two-year period, Europol was able to support the operation by coordinating operational meetings and facilitating the exchange of intelligence and evidence between the UK, Romania, Spain and France. Europol analysts provided analytical support to national investigators and coordinated simultaneous enforcement activities in several countries. Europol's powerful IT systems and analytical support enabled the Metropolitan Police Service to identify other significant members of the criminal network based in several EU countries.

Outcome:

- 115 arrested: 90 in the UK and 25 in Romania;
- 268 trafficked children identified in the UK;
- 45 children located and rescued;
- The criminal group was disbanded;
- 4 million Pounds Sterling of benefit fraud identified and disrupted in the UK.

OPERATION APAR

Background:

Operation Apar was a SOCA investigation into a British criminal group based in the UK, Ireland and the south of Spain. The group involved Irish and British nationals who were trafficking cocaine, cannabis and firearms from Spain to the UK, and were also laundering money. The UK investigation started as a money laundering investigation, and Europol was asked to assist.

Europol Support:
Europol identified links with an ongoing Irish investigation into the same group. Over the following 18 months, Europol’s dedicated analytical work file on suspicious financial transactions was fed with intelligence from police forces in the UK, Ireland and Spain. Europol analysts processed and analysed the information, including large volumes of financial data. Europol organised and coordinated operational meetings and prepared a day of simultaneous action, with raids in all three countries. Europol mobile offices were deployed to Spain, the UK and Ireland so that information gathered during raids and searches could be quickly checked and rapidly exchanged in real time.

**Outcome:**

- 32 arrests after simultaneous dawn raids in the UK, Ireland and on the Costa del Sol in Spain.
- 750 law enforcement officers involved in the operation.

**2012 London Olympics**

- Upon the invitation of the UK authorities, Europol posted four specialists in London for five weeks and deployed two mobile offices to the operational centre.
- This was one of Europol’s largest on-the-spot deployments. The presence of Europol’s team, with their secure connection to Europol’s databases, allowed the UK authorities to run live checks on suspects throughout the Games.
Faculty of Advocates – Written evidence

1. Should the Government exercise its block opt-out?

No. The Faculty has concerns regarding the loss of measures that are essential for the investigation and prosecution of serious crime in Scotland. In particular, the European Arrest Warrant has proved to be a highly effective vehicle for the delivery of suspected criminals; both those who have fled this country and those from abroad who have sought refuge here. The absence of such a mechanism would, inevitably, result in the UK encountering greater difficulty in repatriating suspects from abroad. Worse still, the UK could become something of a bolt-hole for criminals engaged in organized crime or terrorism. The Faculty expects that further difficulties could arise with the loss of access to vital databases and shared intelligence-gathering resources.

The Faculty does not regard the measures as being indicative of a desire to harmonise European police and criminal justice procedures; rather, they are designed to assist in the effective operation of domestic criminal justice systems.

2. What are the likely financial consequences of exercising the opt-out?

By virtue of Article 10(4) of Protocol 36, the UK may be required to bear “the direct financial consequences” of any decision to exercise the opt-out. Given the extent of the measures to which the opt-out would apply and the urgency with which administrative modifications would have to be made, it is conceivable that those consequences could be substantial.

3. What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

The Faculty is reluctant to comment on political matters. However, any delay resulting from a re-negotiation of the more important measures might well have an adverse impact on the effective operation of the Scottish criminal justice system and, therefore, the public interest. The Faculty fears that other countries within the EU, unimpressed with the exercise of the opt-out, might not rush to allow the UK to opt back in on an à la carte basis. In this regard it is significant that the unanimity of the Council, or the Schengen states, as the case may be, is required before a particular measure may be adopted by, and applied to, the UK.

The UK's current participation in PCJ measures

4. Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

There seems little doubt that the European Arrest Warrant (EAW) is the most important of the pre-Lisbon measures and its benefits will be well known to the Committee. The majority of the remaining measures seek to provide assistance in terms of the practicalities of increased co-operation, such as the exchange of information and access to intelligence.

The Faculty is not aware of any disadvantages resulting from the present arrangements. It is undoubtedly true that some of the measures are redundant; but the Faculty believes there is
no need to “throw the baby out with the bath-water”. An exercise of the opt-out, for reasons that are not clear and probably predicated on political anxiety rather than legal analysis, jeopardises the practical benefit of increased co-operation in this field.

The Faculty considers that the better way forward in this field is to allow the process of evolution to continue. For example, the UK has signed up to new provisions which stem from the Lisbon measures and is content to be bound by them.

5. In her 15 October statement the Home Secretary stated that “… some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

The Faculty cannot assist with an exhaustive evaluation of the 130 or so pre-Lisbon measures but would hope that the UK Government sets out in detail which of the measures is defunct or less than useful.

More importantly, the Government must explain the thinking behind its desire to jettison useful measures such as the EAW - to the undoubted detriment of the UK’s Policing and criminal justice – for the sake of clearing out obsolete or ineffective measures.

6. How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

The Faculty is aware that on 25 October 2012 the Scottish Cabinet Secretary for Justice, Mr. Kenneth Macaskill MSP, advised the Scottish Parliament that, “since the beginning of 2004 between sixty and seventy persons have been returned to Scotland under a European Arrest Warrant”. This was said represent an increase in the number of persons being returned to Scotland to face justice. The Faculty is concerned that the UK Government’s proposal was made without any prior intimation to the Scottish Government.

The Faculty is aware that the Prosecution Service in Scotland has taken advantage of other pre-Lisbon arrangements such as the sharing of intelligence and information, and that the measures can be of use to the Defence in criminal trials. For example, previous convictions of a witness from mainland Europe can now be obtained almost at the press of a button without causing undue delay.

7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

The Faculty is unaware of any failure to implement any Pre-Lisbon measures.

8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

The major practical effect of the Court of Justice (CJEU) having jurisdiction is to enable preliminary rulings to be requested where a question arises as to the validity or interpretation of any of the pre-Lisbon measures.
The Faculty’s understanding is that, once a reference is made, the proceedings before the national court are to be suspended. Although the CJEU is obliged to act with the ‘minimum of delay’ the Faculty is concerned that such delays will impact on statutory time limits that apply in Scotland. For example, an accused in a serious criminal matter can be remanded in custody for a maximum of 140 days. With 27 member states under the jurisdiction of the CJEU, there will be a huge increase in the Court’s workload. The Faculty hopes that there are sufficient resources in place to cope with this expansion.

The Faculty is also concerned that some of the Judges of the CJEU might be largely unfamiliar with the practice, and practicalities, of criminal justice, far less the nuances of the Scottish legal system.

A wider potential concern relates to the wide-ranging effect of preliminary rulings. As well as binding the national court hearing the case in which the decision is given, the system of precedent favoured, and developed, by the CJEU will result in other national courts being encouraged to rely on such rulings. However, the Faculty understands that while the CJEU will be able to accept the request for a preliminary ruling regarding pre-Lisbon matters, the effect of Article 9 of Protocol 36 (which preserves the legal effects of pre-Lisbon measures) is to ensure that the Court will not be able to increase their legal effects.

9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

It appears that Commission will, essentially, perform a policing role to ensure that CJEU judgments are given effect and its powers are significant, not least the power to impose a lump sum or penalty. The Faculty believes that, although such a role may not be popular with Governments, it is essential to ensure that the law is applied fairly.

As to the benefits and drawbacks of increased CJEU involvement, the benefit of subjecting the UK to the jurisdiction of the CJEU in this area is the ability to obtain a ruling and so clarification as to the meaning of a particular provision of EU law. Further, the reference may be made by “any court or tribunal” – so there is no need to exhaust the appeal process before such clarification is obtained. The primary drawbacks are firstly, that the ruling may not be one which suits the UK Government and, secondly, as discussed above the referral may cause delay at whatever stage it is made, as the proceedings are suspended pending the ruling of the CJEU (although an expedited referral procedure and, in the case of AFSJ measures, urgent referral procedure is available).

The potential consequences of exercising the opt-out

10. The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

The Faculty believes that the EAW system has been very effective. There have been relatively minor issues with extraditions from this country for relatively trivial offences, but any difficulties are not incapable of being resolved over time.
I 1. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

Other agencies are better able to comment on the direct implications of opt-out.

I 2. Which, if any, PCJ measures should the Government seek to opt back in to?

Some measures, such as the EAW and the facility to share intelligence, are of vital importance and should therefore be prioritized. In general terms, the Faculty submits that there are five factors that are relevant to decisions on opting back into pre-Lisbon measures, and indeed any new measures, namely:

1. Whether the measure is necessary in the interests of the effective investigation, prosecution and punishment of crime in the context of free movement of persons and capital.

2. Whether the measure protects and promotes the rights of the citizens. It would be a strong reason not to opt into a measure which might be justified in the interests of the effective investigation, prosecution and punishment that it does not adequately protect and promote the rights of citizens. On the other hand, it would be a good reason to opt into a measure that it does promote and enhance the rights of citizens where those are not or cannot be adequately secured through domestic measures alone.

3. Whether the measure goes to the grain of our domestic law or, on the other hand, involves innovations which would not cohere with our own law or would, when applied in our own law, result in anomalies or difficulties, or would result in a system which, looked at overall, achieve the purposes of the criminal justice system.

4. Whether the measure is adequately resourced (including, where the measure impacts directly on the citizen, by the provision of legal aid where appropriate).

5. Whether the measure creates a situation in which relevant domestic proceedings are liable to be adversely affected by delay resulting from references to the CJEU.

I 3. How straightforward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

The Faculty has no view on this matter, which is largely a political issue.

I 4. What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

The Faculty is not well-placed to offer evidence on this matter and trusts that the UK Government explores the issue in great detail in advance of any decision.
15. Is Article 276 TFEU, which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

The CJEU only has jurisdiction in relation to matters of EU law. Particularly in relation to its preliminary ruling jurisdiction, it does not rule on the validity or proportionality of internal measures; rather its role is limited to interpreting and determining the validity of a provision of EU law. On one view, Article 276 TFEU does not do any more than remind the CJEU of the limits of its jurisdiction, and so its relevance might be thought of as being more political than legal. Although, the CJEU has on occasion held that powers retained by the Member States have to be exercised in a manner consistent with EU law, Article 276 TFEU may be regarded an ‘added safeguard’ against the CJEU’s review of internal measures.

16. If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

There are very close pre-existing ties between the Republic of Ireland and the UK and there is no reason to suspect that these would not continue.

21 December 2012
About Fair Trials International

Fair Trials International (Fair Trials) is a non-governmental organisation that works for fair trials according to internationally recognised standards of justice and provides advice and assistance to people arrested across the globe. Our vision is a world where every person's right to a fair trial is respected, whatever their nationality, wherever they are accused. Fair Trials pursues its mission by helping people to understand and defend their fair trial rights; by addressing the root causes of injustice through our law reform work; and through targeted training and network activities to equip lawyers to defend their clients' fair trial rights.

Fair Trials is particularly active in the field of EU criminal justice policy. We work closely with the European Commission and Members of the European Parliament to develop measures to protect basic defence rights so that every person suspected or accused of a criminal offence in Europe receives a fair trial.

Context of this inquiry

1. Fair Trials has long been active in the field of EU criminal justice policy through our ‘Justice in Europe’ campaign, which calls on Europe to work together to improve protection for basic fair trial rights. We are working closely with the European Commission and Members of the European Parliament to develop strong legal measures to safeguard the defence rights of people suspected or accused of a criminal offence in Europe. We have also worked to build consensus on the need for reforms to end unnecessary and unjust pre-trial detention in the EU and to improve the operation of existing and proposed judicial cooperation measures, including the European Arrest Warrant and European Investigation Order. This work is informed by our Legal Experts Advisory Panel, a network of almost 100 experts in criminal justice and human rights from 24 Member States.

2. Fair Trials welcomes this opportunity to present its views on the UK’s 2014 opt-out decision (Protocol 36) to the Justice, Institutions and Consumer Protection and the Home Affairs, Health and Education Sub-Committees of the House of Lords Select Committee on the European Union. The issues raised are complex, but important for the millions of British citizens who live, travel and work in EU countries. The inquiry is an opportunity to bring clarity and coherence to the politically divisive issues that the opt-out decision raises. In July 2012, Fair Trials published a Q&A on the UK’s 2014 opt-out decision, with the aim of explaining the key issues in simple terms and setting out Fair Trials’ position (See Annex 1). 14

3. We do not consider this to be an “all or nothing” decision as it has sometimes been portrayed. First, a full opt-out from all EU laws on crime and policing is not possible. Even if the UK decides to opt out of all EU laws adopted pre-Lisbon, it will still be bound by laws it has opted into since. These include the directives on the right to interpretation and translation and on the right to information in criminal proceedings. Secondly, the

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provisions of Protocol 36 make it likely that the UK could decide to opt out and then opt back in to certain measures.  

4. The Home Secretary has stated that the Government’s current thinking is that the UK will opt out of all the pre-Lisbon measures and negotiate to opt back in to individual measures that it is in the national interest to re-join. It has undertaken to facilitate a debate and vote in each House of Parliament before a decision is made, although it is not yet clear what form this vote will take. Given this approach, the main focus of this submission is on whether the UK Government should select to opt back into the European Arrest Warrant (EAW) in its current form.

**European Arrest Warrant**

5. UK police and law enforcement authorities have made it clear that they want to remain a part of the EAW system. They have highlighted how the EAW has speeded up the extradition procedure, meaning that extradition requests issued by the UK to other EU Member States are dealt with quickly. They have also highlighted that it has facilitated the swift removal from the UK of people suspected or convicted of criminal offences in other EU countries to stand trial or serve their sentences.

6. Opting out of the EAW would mean that the UK’s extradition arrangements with other EU countries would be governed by the Council of Europe’s Convention on Extradition. Extraditions between the UK and Council of Europe members (as well as other signatories to the Convention, like the United States) who are not part of the EU currently take place within the framework of this treaty. All Member States are a party to it, but the system is different and it is a slower procedure than the EAW. Despite this, we believe that other Member States will continue to wish to engage in effective extradition arrangements with the UK, whether or not we remain a part of the EAW system.

7. Fair Trials fully accepts the need for a fair and effective system of extradition within the EU. In an EU without borders, effective justice policy depends on efficient cooperation in transnational cases. However, we see numerous cases of injustice resulting from the overly rigid nature of the EAW system and its inability to safeguard fundamental rights and the principle of proportionality. See Annex 2 for some examples of these cases.

8. There is now widespread recognition of the need to reform the EAW. There have been three inquiries into the UK’s extradition laws in the UK and concrete reforms to the

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15 For commentary on this point see e.g. Steve Peers, “The UK’s planned ‘block opt-out’ from EU justice and policing measures in 2014”, Statewatch analysis 2012, available at http://www.statewatch.org/analyses/no-199-uk-opt-out.pdf: ‘The UK has the option, ‘at any time afterwards’, of notifying its wish to opt back in to the pre-Lisbon third pillar acts which ‘have ceased to apply to it’ (Article 10(5)). (...)it should be emphasised at the outset that in the large majority of cases, the UK will not need the consent of other Member States to opt back in to these acts.’
16 Announcement by Theresa May in the House of Commons, 15 October 2012, available at http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121015/debtext/121015-0001.htm#1210154000006
17 See for example remarks by Bill Hughes CBE QPM, Former Director-General of the Serious Organised Crime Agency, at the Law Society on 29 November 2012
19 In 2011 for example, the UK received 6,760 EAWs from other Member States and surrendered 999 people (Council of the European Union Replies to questionnaire on quantitative information on the practical operation of the European arrest warrant – Year 2011)
EAW Framework Decision have been recommended. In June 2011, MEPs held a plenary debate on EAW reform in the European Parliament. Action to address the problems with the EAW Framework Decision was supported by MEPs from a wide political base and demonstrated a growing consensus on key areas for reform. The Commission has also expressed its concerns, acknowledging that there is “considerable room for improvement in the operation of the EAW system.”

9. As well as reform to the UK’s own implementing legislation, the Extradition Act 2003, there are a number of amendments required to the Framework Decision and we recommend the following:

**Proportionality:** A proportionality test should be introduced. Fair Trials sees numerous cases of extradition requests for minor offences and where the circumstances of the suspects and their families make the effect of extradition disproportionate.

**Protection of fundamental rights:** Courts in executing states should be given a greater opportunity, when alerted to a real risk of rights infringements, to seek further information and guarantees from the issuing state (and, ultimately, the power to refuse surrender if their concerns are not satisfactorily dealt with).

**Removal of warrants:** The Framework Decision should be amended to require states to remove an EAW where this has been properly refused by an executing authority. The lack of remedies available to people in this position, who risk re-arrest and imprisonment each time they cross an EU border and are therefore virtual prisoners in their home state, is unacceptable.

**Deferred extradition** should be permitted where a case is not “trial ready”. Fair Trials sees numerous cases where people are extradited under an EAW before any decision has been made to prosecute and are then held for months in prison under extremely difficult conditions awaiting trial. Fair Trials also hopes that greater use will be made of the European Supervision Order to address this problem.

10. We hope that the UK will lead the growing calls for sensible reforms to the EAW system in Europe. Given the severe human impact of unjust extradition, we do not believe that the UK should opt into the EAW in its current form. From 2014, the European Commission will have important powers to take the action needed to ensure that Member States comply with the EAW. Sensible reform now would ensure Member States could not be subject to such proceedings if their national law allows for a higher level of protection of basic rights than the EAW Framework Decision. We welcome the Home Secretary’s announcement that the Government will seek to work with the

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20 The Scott Baker Review reported October 2011, the Joint Committee on Human Rights reported in June 2011 and the Home Affairs Committee reported in March 2012.
23 The UK implementing legislation, for example, contains a provision enabling the court to refuse to extradite where this would breach the requested person’s human rights and German courts apply a proportionality test when deciding whether to extradite someone under an EAW. Neither of these refusal grounds is set out in the Framework Decision.
European Commission and EU Member States to consider which changes should be made to the EAW.\textsuperscript{24}

11. The EAW has been operating now for eight years and it would be the sign of a mature law-maker to review the legislation and introduce changes to address problems. This could be achieved by a legislative proposal from the Commission or through amendments to the Framework Decision initiated by Member States.\textsuperscript{25} We believe that the EU Court could also provide the legal certainty needed as to the human rights considerations which Member States must take into account when operating the EAW. The recent Advocate-General Opinion in the \textit{Radu} case, for example, if followed by the Court, provides much needed confirmation of the need for national courts to consider both proportionality and human rights issues in EAW cases.

**Defence rights in the EU**

12. The mutual cooperation instruments introduced in an effort to create an “area of justice, freedom and security” within Europe are based on the principle of “mutual recognition”. Mutual recognition means that if one EU country makes a decision (for example that a person must be extradited to face a criminal trial or serve a sentence), that decision will be respected and applied throughout the EU. However, mutual recognition instruments such as the EAW have demonstrated that there is not yet a sound basis for mutual trust, not least because basic fair trial rights are not adequately protected in many EU countries.

13. The number of prosecutorial measures that are part of the opt-out decision mean that it is vital that the level of mutual trust is increased. Sadly, until recently, the UK has done little to support EU initiatives in this area, preventing EU defence rights protections being passed under the Lisbon Treaty to accompany the EAW. This was a mistake and has contributed to the injustice caused by the EAW. The reforms brought about in the 1980s to police procedure and practice mean that the UK has excellent practice to contribute and there are clear benefits to us in ensuring that fair trial rights, taken for granted in the UK, are protected in every EU Member State.

14. In recognition of the fact that fair trial rights are not adequately safeguarded in many EU countries, the EU adopted the Roadmap on procedural defence rights (the \textit{Roadmap}) in 2009. This gave a mandate for a series of laws designed to ensure better protection of defence rights in Europe. The first two laws under the Roadmap, guaranteeing the right to interpretation and translation in criminal proceedings and to information on arrest, have now been passed. The UK opted in to these laws, which as post-Lisbon measures will continue to bind it regardless of the 2014 decision. Disappointingly, the UK has chosen not to opt in to the third law under the Roadmap, which will provide the right for suspects to access a lawyer on arrest.

**The European Supervision Order**

15. We believe that the UK has also failed to implement the European Supervision Order (ESO), a Framework Decision passed under the Lisbon Treaty which was supposed to

\textsuperscript{24} Statement on extradition by Theresa May, 16 October 2012, available at \url{http://www.homeoffice.gov.uk/media-centre/news/gary-mckinnon-extradition}

\textsuperscript{25} Under the Lisbon Treaty, the backing of seven Member States is needed to initiate legislation.
have been implemented by all Member States by 1st December 2012.\textsuperscript{26} The ESO lays down rules according to which one Member State must recognise a decision on supervision measures issued by another Member State as an alternative to pre-trial detention. This could have a huge impact on people arrested abroad, who are often denied bail simply because they are non-nationals. Unless the ESO is implemented into UK law, it will not be available to the many British citizens who may spend months or years in foreign prison awaiting trial away from home, often in horrendous conditions.

16. The Government has attributed this failure to comply with its EU obligations to the fact that ‘the UK’s future participation in those measures within the scope of the 2014 decision, which includes this measure, is still being considered.’\textsuperscript{27} The EU criminal justice system will not stand still for two years while the UK considers the opt-out decision. The ESO is an important measure, and it highlights the need to consider all 130 laws subject to the opt-out decision and not just those that assist prosecutors and law enforcement officers.

**Jurisdiction of the Court of Justice of the European Union**

17. Much has been made of the effect that the CJEU’s expanded jurisdiction in 2014 will have on the UK if it were to remain a part of pre-Lisbon crime and policing laws. This topic was not covered in detail in our Q&A published in June.

18. Arguments have been made that ‘the [CJEU] has a long history of extending the remit of the EU institutions through judicial activism’ and that it has ‘radically changed the meaning and scope of EU rules’.\textsuperscript{28} Some fear that, due to an apparent failure of the Court to agree with Member States’ submissions in a number of cases, the CJEU has an agenda that is alien to national legal systems and that this will force UK courts to apply laws in a manner that is not consistent with the statute books. There is a particular concern that the UK will be disproportionately affected by the CJEU’s judgments due to its common law system.\textsuperscript{29}

19. The Court’s judgments provide little evidence to support these views. Many cases have in fact had a positive effect on both British citizens and on the national interest.\textsuperscript{30} In the case of Cowan, for example, a British citizen subject to a violent assault on the Paris metro was able to claim compensation as a recipient of services, bringing about a change in French domestic law which had previously limited such claims to French nationals.\textsuperscript{31} In cases involving criminal law, the Court has shown reluctance to interfere with Member

\begin{footnotesize}
\textsuperscript{26} Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention, OJ 2009 L 294, p. 20-40.
\textsuperscript{27} Written response to Dominic Raab MP’s question to the Secretary of State for Justice, HC Deb, 1 November 2012, c398W.
\textsuperscript{29} See e.g. Open Europe, “An unavoidable choice: More or less EU control over UK policing and criminal law”, available at http://www.openeurope.org.uk/Content/Documents/PDFs//JHA2014choice.pdf.
\textsuperscript{30} See e.g. Case C-127/08 Metock and others v Minister for Justice, Equality and Law Reform, judgment of 25 July 2008. The concept of direct effect has been instrumental in breaking down trade barriers within the EU and creating the internal market which has been of enormous benefit to the UK.
\textsuperscript{31} Case C-186/87 Ian William Cowan, Judgment of 2.2.1989.
\end{footnotesize}
States’ domestic law.32 In relation to the EAW, it has upheld provisions of national law in several cases.33

20. The CJEU is the EU’s highest court. National courts refer questions to it on the validity and interpretation of EU laws and its rulings help to ensure laws are applied consistently by Member States throughout the EU. The Court’s judgments can provide welcome clarity on provisions of EU law, as demonstrated by the Radu case. From December 2014, the CJEU will be able to hear references on EU crime and policing laws from all national courts.34 The CJEU also enforces EU law by ruling on infringement actions brought against EU countries by the European Commission for failure to implement EU laws or apply them consistently with fundamental rights.35 The UK courts have acknowledged the benefit of the role of the CJEU in this area. In a recent decision, a UK Supreme Court justice commented that the inability of the court to refer a question to the CJEU made it difficult to interpret unclear points of EU law.36

Recommendations and conclusions

21. Fair Trials recommends that the UK uses the 2014 decision as an opportunity to build on the growing consensus for reform of the EAW to create a fair and effective system of extradition within Europe. Unless these flaws are remedied by CJEU case law, we believe that the UK should not opt into the EAW without first securing political commitment to key reforms to the European legislation that created the EAW.

22. There is a danger that the opt-out decision will focus on picking and choosing those measures that are perceived to combat cross-border crime without building a sound basis for the trust needed to underpin mutual recognition measures like the EAW. Such measures will not operate fairly unless they are accompanied by effective guarantees of basic fair trial rights. The UK should play a constructive role in the ongoing debates on important procedural rights measures such as the directive on the right to access a lawyer. The UK should also implement the European Supervision Order, which could prevent Britons being detained for months or years pending trial in other EU Member States. These measures will guarantee respect for the rights of the thousands of Britons exercising their right of free movement across the EU every year.

23. Fair Trials welcomes the role that the CJEU can play both in improving the consistency of the application of EU law and ensuring that measures are applied in conformity with basic fair trial standards. The case-law shows that it can provide helpful interpretation on

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33 See e.g. Case C-303/05 Advocaten voor de Wereld VZW v Leden van de Ministerraad, judgment of 3 May 2007, in which the CJEU agreed with the Member States that it was not contrary to the principle of legality for Article 2(2) of the EAW Framework Decision to abandon double criminality checks in respect of the Framework List offences. See also Case C-123/08 Wolzenburg, judgment of 6 October 2009, in which the Court found that the Dutch law laying down a five-year minimum residence requirement before a non-national could benefit from the protection offered by Article 4(6) EAW was justified.

34 The UK and 8 other countries have blocked national courts from referring questions on pre-Lisbon EU crimes and policing laws until 2014. From December 2014, the countries will no longer be able to stop their courts making these references.

35 The only exception will be for the UK and Ireland, for those EU laws that they have chosen not to participate in, or (in the UK’s case) opted out of as part of the 2014 decision.

36 Assange v The Swedish Prosecution Authority, [2012] UKSC 22, dissenting judgment of Lady Hale, paras. 179 and 185
unclear points of EU law to ensure accurate and consistent implementation in all Member States. The UK has an excellent record of implementing and complying with EU measures, and it is important to recognise the benefits that the extended jurisdiction of the CJEU could bring, both to UK citizens and to the courts by enabling them to refer questions of interpretation.

14 December 2012
Annex 1

The UK’s right to opt out of EU crime and policing laws from December 2014

Frequently Asked Questions

July 2012

Working for a world where everyone’s right to a fair trial is respected, whatever their nationality, wherever they are accused.

Context

The debate on a possible UK opt-out of EU crime and policing laws in 2014 is set to heat up, as the UK prepares to decide on our future participation in a raft of EU laws. These include the European Arrest Warrant, a fast-track system of extradition that has revolutionised the way wanted persons are moved from state to state, removing many safeguards.

The opt-out decision will impact on how UK police, prosecutors and courts work with partners across Europe to investigate crime, extradite people, share criminal records, exchange evidence and liaise with Europol and similar EU bodies. The issues raised are complex, but important for the millions of British citizens who live, travel and work in other EU countries.

With the deadline a year before the date currently scheduled for a general election, this looks set to be a big party-political issue. Coalition tension is foreseen, with the Liberal Democrats’ pro-EU stance meeting pressure from many Conservatives who demand the “repatriation of powers” from the EU and from Europe’s regional courts at Strasbourg and Luxembourg. As one think-tank has observed: “The Conservatives and Liberal Democrats have long held opposing views on the [European Arrest Warrant] that will be difficult to climb down from and will make the collective decision very tough”.  

The Government has not yet expressed its position on the 2014 issue, but has promised a vote in Parliament before it decides. Those seeking a full opt-out say we could opt back into laws “deemed vital”. Yet the consequences of such an approach are legally, financially and operationally unclear, as the Lord Chancellor and others have acknowledged.

In reality, however, this is less about repatriating powers from Brussels than about degrees of future participation in a system already in place. As we explain, a total opt-out is legally impossible, leaving aside its possible merits or drawbacks. The UK should, in our view, make its future participation conditional on securing reforms to the European Arrest Warrant, a law that is currently undermining justice and wasting resources. The 2014 choice offers a narrow window of opportunity to build on the growing consensus for this reform.

This paper seeks to explain the key issues in simple terms. It concludes that the key question for the Government is: how does the UK ensure effective cooperation in the fight against crime across EU borders, without sacrificing rights and liberties in the process?

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37 Open Europe blog post 21 March 2012
38 Letter to David Cameron “Repatriate powers on crime and policing” published Telegraph 6 February 2012
39 Evidence to Lords EU Justice and Institutions Sub-Committee 18 January 2012
Q1 What is the opt-out decision about?

Two things: (1) how far the UK carries on participating in EU laws on crime and policing; and (2) how far it will accept the jurisdiction of the Court of Justice of the EU (EU Court) over how it applies those laws and how they are enforced.

The Lisbon Treaty changed the way EU laws on crime and policing are made and enforced at EU level, but some of the changes only take effect in the UK from December 2014 – a grace period that the UK wanted. Any of these EU laws the UK is participating in as at December 2014 will fall under the EU Court’s jurisdiction, so the European Commission will be able to take infringement proceedings in that Court if the UK fails to apply the laws properly. The UK negotiated a protocol giving it five years to decide if it wanted this. It must notify the EU of any opt-out decision by no later than 1 June 2014 and this decision would take effect from December 2014. We explain more about the EU Court’s role later (Q8). We also explain why a complete opt-out of all EU crime and policing laws is not an option, as the opt-out only covers laws passed before Lisbon – for laws the UK has chosen to take part in since Lisbon, the EU Court’s jurisdiction cannot be opted out of. We give examples of these under Q5 below.

Q2 What are the principles underlying EU crime and policing laws?

**Free movement and open borders**

In the late 1990s border controls were lifted between many EU countries and this process has continued since, with EU law now guaranteeing free movement for all EU citizens inside the EU area. Even where border controls still operate (like the UK and Ireland), EU citizens have an automatic right to enter if they show a valid passport on arrival. Police and prosecutors understandably needed new powers to co-operate across borders, so that criminals cannot exploit open borders to escape justice or commit further offences.

**Mutual recognition**

Terror attacks in the United States led to rapid consensus among EU countries that faster, simpler cooperation across borders was needed and the way to achieve this was through “mutual recognition” of prosecutors’ and judges’ decisions across the EU, without delay or red tape. So, if a judge in one EU country wanted a suspect or convict extradited there, other countries had to cooperate and extradite the person, with very little discretion to say “no” or raise questions.

The underlying assumption was that, although EU countries had their own laws and procedures, they all complied with human rights, including the rights not to be tortured or treated in an inhuman or degrading way and to receive a fair trial. This assumption is, at best, optimistic: fundamental rights are not protected to acceptable standards in many parts of the EU despite all EU countries belonging to the European Convention on Human Rights.

**Subsidiarity**

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40 (in force as of December 2009)
The laws the EU can make on crime and policing are limited by the principle of “subsidiarity”: laws can only be made where countries acting alone could not achieve the same result. So, for example, we have EU laws enabling judges and police to cooperate on extradition requests and laws on evidence exchange and prisoner transfers. We also have EU laws on the basic procedural rights of suspects, defendants and crime victims, introduced in belated recognition that “mutual recognition” requires a stronger foundation of rights protection.

The EU also has limited powers to make substantive (as distinct from procedural) criminal law – in other words, to outlaw certain types of conduct and lay down sanctions for very serious crime with a cross-border dimension. Under the Lisbon Treaty this covers crimes like terrorism, trafficking in human beings, cyber-crime and organised crime.

None of this stops the UK from making its own crime and policing laws. So, if the UK wants to make laws giving greater rights to crime suspects or victims than those laid down by EU law, it can. There are legal question marks over what happens when the UK makes a law that directly conflicts with an EU law. The UK would be in breach of EU law by doing so but there are currently no enforcement procedures the EU could bring to stop this.

Q3   How are EU crime and policing laws made?

Before the Lisbon Treaty, the EU used “framework decisions” to make crime and policing laws intended to have effect in all EU countries. After Lisbon, laws in this area are made in the form of “directives”, using a different decision-making process.

Framework decisions and directives both require member states to achieve particular results without dictating the means of achieving them. But directives, unlike framework decisions, allow the European Commission to bring infringement proceedings against EU countries that fail to transpose them into domestic law. The other big difference is that framework decisions could only be passed by unanimous vote of all EU countries (meaning a single state could block new laws they did not want); whereas directives are decided by a qualified majority. Finally, Members of the European Parliament had no binding voting powers on framework decisions, but do vote on directives and could in theory block them.

Due to the powers the EU Court has to enforce directives and ensure EU countries apply them in accordance with their terms and with fundamental rights, the UK wanted a right to choose whether to participate at all in post-Lisbon directives on crime and policing. It therefore negotiated an individual opt-in right, for every new directive proposed. The way this works is explained under Q5 and Q6.

Q4   What are the main examples of pre-Lisbon laws on crime and policing?

- European Arrest Warrant Affects thousands each year and has generated high profile cases of injustice. In operation for 8 years, it has speeded up extradition and limited powers

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41 There were also Conventions – but these only operated when Member States accepted them.
42 This is separate to the 2014 opt-out – it will continue indefinitely and applies to Ireland as well as the UK.
43 There are over 100 such laws: a full list is contained in a letter of 21 December 2011 from the Home Secretary, available at p 24ff of a report by Open Europe: “An unavoidable choice” [http://www.openeurope.org.uk/Content/Documents/Pdfs/JHA2014choice.pdf](http://www.openeurope.org.uk/Content/Documents/Pdfs/JHA2014choice.pdf)
Fair Trials International – Written evidence

of refusal. It has resulted in big increases in extradition requests, with some countries using it for minor as well as serious crimes.

- European Supervision Order  Comes into force in December 2012. Could have a huge impact by preventing thousands of people not convicted of any crime from spending months or years in prison awaiting trial, allowing them instead to be bailed back home until trial. Could be good news for many UK citizens awaiting trial in other EU states. Currently, most do not get bail, simply because they are non-nationals.

- Prisoner transfer law  Will simplify the way countries transfer convicted prisoners who are from other EU countries back to their home state to serve remaining sentence. Premised on the need to improve rehabilitation prospects, it would allow the UK to transfer EU nationals from other states back home with minimum red tape. It would also mean UK prisoners in other EU countries could be transferred home more easily.

- Exchange of criminal records data  ECRIS (the European Criminal Records Information System) enables the sharing of criminal records data across EU borders. Every EU country has a central authority that stores the criminal records of its citizens and sends these to other countries on request.

- Financial penalties law  This allows fines of €70 or more, imposed in one country, to be enforced in another. Potentially a good alternative to extradition in less serious cases, but under-used.

- Europol, Eurojust, police/prosecution cooperation  EU laws cover how the UK and other EU countries work with these bodies, sharing information on criminal records, transmitting extradition requests and helping coordinate complex cross-border investigations.

Q5  What about crime and policing laws made since Lisbon?

- Defence rights  Two directives have been adopted in this area and two more are planned. The first will ensure that anyone facing charges in an EU country gets access to interpretation and translation if needed. The second guarantees that suspects receive information about their basic legal rights and the charges against them. They come into force in 2013 and 2014. Further laws on the right to legal advice and protections for vulnerable suspects (like children or disabled people) are under discussion.

- European Investigation Order (EIO)  Likely to be adopted in late 2012, the EIO will introduce major changes to the system by which evidence is obtained and shared between EU countries in criminal cases. “Requests” for evidence or investigations will become “orders” that other EU countries must comply with, by fixed deadlines.

Q6  What approach has the UK taken to EU crime and justice laws?

Essentially, a pick-and-choose one. Pre-Lisbon, the UK voted in favour of law enforcement measures like the European Arrest Warrant but, along with a few other countries, vetoed a law protecting defence rights. Post-Lisbon, there is no longer a veto, but a protocol to the

44 (notably, Poland, Romania and Hungary)
Lisbon Treaty now lets the UK (and Ireland) choose whether to opt in or stay out of new proposed EU laws, on a case-by-case basis. Any new EU law proposed can be opted into within 3 months of being proposed\(^45\): once “in”, the UK can negotiate on the text, but has no right to opt out once the measure is adopted. So far, it has decided as follows\(^46\):

- **Defence rights:** The UK opted into the two directives on defence rights in recognition that, though it complied with them already, many EU countries did not. More recently, the UK has chosen not to opt into a proposed law guaranteeing suspects the right to legal advice and representation and the right to contact consular officials and family members on arrest, stating that the measure goes further than necessary. It has signalled that it might choose to participate *after* the directive has been adopted into EU law – an option also available under the special UK (and Irish) protocols.

- **European Investigation Order (EIO):** The Home Secretary told Parliament in 2010 that the UK would opt into this law and would benefit from its more streamlined system for cross-border evidence sharing. She warned that if we did not opt in, our own evidence requests would be sidelined, once other EU countries were using the EIO.

**Q7** In 2014, can we opt out of laws we have opted into since the Lisbon Treaty?

No. Even if we opt out of all EU laws adopted pre-Lisbon, there is no way we can opt out of laws we have opted into since. This means we stay in the EIO (assuming it gets adopted) and the defence rights laws (above) even if we opt out of all pre-Lisbon laws and do not opt into any more EU laws.

**Q8** What is the Court of Justice of the EU?

There is confusion in some quarters about the EU Court. Based in Luxembourg, it is the EU’s highest court. National courts refer questions to it on the validity and interpretation of EU laws. Its rulings help to ensure laws are applied consistently in all EU countries. The Court’s role has evolved as EU countries have conferred more powers onto the EU. It originally dealt with laws on trade, agriculture and the internal market. Now it also deals with social policy, environment, judicial cooperation and other areas. The UK and 8 other countries have blocked national courts from referring questions on pre-Lisbon EU crime and policing laws, at least until 2014.

The EU Court also enforces EU law, by ruling on infringement actions brought against EU countries by the European Commission for failure to implement EU laws or apply them consistently with fundamental rights like free movement and non-discrimination and general principles of EU law such as proportionality. A key role is thus to ensure fundamental rights are observed in areas that fall within its jurisdiction. Its decisions are binding on all EU member states.

\(^{45}\) Alternatively, even if the UK does not opt in during these first three months, it can notify the Commission *after* the law’s adoption that it wants to participate.

\(^{46}\) The UK has also opted into new Directives on child sex abuse and on people-trafficking; as well as a proposed Directive on the rights of crime victims.
The EU Court’s role in the area of EU crime and policing laws will expand when changes brought in by the Lisbon Treaty take effect. From December 2014, its jurisdiction to take references and to rule on infringements will apply to all EU countries uniformly: countries can no longer stop their courts making references and all will be subject to potential infringement proceedings. The only exception will be for the UK and Ireland, for those EU laws that they have chosen not to participate in, or (in the UK’s case) opted out of in December 2014 and not opted back into after that.

The EU Court is different to the European Court of Human Rights, which is based in Strasbourg and has jurisdiction over all 47 Council of Europe countries, not just the 27 EU countries. The Strasbourg Court hears complaints about violations of the rights enshrined in the European Convention on Human Rights. It can award compensation to individuals whose human rights have been infringed, whereas the EU Court has no similar power.

Q9 Can the UK avoid the EU Court’s jurisdiction by using the bloc opt-out?

Not completely. The UK cannot opt out of those EU laws on crime and policing adopted since the Lisbon Treaty that it has chosen to participate in. So, the EU Court will be able to rule on infringement cases brought by the European Commission in relation to these laws where, for example, the UK fails to implement a directive properly or apply it in accordance with EU principles or fundamental rights. This could happen either when an individual brings infringements to the Commission’s attention or when the Commission acts on its own initiative. UK Courts will also be free to refer interpretation questions to the EU Court on these post-Lisbon laws, as soon as they are in force.

This contrasts with the position on pre-Lisbon laws like the European Arrest Warrant: the EU Court will only have jurisdiction over how the UK applies these laws after the transition period ends in December 2014, assuming we stay in them (or opt back into them, after an opt-out in December 2014).

Q10 Could the EU Court interfere in UK police operations?

The Lisbon Treaty says the EU Court cannot review the “validity or proportionality” of operations by national police or other law enforcement bodies, or the actions they take to maintain law and order and safeguard national security. So, if the Met Police decided to arrest everyone at a demonstration, the EU Court could not rule against the UK and hold that the police acted illegally or excessively.

Q11 Must we accept a European Public Prosecutor, if we do not opt out en bloc?

No. Under the Lisbon Treaty, establishing this office would need unanimity among all EU states. Failing unanimity, if nine states or more want it, it could operate just among those. Even if this happened, the UK could never be forced to relinquish any power to a European Public Prosecutor47. No legislative proposal for this office exists as yet. The role is intended for prosecuting serious frauds on the EU institutions, but could be expanded by agreement.

47 The European Union Act 2011 in fact says the UK cannot join the European Public Prosecutor project without a referendum and an Act of Parliament.
Q12 So, what happens if we opt out of all the measures we can opt out of?

The UK will still have to pass domestic laws enacting the EU measures it has opted into post-Lisbon, plus any future laws it opts into. The UK will be under the jurisdiction of the EU Court in any infringement case brought by the European Commission concerning those laws, once adopted. UK Courts will no longer be barred from referring interpretation questions on these laws to the EU Court. (UK Courts already do this in other areas of law.)

Q13 Can we opt out, then selectively opt back into the laws we want?

Yes, but only if the European Commission (or for some laws, the European Council) agrees: conditions can be attached and there could be financial consequences. The detail would need approval and this could take several months. The UK might not get its own way on everything. James Brokenshire, Minister for Crime and Security, has stated: “We believe that the Commission would attach conditions, for instance, they might only allow us to join groups of related measures, some of which we might like and others we might not.”

Q14 How does all this affect the European Arrest Warrant?

At Fair Trials International we have highlighted many cases where people have been extradited under this system, despite serious risks of rights violations. Yet it would be wrong to say that these problems can only be solved by leaving the Arrest Warrant system. Opting out would mean going back to the system of extradition in use before the EAW (and still used by other non EU countries in Europe). EU countries, when dealing with the UK on extradition, would have to apply a different system to the one they use for other EU states. Senior police officers say this would cause delays and could risk the UK’s own extradition requests going to the bottom of the pile when other EU countries are operating the fast-track Arrest Warrant system with its strict deadlines.

An alternative is to fix the EAW’s defects. There have now been three inquiries into our extradition laws and concrete reforms to the Arrest Warrant have been recommended, some of which need law changes at EU level – changes the UK could not influence unless it remained “in”. The European Commission and many MEPs have also acknowledged that there is room for improvement in this law. One obvious solution is for the UK to condition its future participation on EAW reform in key areas recommended by review bodies and other experts. Building in a proportionality test to stop the misuse of the Arrest Warrant for trivial cases is one area where consensus should be possible.

Q15 Would opting out “repatriate powers” to the UK?

By its very nature, cross-border crime requires a coordinated system where all countries work to the same rules. Similarly, the EU is an area where 27 countries have different legal systems, but the same obligations to safeguard rights. So it makes sense that EU countries “pool” their sovereignty, making decisions collectively through the EU institutions, on areas like extradition, prisoner transfer, bail decisions between EU states and exchanging criminal records data. This is an area where EU laws meet the “subsidiarity” test discussed earlier.

48 The Commission saw the key problem as disproportionate use of EAWs for minor crime. It inserted a clearer proportionality guideline in the (non-binding) Handbook for issuing EAWs applicable to countries wishing to issue EAWs. The Commission has said it does not rule out legislative change if this does not solve the problem.

49 Fair Trials International has prepared a briefing on necessary amendments to the EAW framework decision.
So, whilst a full opt-out of pre-Lisbon laws would leave the UK free of obligations to comply with these, other systems would have to be introduced to take their place, where necessary to enable the authorities to tackle crime and cooperate with other EU countries properly in cases with a cross-border element.

Whether we choose a bloc opt-out or not, for any future proposals on EU crime and policing laws, the UK government will always have the right to choose whether to participate (opt in) (see above, Q6). This does not change in 2014. If the UK opts into a new law, it can take part in EU level negotiations on what the law says. The UK’s elected MEPs will also have the right to debate and vote on the laws. Finally, the UK will have the right to vote in the European Council, on whether to adopt the final text. Under Lisbon rules, no country has the power of veto. A 2014 opt-out would not change this.

Finally as discussed above, we cannot opt out in 2014 of the laws we have chosen to take part in, since Lisbon. So the issue is less about repatriation of powers than about degrees of future participation in an EU-wide legal system already in place. Under this system, the UK and other EU countries have pooled their collective sovereignty, to make and enforce laws on cross-border crime and policing together at EU level. The real question is whether continuing to take part in that system serves our national interest better than going it alone (to the extent that that is possible).

Q16 What is Fair Trials International’s position?

Our work involves helping people who are facing charges in other countries to protect their fair trial rights. We use the lessons learned from hundreds of cases, many involving British citizens, to analyse the wider issues, both domestically and at EU level. We look at every EU law in the field of crime and policing from this standpoint. Where EU laws undermine fair trial rights, we lobby for reform. Where EU laws can improve the protection of UK citizens facing charges elsewhere in Europe, we support their adoption. We have criticised some EU justice measures for failing to protect fundamental rights and for blindly trusting all EU countries to uphold rights. For example, we have highlighted flaws in the European Arrest Warrant and the proposed European Investigation Order.

We have welcomed and promoted EU laws designed to protect basic defence rights like access to a lawyer and an interpreter and alternatives to lengthy pre-trial detention. These laws should help British people – millions of whom live, work and holiday in other EU countries every year – to feel confident that they are not leaving their rights at home when they travel. But in practice, this will only happen if the standards laid down in EU laws are actually complied with by all EU countries, in line with human rights standards. The EU Court has an important role here. In addition to its enforcement powers, a further advantage would be that the UK would be free to seek rulings that an EU law goes beyond the proper legal remit of EU law-making as agreed by treaty. This is an important safeguard of national sovereignty and the subsidiarity principle.

Conclusion

- The UK cannot “go it alone” on crime and justice. In a Europe without borders, millions of Britons will continue travelling for business, study or pleasure, long after 2014. The need for law enforcers to cooperate across borders will not change. The UK could benefit from continuing to take part in EU criminal justice cooperation
while also building stronger safeguards for defence rights. This would help strengthen the rights of British citizens facing extradition to, or trial in, another EU country.

- The UK is not the only member state to have concerns over the European Arrest Warrant, the proposed Investigation Order, and the insufficient protection for fair trial rights and civil liberties in much of the EU today. Other countries like Germany, the Netherlands and Ireland are also suffering the effects of a flawed extradition system with no proportionality test and have seen public concern about the effects of appalling pre-trial detention conditions endured by their citizens, following extradition. The UK should work with like-minded states to build a consensus for reform, using the momentum of its 2014 deadline to push this agenda forward.

- Whatever decision is taken, the UK will remain subject to the rulings of the EU Court on the EU crime and policing laws we cannot opt out of. In the worst of all worlds, the UK will opt out en bloc from those measures it can opt out of, then opt back in, but only to prosecution measures like the European Arrest Warrant and not other measures that could lessen its worst effects: measures like the European Supervision Order. This would be a wasted opportunity. Instead the UK should now work with the rest of the EU to fix what is not working, most importantly, the European Arrest Warrant. It should also use its influence to push for better standards on fair trial rights and pre-trial detention, promoting alternatives to remand in custody in suitable cases. The emphasis should be on ensuring effective cooperation, without sacrificing rights and liberties in the process.
Effects of extension of the jurisdiction of the Court of Justice (ECJ)

If the UK does not avail itself of the option granted to it by Article 10 of Protocol (No 36) on Transitional Provisions to the Lisbon Treaty, then the so-called “Third Pillar” measures adopted before the Lisbon Treaty and to which the UK is party will become fully justiciable before the ECJ, and subject to supranational enforcement procedures by the European Commission under Article 258 TFEU.

This will have a number of serious consequences, all of which in my opinion will be damaging to a greater or lesser degree. These consequences can be summarised as follows:-

(1) Subjection of UK domestic courts to the so-called duty of ‘conforming interpretation’ in respect of these Third Pillar measures.

(1) The subjection of the United Kingdom to so-called “direct action” infraction proceedings before the ECJ brought by the European Commission under Article 258 TFEU.

(1) The interpretation of these Third Pillar measures by the ECJ in accordance with over-arching principles allegedly derived from the EU Treaties, including the furtherance of European unity as an end in its own right.

(1) Significant delays to legal proceedings before the UK courts involving these Third Pillar measures arising from the need to make preliminary references under Article 267 TFEU.

(1) Serious curtailment of the UK’s ability to develop and apply its own fundamental rights regime to the important areas of policy covered by these measures.

1. The duty of ‘conforming interpretation’

In the context of EU ‘First Pillar’ measures, it is an established doctrine developed by the ECJ that national courts are under a duty to interpret national legislation if possible in accordance with directives. This is despite the fact that under the Treaties (now Article 288 TFEU) directives, in contrast to regulations, do not have general application and are only binding on member states and not on citizens. The ECJ set out this doctrine in Case C-106/89 Marleasing SA v La Comercial Internacional de Alimentacion SA [1990] ECR 4135 and in a number of other cases.

This doctrine as accepted and applied by UK courts can affect the meaning of legislation which applies to a citizen to a quite considerable extent, and is more powerful than the more limited normal principle that legislation be interpreted consistently with the UK’s international obligations. A generally accepted judicial summary of the effect of the doctrine of conforming interpretation is set out in the judgment of Sir Andrew Morritt (Chancellor) in Vodafone 2 v Revenue and Customs Commissioners [2009] EWCA Civ 446, [2010] Ch 77, at 37:
"In summary, the obligation on the English courts to construe domestic legislation consistently with Community law obligations is both broad and far-reaching. In particular:

(a) It is not constrained by conventional rules of construction (Per Lord Oliver in Pickstone at 126B);

(b) It does not require ambiguity in the legislative language (Per Lord Oliver in Pickstone at 126B; Lord Nicholls in Ghaidan at 32);

(c) It is not an exercise in semantics or linguistics (See Ghaidan per Lord Nicholls at 31 and 35; Lord Steyn at 48-49; Lord Rodger at 110-115);

(d) It permits departure from the strict and literal application of the words which the legislature has elected to use (Per Lord Oliver in Litster at 577A; Lord Nicholls in Ghaidan at 31);

(e) It permits the implication of words necessary to comply with Community law obligations (Per Lord Templeman in Pickstone at 120H-121A; Lord Oliver in Litster at 577A); and

(f) The precise form of the words to be implied does not matter (Per Lord Keith in Pickstone at 112D; Lord Rodger in Ghaidan at para 122; Arden LJ in IDT Card Services at 114).

38. ... The only constraints on the broad and far-reaching nature of the interpretative obligation are that:

(a) The meaning should "go with the grain of the legislation" and be "compatible with the underlying thrust of the legislation being construed." (Per Lord Nicholls in Ghaidan at 33; Dyson LJ in EB Central Services at 81). An interpretation should not be adopted which is inconsistent with a fundamental or cardinal feature of the legislation since this would cross the boundary between interpretation and amendment; (See Ghaidan per Lord Nicholls at 33; Lord Rodger at 110-113; Arden LJ in IDT Card Services at 82 and 113) and

(b) The exercise of the interpretative obligation cannot require the courts to make decisions for which they are not equipped or give rise to important practical repercussions which the court is not equipped to evaluate. (See Ghaidan per Lord Nicholls at 33; Lord Rodger at 115; Arden L in IDT Card Services at 113.)"

The significance of this in the present context is that the ECJ decided in Case C-105/03 Criminal proceedings against Pupino that the doctrine of conforming interpretation applies to framework decisions adopted under the Third Pillar. It was for a time wrongly assumed that the Pupino decision, and this extension of the doctrine of 'conforming interpretation', would have effect in relation to UK legislation enacted to give effect to Third Pillar measures.

However, in Assange v Swedish Prosecuting Authority [2012] UKSC 22, an exhaustive analysis of this issue by Lord Mance demonstrated that neither the Pupino decision itself, nor the doctrine of ‘conforming interpretation’ of Third Pillar measures which it contains, forms part of EU law which is binding on the United Kingdom or its courts. Although Lord Mance dissented from the majority regarding the outcome of that case, his analysis on this point was accepted as correct by all member of the 7-strong panel of Supreme Court Justices who heard the Assange case.
It follows that the present position is that the doctrine of ‘conforming interpretation’
does not apply to pre-Lisbon Third Pillar measures to which the UK is a party, and only the
lesser doctrine of the presumption of conformity with international obligations applies.
Whilst under that doctrine the UK courts may treat decisions of the ECJ as persuasive
authority, they are free to depart from them either if they regard them as ill founded or if
the words of the domestic legislation are clear enough.

2. ‘Direct action’ infraction proceedings

Under 258 TFEU, the Commission may bring proceedings before the ECJ against a
member state which the Commission believes to be failing to implement an obligation
imposed by an EU measure. If the opt-out is not exercised, this power will become
applicable to Third Pillar measures and such actions will be capable of being brought against
the UK.

3. Interpretation of Third Pillar measures in the light of wider Treaty objectives

A classic statement by the ECJ itself as regards its approach to the
interpretation of EC instruments is set out in its advisory judgment in the
European Economic Area Agreement Case (1992):

An international treaty is to be interpreted not only on the basis of
its wording, but in the light of its objectives. ... The Rome Treaty
aims to achieve economic integration leading to the establishment
of an internal market and economic and monetary union. Article 1
of the Single European Act makes it clear that the objective of all
the Community treaties is to contribute together to making
concrete progress towards European unity. It follows from the
foregoing that the provisions of the Rome Treaty on free
movement and competition, far from being an end in themselves,
are only means for attaining those objectives. ... As the Court of
Justice has consistently held, the Community treaties established a
new legal order for the benefit of which the States have limited
their sovereign rights, in ever wider fields, and the subjects of which
comprise not only the member-States but also their nationals."

A fuller analysis of the ECJ’s so-called teleological or purposive approach to the
interpretation of the Treaties and measures under them would need a book to set out.
However it is clear, in my view beyond all serious doubt, that the ECJ will often interpret
measures in ways which depart from their wording or the actual intentions of the states or
legislators who negotiated and agreed them in order to further wider political interests
including that of European integration. As such, its approach to Third Pillar measures is
likely to be to treat them as building blocks for the construction of aspects of a Europe-wide
state outside the economic sphere.

4. Delays

If the Third Pillar measures become subject to the jurisdiction of the ECJ, then UK
national courts will be under a duty (as a consequence of the duty of ‘conforming
interpretation') to make preliminary references to the ECJ on the interpretation of those measures when they are interpreting national legislation which gives effect to those measures. In the case of the Supreme Court or another national court from whose decisions there is no appeal under national law, making a reference is compulsory under Article 267 TFEU if there is an arguable issue of interpretation which affects the outcome of the case.

This would be likely to introduce significant additional delays into cases where a preliminary reference is made. Cases in the Third Pillar (mainly criminal) field are likely to suffer greatly from such delays. Although the ECJ does have power to accelerate the hearing of cases, this power is quite rarely used. When it is not used, it would not be untypical for a preliminary reference to take around 2 years to resolve and I have been personally involved in a recent case which took over 3 years from the case being sent to Luxembourg and the judgment of the ECJ.

5. Fundamental rights

If the Third Pillar measures become subject to the jurisdiction of the ECJ, they will then also be subject to the EU Charter of Fundamental Rights as interpreted by the ECJ.

In other fields, the fact that the Lisbon Treaty conferred on this Charter the same legal value as the Treaties themselves has already had significant effects, notably in further emboldening the ECJ in its activist approach to EU law. An important example of this is Case C-326/09 relating to equality between the sexes in insurance premiums. The ECJ interpreted Articles 21 and 23 of the Charter as entitling it to strike down as invalid and agreed provision of Directive 2004/113 "implementing the principle of equal treatment between men and women in the access to and supply of goods and services" which permitted insurance premiums to be charged differentially between the sexes where this was justified on the basis of statistical risk differences.

The Charter is extremely vague in its provisions and it can be expected that in the field of Third Pillar measures the ECJ will have wide scope to interpret the Charter in ways which will turn out to be quite unexpected. Nor should it be assumed that its interpretations will necessarily be in the direction of favouring individual rights. The ECJ may well give priority to the objective of intra-EU solidarity in the criminal justice field in ways which conflict with our conceptions of the rights of individuals in this country.

I should note in December 2012, the Commission on a Bill of Rights for the UK reported (by majority) in principle in favour of UK Bill of Rights. The extension of ECJ jurisdiction, and in consequence of the EU Charter, into this field of Third Pillar measures would seriously interfere with the introduction into this important area of a new UK fundamental rights regime. In my view this is a further significant reason in favour of exercising the UK's opt-out under Protocol 36.

[ends]

5 January 2013
Many of the questions raised by the call for evidence are technical and others have the detail to answer them. This submission is concerned with the practical operational impact of the proposed “opt out”. Others have written and spoken eloquently about the legal issues and the political background, especially Professor John Spencer. Several commentators have referred to the potential impact on policing cooperation across Europe and this paper seeks to provide a flavour of that from the point of view of an old practitioner.

In 2010 during the Belgian Presidency of the EU, I presented a paper to COSI as the retiring Director General of SOCA. On behalf of the UK, I firmly supported closer working across Europe as the way to deal with the serious organised crime threats identified in the OCTA produced by Europol.

I identified several new approaches being taken within the UK to seek to disrupt and prevent criminal activity and suggested that they could be implemented by other EU countries and become part of a common EU approach. The paper was received with great interest and enthusiasm, and it was agreed to use it as an action plan for the year ahead. After the meeting I received many positive and encouraging responses from the leaders of the EU countries police and judicial authorities that I had come to know well in my 10 years as the UK representative to the European Police Chiefs Task Force, which had been absorbed into COSI.

In those 10 years, the UK had introduced the concept of the European Crime Intelligence model, based upon the successful UK National Intelligence Model, and which now allows Europol, under its British Director, to produce the Organised Crime Threat Assessment. In its turn, this was based upon the UK Serious Organised Crime Threat Assessment produced by NCIS and latterly SOCA.

With the Dutch during their Presidency, the UK had developed the CosPol approach whereby volunteer EU countries were identified to lead various initiatives to deal with specific types of cross-border serious organised crime, with active support from others in strategic and intelligence-led operations. The use of Joint Investigation Teams were of great importance in this approach, and many times the UK police were asked to lead such JITs because of the respect for the UK and its policing methods.

Huge improvements in intelligence sharing across police databases in the EU have improved the intelligence picture on serious organised crime out of all proportion and this has been invaluable in the counter-terrorism approaches following 9/11. Under the UK Presidency of the European Police Chiefs Task Force, Europol and Interpol were brought together to support European and international policing operations, where before there had been little positive cooperation between the two.

The European Arrest Warrant has become an invaluable tool for rapidly identifying and arresting fugitives from the UK living in Europe and those fugitives from other EU countries who were in the UK and often continuing their criminal activities, believing that the UK police would not trouble them. There is a lot that has been written about the EAW, which unfortunately often ignores the valuable contribution that it has made.
It has reduced by an incredible level of magnitude, the dreadful, slow and laborious processes that were needed before to identify suspects in other countries, to initiate law enforcement action against them and to arrest and extradite them back to the country that has issued the Warrant. Conducting trials many years after the events created major problems for the legal process and were not in the interest of any party involved.

The successes in relation to this piece of legislation are many, and I have a list of some of the more notable ones that have enormously benefited both the UK and other European countries in bringing suspects quickly to trial. In the recent past, it is very likely that they would have simply disappeared or been impossible to trace and bring back.

I am very conscious that all in Europe is not ideal in terms of arrest, detention and trial procedures, but in my view, it would be simplistic and false to assert that this is the fault of the EAW. Those problems existed before and have to be resolved in a common European framework that uses a mixture of methods by which to improve the standards. There is still a long way to go, and action has to be taken. The UK has often reinforced the demands for improvement, and whilst not perfect, seeks to demonstrate the way forward.

I am sure that some will accuse me of complacency or ignorance. I have however, always believed that if you want to improve the club of which you are a member, it is best to do so from inside and by example. It is for the stronger and more capable to work with and mentor those who are not at the required level as part of being a committed team player. The UK police and law enforcement agencies have done a great deal of that kind of work.

In other areas of law enforcement and policing, there are many other examples of good practice and innovation that have come about as a direct result of either UK proposals, or of the UK leading the EU approach because of the respect for the “honest broker” approach of the UK. I was part of a team of people from the UK that sought to influence and contribute to improvement in the way that all European police and law enforcement strategies operate. Much of that was designed to give the EU an opportunity to develop new ways of preventing or disrupting serious organised crime and of removing the financial rewards of such activity. In turn, this was intended to reduce reactive and unproductive policing operations in some EU countries, which appeared to owe more to their recent history, than more modern intelligence-based approaches.

In this the UK is seen as a valued member of the EU policing and judicial arena. Our involvement and commitment are demonstrated by the fact that a British law enforcement officer now heads Europol, and two of Eurojust’s Presidents have been British. CEPOL, the EU police virtual college, is based in the UK. My paper to COSI was received well precisely because the UK was seen as a committed team player and a valued contributor to EU policing strategies.

I am now concerned, based upon my recent experience when I recently conducted a review of Europol with RAND Europe which was designed to judge the effectiveness of Europol following the Lisbon Treaty and its governance structures. During that work, I met some of my old friends from the European Police Chiefs days. They were saddened to tell me that their Ministers and officials were becoming very concerned at the approach being taken by the UK towards the EU and especially towards police and judicial matters. The issue of the “opt out” was raised several times. The fact that there is an “opt out” provision was not the issue. It was rather the arrogant view being expressed in the UK that we could withdraw
and then “cherry-pick” those of the 130 measures that we thought would suit us. The view was that this was not the way that an “honest broker” would behave. They expected the UK to work with the other EU States to work on revising the list, to remove those that are of no use or out of date, and to amend or update those that are useful across the EU.

Some may say, well what does that matter in today’s modern world, where markets are crumbling, countries have huge debts and it’s every country for itself? In my opinion, it matters a lot. In my experience over the last ten years or so, there has been an unprecedented level of cooperation and willingness to work together across the EU policing and judicial agencies. Europol, Eurojust, CEPOL, Frontex all work together far better than many hoped. In any fast-moving investigation or operation, there has developed an attitude of “let’s get this to work effectively, quickly and lawfully”.

That did not used to be the case, I can assure you. Relationships between the UK and some of our immediate neighbours used to be dreadful, and much of this was based upon a series of complex legal systems trying to be worked through, with each side accusing the other of dragging their feet or not being helpful enough. Intelligence was not shared properly, because there was no real mechanism to do so. It is a fact of human life that when things do not work well or go wrong, people get blamed rather than the systems they operate within.

Of course the law should be above personalities and politics. That is right, but the simple matter is that in the interests of justice and security, there has to be real and meaningful cooperation at all levels across the EU and there will be a risk to that if we continue as a country, down a route that is illogical, potentially expensive and unnecessary, and which will almost certainly lead to a period during which law enforcement effectiveness in the UK and in the EU will be degraded. This will only be of benefit to serious organised criminals and terrorists.

Within ACPO, my ex-colleagues are now working on developing processes and “work arounds”, which would provide some semblance of operating procedures if the opt-out occurs. This is at the request of the Home Office and despite a lot of thought and hard work, the resulting situation would fall considerably short on effectiveness, timeliness and simple workability.

The arguments on whether the “opt out” is actually required should be made clearly and factually and such an approach would be welcomed. Unfortunately across the UK and the EU, many learned and experienced individuals in the law, policing and academia have looked at this decision to “opt out” with bemusement, searching for some fact that would explain why anyone would think this was a sensible way to go. They have searched in vain.

Although retired, I have not lost my passion and commitment to international policing cooperation and I do not want to see the great advances made in Europe over the last ten years being thrown away without proper consideration of the possible consequences.

William F Hughes CBE QPM
Director General Serious Organised Crime Agency 2006 – 2010
UK Representative European Police Chiefs Task Force 2001 – 2010
13 December 2012
JUSTICE – Written evidence

Introduction

1. JUSTICE is a UK-based human rights and law reform organisation, whose mission is to advance justice, human rights and the rule of law. JUSTICE is regularly consulted upon the policy and human rights implications of, amongst other areas, policing, criminal law and criminal justice reform. It is the British section of the International Commission of Jurists. JUSTICE has been active in the field of EU criminal justice for the past ten years, through research, lobbying and court interventions. We recently completed a two year study, on the European arrest warrant (European arrest warrants: ensuring an effective defence50) and are engaged in cross border empirical research into procedural safeguards for suspects51. We are well placed to observe the impact of EU law-making upon British citizens and welcome this inquiry into whether the UK should opt out of the pre-Lisbon Treaty EU criminal justice cooperation measures.

1. Should the Government exercise its block opt-out?

2. Whilst we have expressed concerns about certain implications of measures relating to mutual recognition from the perspective of the suspect, which we will return to below, our overall view is that the UK is in a much stronger position to ensure access to justice and fair trial rights for people travelling to and from the UK who become involved in the criminal justice system by remaining fully engaged in this area than by exercising the opt out and attempting to negotiate a piece-meal alternative.

3. Irrespective of the decision taken in 2014, people will continue to travel throughout the EU and, for whatever reason, become embroiled in the criminal justice system of other nations, or commit crime in the UK. We do not consider that a case has been made as to why the opt out should be exercised. Without the benefits of doing so being demonstrated it is difficult to see what the purpose would be.

2. What are the likely financial consequences of exercising the opt-out?

4. We are not in a position to quantify the financial consequences, but it is clear that Protocol 36 provides for financial recompense where other member states are affected by the UK’s decision. The remit of this is not limited and could therefore encompass wide-ranging applications – for example, amendment of legislation through 26 parliamentary systems to return to Council of Europe or other conventions in relation to the UK. If we seek to negotiate bi-lateral treaties, the cost of doing so for each member state could be invoiced to us. There could be indirect consequences to cases where wanted persons, records of previous convictions, incarceration post-conviction, freezing or confiscation of

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50 The publication of results is available here http://www.justice.org.uk/resources.php/328/european-arrest-warrants. The project was funded by the European Commission and supported by the International Commission of Jurists and the European Criminal Bar Association. It considered defence to EAWs in Denmark, Germany, Greece, Ireland, Italy, Netherlands, Poland, Portugal, Sweden and the UK.

51 Inside Police Custody: An Empirical Study of Suspects’ Rights in Four Jurisdictions is an empirical study of police detention conducted in England and Wales, France, Scotland and the Netherlands through observations in police stations, accompanying defence advisers and through informal and formal interviews with police and legal advisers. The results are currently being collated and will be published in May 2013. This a joint project between the University of Maastricht, JUSTICE, University of Warwick, University of the West of England, OSJI and Avon and Somerset Police. The project is funded by the European Commission.
assets or investigation of crime are no longer available from the UK. If discontinuance or acquittal results, there could be a claim against the UK where loss of assets and compensation could be directly linked to the UK’s decision. A request for compensation from another member state could result in litigation to the CJEU which in itself could be costly.

5. The internal cost of to the UK will no doubt be considerable due to the complex and time consuming process that will ensue for civil servants engaged in this activity as well as ministers in negotiation.

3. **What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?**

6. The relationship of the UK with the rest of Europe is already considerably strained by the much reported Eurosceptic views held by some in the UK. The position the UK has taken in relation to financial management of the EU has conflated this. It would be naïve to think that each area of EU competence is insulated and that a decision to pull out of cooperation with respect to criminal matters will have no effect on other areas in which the UK is participating.

7. Opting out would also be likely to have a detrimental impact with respect to current and future measures in the criminal justice field. The UK has opted into a number of these post Lisbon (set out in the letter of the Home Secretary of the 21st December), together with measures on procedural safeguards for suspects in criminal cases relating to interpretation and translation and the right to information. Whether the UK opts in to a measure or not, civil servants and MEPs as well as civil society organisations such as JUSTICE continue to play a leading role in negotiating and lobbying for improvement in the protection of fundamental rights in these instruments, as they will affect UK citizens travelling abroad irrespective of whether the UK opts in post adoption or not (a possibility afforded by Protocol 21 TFEU). A wholesale opt out will limit the ability of these bodies to persuade other member states to agree to improvements in legislative proposals. Current instruments being negotiated that the UK as not opted into but is nevertheless fully engaged with are the proposed directives on the right to a lawyer and on confiscation and freezing of assets, both of which will have significant implications for accused persons and those associated with them.

8. The Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings is a crucial agreement between the member states and the legislation adopted under it has the potential to greatly improve standards in the trial process across the member states. We wrote to this Committee on 20th October 2010 urging the Committee to lift its scrutiny reservations and allow the Roadmap to be adopted. The focus by the EU institutions on fair trial rights for both defendants and victims over the past few years has been welcome. However, it is already beginning to wane with the prospects for measures on legal aid, vulnerable suspects and detention conditions uncertain. The UK should be supporting measures that aim to ensure higher standards during the trial process.

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across the member states. Our ability to do so will be weakened by a lack of commitment to cooperation in criminal matters that the opt-out will demonstrate.

The UK’s current participation in PCJ measures

4. Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

9. The Cambridge Centre for European Studies at Cambridge University produced a paper in the summer considering the implications of each measure in detail. We have read and agree with this paper. Generally, the European arrest warrant offers the most benefit to the UK since it is the instrument which is used the most widely, with 10,376 requests for surrender being sent around the EU last year. We consider its benefits and disadvantages below at question 10.

10. Other significant measures relate to the establishment and participation in Eurojust and Europol, as well as the European police college, and training programmes that UK police forces are engaged in with other forces from across the EU to ensure evidence gathered will be admissible in UK courts. These bodies facilitate investigation, arrest and prosecution across the EU in relation to cross border crime.

11. Once fully operational across all member states, all the measures adopted will be of use to the UK. The most significant feature of all EU measures is that they require parity with domestic measures and response within a restricted period of time through a uniform process. This means that a request for freezing of assets or for criminal records will be answered within a period of time that will enable the request to be utilised in the UK trial process. Prior to EU cooperation measures, and for those areas not covered by EU mutual recognition measures, obtaining cooperation through letters of request for assistance could lead to lengthy delays in the prosecution process, and possibly discontinuance.

12. One disadvantage of the measures relates to the difficulty for the defence in being able to challenge the application of a measure in the trial because often evidence is obtained from the requested state by the trial state without the opportunity of the accused person to challenge its inclusion. However, this problem is not caused by the instrument itself, but its application in the member states, predominantly in relation to the need for training of judges and lawyers in ensuring that equality of arms is maintained and that access to a lawyer is available in both member states. This is being addressed by EU funding for judicial training, by the introduction of the EU Charter of Fundamental Rights raising the importance of trial rights, by an article in the proposed directive on the right to a lawyer which will afford dual representation (at least in EAW cases), and, after 2014, the opportunity to take references to the CJEU.

13. There is also evidence that standards of conditions of detention differ markedly across the member states and that measures, such as the EAW and transfer of sentenced persons will require UK residents and citizens to be incarcerated in poorer conditions. The European Commission has consulted on whether it should bring forward legislation to tackle this problem and a response is anticipated during this year. Furthermore, the transfer of sentenced persons framework decision can also be utilised to remove people from poorer conditions as well as place them there, and a measure which should have come into force in the UK in December 2012 but has been suspended pending the opt-out decision, which would have afforded a Supervision Order to be used to alleviate some pre-trial incarceration measures by allowing the person to remain in their country of residence under bail conditions pending trial.

14. Therefore, more work is needed to fill in the gaps in safeguards revealed by the prosecution oriented instruments rather than their removal. In our view the UK should be striving to support the necessary improvements to these measures, as a leader amongst EU nations of fair trial rights and prison standards, rather than turning away from them.

5. In her 15 October statement the Home Secretary stated that “... some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

6. How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

16. There is little public information about how often all measures are used; some will be utilised during criminal trials at a domestic level, with requests being made to other EU countries as a matter of course. We are unaware of whether this information is recorded by the Court Service or the CPS. Requests to the UK as the Central Authority will go to SOCA, which may record these. The EU Council periodically collects information on the implementation of each measure which reveals how many are now in force across the member states. The Commission also carries out evaluation reports as to implementation and compliance with the relevant EU law. Statistics are available on the use of the European arrest warrant, see note six above.

17. The EU agencies are utilised by the UK. Europol records that in 2011, 13,697 cases received its operational support and information generating support, 9.7% of which was for the UK (or 1,328 cases). This was the third highest number of requests amongst member

57 See the European Commission webpage for details of the consultation and responses thereto: http://ec.europa.eu/justice/newsroom/criminal/opinion/110614_en.htm
58 Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement in the European Union
59 Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions of supervision measures as an alternative to provisional detention
states.\textsuperscript{60} Eurojust reports 1441 requests for assistance across the member states in 2011, of which 71 were from the UK. The annual report refers specifically to the assistance Eurojust offered in facilitating a joint investigation team between the UK and the Czech Republic concerning Roma women being trafficked to the UK for prostitution which led to the arrest of 11 ringleaders.\textsuperscript{61}

7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

18. The UK has not implemented two measures - Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions, and the Supervision Order, which as we have set out above has been suspended pending the decision on opt in. Since the UK operates comprehensive community sentencing and bail systems it is unlikely that giving effect to these instruments will cause any difficulties. If the UK does not exercise the opt-out, it is likely that the measures will be implemented before the Commission considers infringement proceedings.

8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

19. The UK is only before the CJEU a few times each year, with only 23 actions for failure to fulfill obligations between 2007 and 2011,\textsuperscript{62} and 113 requests for a preliminary reference over the same period, with 26 last year.\textsuperscript{63} Given the wide remit of EU competence this demonstrates the UK has a good record in implementing EU law and national courts rarely need to refer cases to the ECJ for clarification.

20. As set out above, the Commission is unlikely to bring infringement proceedings since the UK is largely in compliance with its implementation requirements in the field of criminal cooperation. The national courts will only refer to the ECJ if there is a lack of clarity in the EU law that has been transposed into domestic law. Even when referred, the Court will limit itself to interpreting the EU law, and not interfere with its application in the member state. It has also been careful not to expand the remit of its jurisdiction where EU law cannot be said to apply.\textsuperscript{64} There is therefore in our view no danger of the Court limiting common law or British principles of justice.


\textsuperscript{62} Court of Justice Annual Report 2011, p 98.

\textsuperscript{63} Ibid, page 118.

\textsuperscript{64} See Case C-507/10 Criminal proceedings against X (21st December 2011) (unreported, available at www.curia.europa.eu) and Case C-105/03 Criminal proceedings against Maria Pupino ECR [2005] I-05285.
21. Previous judgments in this field have not affected the approach to measures in the UK because the decisions have often related to specific systems which do not concern the UK or are already established practices here.

22. Nevertheless, the Court will offer a benefit where the EU law does require clarification in the application of fair trial rights where these are not fully respected, or where the thresholds set are too high\textsuperscript{65}. The Court could provide an additional protection from the risk of injustice rather than a danger of interference with UK law.

9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

23. We see no danger from the Commission enforcement powers, as set out above. With the possibility post Lisbon not to opt in to new measures that are considered against the national interest, the powers of the Commission cannot be detrimental.

24. The benefit of Commission enforcement powers will be where EU law can improve standards for individuals but the UK fails to implement the law correctly or at all, since the power will provide an impetus to do so. The jurisdiction of the Court will again assist individuals where the EU law is unclear. The opportunity to refer to the Court will enable better interpretation at national level.

25. Concern has been expressed (by this Committee and elsewhere\textsuperscript{66}) that the Court will not be able to handle an influx of criminal cases, due to lack of capacity and experience. The Court has had to manage aspects of criminal law throughout its history, since sanctions and penalties have long fallen within its jurisdiction. The Court has also not shied away from developing a rights focused jurisprudence which has upheld fair trial principles.\textsuperscript{67} Capacity is a matter of funding and logistics which will no doubt be monitored and reviewed subsequent to the 2014 transition. It does not provide an acceptable reason to opt out of these measures in our view.

The potential consequences of exercising the opt-out

10. The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

26. The EAW offers speedy return, through an agreed timetable with limited grounds for refusal and judicial scrutiny of the process. It affords a hearing to the requested person to put forward their opposition to surrender. It requires fundamental rights to be respected.

\textsuperscript{65} See the Advocate General’s Opinion in Case C- 396/11 Ministerul Public - Parchetul de pe lângă Curtea de Apel Constanța v Ciprian Vasile Radu which considers that the test for finding a violation of the right to a fair trial should be amended from the ‘flagrant breach’ European Court of Human Rights test to ‘the infringement in question must be such as fundamentally to destroy the fairness of the process’ at [83].


\textsuperscript{67} See Case C- 405/10 Özelm Garenfeld v Germany (10th November 2011), unreported at [48].
27. The advantage to the UK of remaining in the EAW system is the return of wanted persons for trial or sentence within a reasonable passage of time that affords a fair trial to take place and the removal from the UK of criminals abroad.

28. It is not certain what process will take place were the EAW no longer to be utilised. Return to the European Convention on Extradition 1957 may be the desired route, but this would lack the judicial scrutiny and speed of proceedings provided by the EAW and may lead to challenge through the courts if it were attempted for discrimination on the grounds of nationality and violation of the right to a fair hearing under article 47 of the EU Charter of Fundamental Rights. It is likely that the UK will need to arrange bi-lateral treaties in order to ensure the benefits of the EAW procedure remain. This could be a lengthy process which other member states may be reluctant to engage in. Without recourse to the CJEU, other member states may not prioritise UK requests, notwithstanding a bi-lateral treaty.

29. Since the UK receives far more requests through the EAW system than it generates it may be that other member states will continue to request extradition in as many numbers as currently. Where there is insufficient information provided in a request at present, the Crown Prosecution Service liaises with the requesting state for further information to be received in order to comply with the EAW procedure. Again, it is not clear whether the requesting member state would fully cooperate with this process without the requirements of the EAW system and may make extradition more difficult. Often police and prosecution services will refer to Europol and Eurojust for assistance with an investigation or for clarification of the law in another member state. This will not be possible following opt out and will make it more difficult to decide whether the extradition request should be granted.

30. Ultimately, without the EAW, it is likely that requested persons will be in a worse position because proceedings will take longer, and information provision will be more limited. The current problems with the EAW process in relation to requests for surrender for minor offences, the absence of a less draconian mechanism to resolve the complaint, and failures to amend or remove Schengen Information System alerts and Interpol red notices will remain irrespective of the measure used.

31. The UK also risks, either in the interim or indefinitely harbouring criminals and becoming a safe haven for crime since other member states may not wish to adopt the UK’s proposed surrender system at all such that the number of requests reduces.

11. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

32. There will certainly be an impact for investigation of crime and information sharing but this question is best answered by the services identified.

12. Which, if any, PCJ measures should the Government seek to opt back into?

33. It is very difficult to separate out the measures since they relate to all aspects of the criminal justice system. Mutual recognition measures are all of importance and assist each
other – if the EAW were opted back in to but no others we would lose the option of demanding the return of a UK citizen for service of their sentence if convicted, or of refusing a warrant purely for sentence if they can serve it here\textsuperscript{68}. The application of this measure is something which many organisations like JUSTICE have lobbied for to mitigate the draconian nature of the EAW. The same is true of the Supervision Order\textsuperscript{69} which it is anticipated could be utilised to allow a requested person to remain in the UK pending trial in the requesting country.

34. Many measures assist the domestic trial of a defendant who has made use of EU free movement, and allow freezing or confiscation assets\textsuperscript{70}, payment of fines\textsuperscript{71}, and admissibility of convictions obtained in another member state\textsuperscript{72}. It would be very difficult to appease victims of fraud should their funds no longer be available for seizure because the UK has opted out of the measure that allows them to be captured.

35. Substantive measures requiring cross border crimes to be defined and prosecuted may not seem important because the UK already recognises them, but the measures for investigating crimes such as drug or human trafficking that have been established as a result will not be available to ensure that these crimes continue to be targeted. If the UK already recognises the crime, why opt out of the EU measure reinforcing it at all? To do so would damage the cross border cooperation that has so far been achieved in this area.

36. Equally the continuing engagement with Eurojust and Europol are vital for the investigation and prosecution of cross border crime. Of Eurojust, this Committee has previously concluded:

\textit{We are in no doubt that Eurojust meets a real and increasing need for assistance in facilitating the investigation and prosecution of complex cross-border criminal cases. It is unrealistic to expect individual national prosecutors to be familiar with the evidential and other requirements of a large number of different jurisdictions and to be able to co-ordinate unaided a complex investigation involving several different Member States.}\textsuperscript{73}

The UK, and particularly London, receives a significant amount of cross border criminal activity, in relation to financial crime, drug and human trafficking for sexual and other forms of slavery. These bodies are also vital for the investigation of wider and more serious international crimes of universal jurisdiction such as crimes against humanity, torture and other war crimes. It is difficult to see what justification can be given to victims of these heinous acts for reducing the ability of UK police forces to investigate these crimes the most effectively.

\textsuperscript{68} See note 9 above.
\textsuperscript{69} See note 10 above.
\textsuperscript{71} Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties.
\textsuperscript{72} Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.
13. How straightforward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

37. Protocol 36, together with protocol 19(4) and 21(4) (which cross-refers to article 331(1) TFEU), demonstrate that conditions can be placed on a request by the UK to opt back in. It is not clear what these conditions might be – whether they will be limited to technical matters, or could demand that other measures are included to ensure better functionality. The views of the other member states will need to be canvassed before the imposition of any conditions, and for Schengen matters, the unanimity of member states in Council is required to approve the request.

38. This could be a very complex and time consuming process given that there may be divergent views amongst the member states and the Commission in relation to each instrument. Furthermore, because, as we have demonstrated above, many instruments are inter-linked it is likely that it will be difficult to consider a request in isolation. The Government should in our view, if opt-out is exercised, ensure that it has a comprehensive list of measures it proposes to opt back into rather than attempting case-by-case basis requests.

14. What form could cooperation with other Member States take if the United Kingdom opts out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

39. This route has been suggested by a number of commentators. It is not necessarily simple to do so however. Other member states will need to amend legislation to bring the UK back within the remit of these instruments. More significantly the EU concluded over a lengthy period of debate and reflection that these instruments are inadequate for the prosecution of crime in the EU. The instruments that the EU has drafted offer far better mechanisms for the investigation and prosecution of crime, and also far better recognition of the rights of the defence or victims of crime. The Conventions, being previously recognised as unfit for purpose, may provide convenient replacements, but they are poor ones for ensuring access to justice.

40. The alternative is the negotiation of bi-lateral treaties that would be largely reflective of the existing instruments in the hope that all EU member states would sign up. It is unclear what the purpose of going through what is likely to be a lengthy and technical process is when the instruments already exist and are operationally successful.

41. The UK should be taking this opportunity to advance amendment of these instruments prior to the 2014 transition, where it considers reform is necessary, whilst it is in a strong bargaining position.

15. Is Article 276 TFEU, which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the

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74 In particular Open Europe, see Cooperation not Control; The case for Britain retaining democratic control over EU crime and policing policy (29th October 2012); An Unavoidable Choice: More or less EU control over UK policing and criminal law (29th January 2012).
maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

42. Article 276 TFEU reflects article 72 TFEU which limits EU competence in the field of police and judicial cooperation. The Court has competence to review measures in this field that have been adopted notwithstanding the potential impact of article 72, as the member states have agreed that Union activity is necessary, in accordance with the subsidiarity principle.

16. If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

43. We are unaware of the particular implications for the Republic of Ireland.

3 January 2013
Justice Across Borders –Written evidence

Justice Across Borders

1. Justice Across Borders is a campaign group, which has recently been founded to campaign in the interests of British victims of crime against a UK decision to opt out of the pre-Lisbon JHA instruments. This submission contains arguments against a decision to opt-out, together with three Annexes: Annex A containing extradition statistics, Annex B giving details of operational benefits to the UK of EU police and justice cooperation, and Annex C providing press summaries of successes of UK police forces using the EU instruments.

The risks of Opting out

2. Effective law enforcement enables victims to obtain justice and the UK to protect its security. If the United Kingdom opts out of Justice and Home Affairs (JHA) instruments under Protocol 36, we believe that this will:

- weaken UK law enforcement,
- reduce the chances of victims obtaining justice,
- risk making the UK and other EU Member States a safe haven for foreign criminals,
- expose UK security to other increased risks,
- reduce the chances of the UK being able to raise standards in other Member States, and
- reduce UK leverage to improve the texts of the relevant instruments.

Shortcomings

3. That does not deny that there are shortcomings in the JHA instruments. The flagship instrument is perhaps the European Arrest Warrant (EAW). This provides an efficient means of extradition between EU Member States, which needs to be balanced by proper protection of human rights. In our view, the EAW does not get this balance right, at least in the way it is operated. We argue in paragraphs 36 to 40 below that this is not a reason to opt out of the EAW, though it is a reason to seek improvements and to adopt measures which will remedy the main problems.

Democracy and Sovereignty

4. The reason for the opt-out provision in Protocol 36 is that after December 2014 the pre-Lisbon JHA instruments become subject to the full powers of the EU institutions, in particular the Commission and the Court of Justice of the European Union (CJEU). It has been argued that this involves loss of democratic control or loss of sovereignty. This argument risks misrepresenting the nature of both.

5. Democracy is underpinned by the rule of law. Independent courts uphold the rule of law and are not directly accountable to Parliament under any system. If Member States wish

75 This has been pointed out by many bodies in many reports and submissions. See, for example, the Joint Committee on Human Rights Fifteenth Report, The Human Rights Implications of UK Extradition Policy, 22 June 2011 (referred to as the JCHR Report), paragraphs 3 and 4.
to reverse the effects of a judgment of the CJEU, they still retain the right to adopt amending legislation.76

6. Sovereignty is a tool. If the UK obtains benefits by undertaking international obligations or by subjecting itself and others to binding court decisions, that does not amount to “loss” of sovereignty as if the UK is gaining nothing in return. Rather, it is what sovereignty is there for, to engage in the world for our national interest. The UK has, for example, already taken a sovereign decision to agree the pre-Lisbon instruments by unanimity because of the significant benefits they give the UK in bringing criminals to justice.

**Strengthening the Rule of Law**

7. Since the Second World War, the UK has sought to create a rules based international order. This would be ineffective without international courts or settlement processes which enforce those rules, such as the International Court of Justice, the CJEU, the WTO Panel and the International Criminal Court. In particular, the success of the EU single market has depended on an effective CJEU. Without the CJEU, there would be no effective means of enforcing EU laws. It was the UK in the 1990s which pressed for stronger CJEU (ECJ) powers, including the power to fine Member States for non-compliance.

8. The same applies to the area of European police and judicial cooperation. Binding legal obligations between the Member States create a stronger legal regime than non-binding mechanisms. If binding obligations are agreed, it is in the interests of victims of crime and of UK security that these are implemented and enforced. Granting the CJEU jurisdiction over JHA instruments increases the prospect that this will happen. Stronger enforcement of EU laws means less crime in Britain, less crime in other Member States, and greater stability for Europe as a whole.

**Consequences of Free Movement**

9. Other Papers and Reports have documented the dramatic increase in movement across borders within the EU.77 EU nationals move freely.78 That is to the benefit of all EU nationals, including British nationals.79 The huge growth of free movement and transnational crime requires modern and streamlined procedures, a point recognised as far back as the Interdepartmental Working Party on Extradition in 1982.

10. The resulting growth in extradition is illustrated by the tables in Annex A. Table 1 shows the number of suspected criminals removed from the UK under the EAW between 2004 and 2011. This has risen from 24 in 2004, to 1173 in 2010 and 922 in 2011. The total for these years is 4081. Table 2 breaks down these figures for British nationals and foreign

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76 After Lisbon, only the UK and Ireland have the right to decide whether they will opt into measures for which there is a Qualified Majority among the others.

77 For example, Hinaréjos Alicia, J R Spencer, *Opting-out of EU Criminal Law: What is actually involved?*, CELS Working Paper, New Series, No 1, September 2012: Centre for European Legal Studies, Cambridge (referred to as the CELS Paper), paragraph 20 and footnotes 24-26; and *A Review of the United Kingdom's Extradition Arrangements* presented to the Home Secretary on 30 September 2011 (referred to as the Baker Review).

78 The latest census showed that there are [600,000] Poles resident in the UK, [97,000] Lithuanians, [xxx,000] Czechs.

79 Footnotes 24-26 of the CELS Working Paper state, drawing on various sources, that each year some 19.3 million Britons travel to France and over 12 million to Spain; some 200,000 British citizens now own second homes in France; and around a million British citizens now live in other EU Member States – as against around 1.6 million citizens from other EU states resident in the UK.
nationals. The numbers of foreign nationals removed are 19 in 2004, 1125 in 2010 and 890 in 2011, making 3859 in total. Table 3 shows the number of British nationals returned to the UK under the EAW. These were 63 in 2005, 134 in 2010 and 86 in 2011.

11. Serious problems of law enforcement would result if the UK attempted to deal with the flows of migration and extradition by cumbersome and outdated procedures. It is in everyone’s interests (apart from criminals’) that European countries as geographical neighbours have efficient mechanisms to deal with the consequences of the huge flow of nationals across their borders, subject to proper safeguards from injustice or mistreatment.

12. In this context, British nationals facing trial abroad is the quid pro quo for foreign nationals facing trial here. Hard cases involving British nationals in other EU countries illustrate current weaknesses which have to be faced. But facing these weaknesses is another reason why the UK needs to engage in EU JHA, to remedy the problems and impose obligations on other countries to raise standards.

**Strengthening New Democracies**

13. Mafia and organised crime pose threats to both new and old democracies. One of the biggest threats to our own security is organised crime and transnational crime. New democracies, including those in the European Union, are particularly vulnerable. It is in the UK’s interests to strengthen their defences. Participation in European JHA cooperation, including the pre-Lisbon instruments, affords the UK an opportunity to do that. If the UK opts out of these instruments, what sort of signal does this give to others? It might imply that we don’t care about what they do, only about what we do. A number of the pre-Lisbon instruments, such as the peer reviews, were adopted in the context of the accession of new Member States to encourage greater responsibility in JHA. What is the effect if we now abdicate that responsibility ourselves? 80

**Protecting British Nationals in the EU**

14. This responsibility matters not just because a stable Europe helps to create a stable UK but because large numbers of British nationals travel in the EU each year. British tourists, together with British companies and individuals doing business abroad, need to operate with a high degree of personal security and protection from the rule of law. The same applies to the large communities of British nationals reside or have second homes in EU countries, not just in France but in countries such as Bulgaria, Romania and Greece.

**The British Solution**

15. The big challenge facing Governments in the 1980s and 1990s was to how strengthen law enforcement in Europe when faced with differences between common law systems like our own and civil law systems in most EU countries. There were essentially three possible routes: harmonisation of criminal law and procedures; mutual recognition; or muddling through.

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80 This point is particularly relevant to the group of instruments under which Member States are obliged to punish certain forms of misbehaviour. The UK does so (and in nearly every case did so before the EU instrument was adopted). It has been suggested that, since this group of instruments are ones that give us no direct benefit, we should opt out of them, and stay out: even though the UK does not want to decriminalise any of the types of behaviour to which they refer.
16. All the studies of UK extradition between 1982 and 2001 showed that “muddling through” on the existing basis was not an option. That left harmonisation or mutual recognition. Although harmonisation was in UK interests in some cases, generally the UK argued for a system of mutual recognition.\textsuperscript{81} This would preserve the different basis of each other’s legal systems but enable the decisions of one jurisdiction to be recognised and enforced in another. This was in practice largely “the British solution” – a solution which the UK pressed for and negotiated in the EU.

17. The pre-Lisbon instruments are not therefore generally measures of harmonisation. The measures of practical cooperation in fighting terrorism, serious crime, fraud and drugs are largely based on the principle of mutual recognition. They do not threaten the common law. In fact, they help to preserve it, at the same time as helping to improve law enforcement. If our courts could not recognise as valid instruments and procedures in other EU countries and vice versa, it would present both a considerable burden to them and a considerable obstacle to effective law enforcement.

**Civil Liberties**

18. As we have already stated, we share some of the misgivings which have been expressed in respect of the EAW. These are sometimes expressed in the context of wider misgivings about the protection of human rights in EU countries. On whatever basis we cooperate with our EU partners in law enforcement – and cooperate we must, we have an interest in strengthening human rights protection in the EU. This is the corollary of streamlined police and justice cooperation.

19. This, however, requires two things. First, it requires that the UK uses its leverage within the field of EU JHA cooperation to maximise human rights protection. The less it participates in EU JHA, the less it can do that. The UK should opt in to, and encourage others to opt in to, the EU measures specifically designed to give increased protection. Second, it requires that the UK continues to apply itself, and encourages others to apply, the overarching instruments of European human rights – namely the European Convention on Human Rights (ECHR) and the Charter of Fundamental Rights.

**The risks of CJEU Jurisdiction**

20. We share the analysis of the CELS Paper that there is little risk to the UK from accepting CJEU jurisdiction over the pre-Lisbon instruments. The UK has a strong record in implementing EU laws. The CELS Paper shows the same to be true in respect of the pre-Lisbon JHA instruments. The UK also has a strong record in cases before the Court though

\textsuperscript{81} See the statement of the then Home Secretary, Rt Hon Jack Straw in the Foreword to *The Law on Extradition: A Review*, Home Office, March 2001: “Developments in the EU are setting the pace for progress and the United Kingdom is determined to be at the forefront of this. The purpose behind the Treaty of Amsterdam 1997 was to establish an area of freedom, security and justice. In seeking to implement the treaty it was agreed at the Tampere Special European Council in October 1999 that the mutual recognition of judicial decisions should become the cornerstone of judicial co-operation in both criminal and civil matters within the Union. In the light of these developments, the present arrangements for extradition from the United Kingdom appear out of date and in most cases unnecessarily complex. The Extradition Act is now over 10 years old but some of its provisions date back to previous centuries when European nations were periodically at war with each other. What was needed then is no longer always appropriate in today’s fast-changing climate. Serious crime is becoming increasingly complex and international in character...In response we need to step up our efforts to tackle these growing problems”. This is quoted in the House of Commons Select Committee on Home Affairs, First Report, Extradition Bill, 28 November 2002, at paragraph 10.
no court finds in favour of the Government all of the time. The JHA instruments do not pose a threat to the basis of our policing or of our criminal law, nor would the exercise of CJEU jurisdiction over them. A key judgment is whether the risks posed by CJEU jurisdiction outweigh the risks posed by opting out. We argue on the basis of the above that they do not.

21. The UK in fact stands to gain substantially from the stronger regime of enforcement which the Commission and CJEU will impose on others. A cost-benefit analysis must include the benefit which our participation gives by raising standards in other countries, by committing them to binding obligations, and by participating as fully as possible in a Europe-wide system, over which the UK has had profound influence. If it is a gain to their law enforcement, it is a gain to the UK. The UK would become a free rider if we relied on other states (and the EU institutions) to do the heavy lifting. Our leadership so far has paid dividends.

**Opting Back In**

22. On the face of it, even if the UK wished to opt out of only a few of the pre-Lisbon instruments, it might look attractive to opt out of all instruments and then opt back into the instruments which the UK thought desirable. But there are costs and risks to this approach.

23. First, under Article 10(4) of Protocol 36, the United Kingdom will bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of ceasing to participate in those acts in respect of which it opts out.

24. Second, the procedure for opting back in is not straightforward. The bulk of the instruments would be subject to Protocol 21 on The Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice. Article 4 of the Protocol specifies a procedure whereby, if the United Kingdom (or Ireland) notifies its intention to accept a measure after it has been adopted, the procedure in Article 331(1) of the Treaty on the Functioning of the European Union shall apply. The Commission shall, within four months of the notification, confirm the participation of the Member State concerned.

25. However, Protocol 36 specifies that, when exercising this right, the Union institutions and the United Kingdom “shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence”. The UK would, therefore, be constrained from opting in to parts of the acquis on a basis which was not coherent or which affected practical operability of the various parts. The EU institutions might also legitimately balk at an approach designed to re-establish the “narrowest” possible measure of participation, as distinct from the “widest”.

26. Third, opting back in might leave gaps in transitional arrangements. For example, either the EU or the Member States might not have immediately available and in force legislation necessary to deal with areas where the UK had opted out, even if these were areas where it sought to opt back in. Different domestic jurisdictions might interpret the decision to opt out in different ways, creating legal uncertainty.82

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82 See the CELS Paper, paragraph 166.
Ad Hoc and Bilateral Arrangements

27. The Open Europe Report “Cooperation Not Control”\textsuperscript{83} asserts that:

“For each measure examined in this report, the functional cooperation could be achieved through ad hoc bilateral or multilateral cooperation, cooperation pursuant to a Memorandum of Understanding (MoU) coupled as necessary with domestic implementing legislation, or – where an international legal basis is required – a treaty framework or EU instrument that is not supervised and enforced by the Commission and ECJ.”

28. A key judgment, therefore, is whether such “functional cooperation” could be achieved, or could be achieved effectively, on the basis that the Open Europe Report suggests.

29. First, negotiation and implementation of bilateral and ad hoc arrangements are fraught with difficulty. Other States may not accord these priority, resulting in significant operational delays. Individual legislation may not be fast-tracked or implemented against a deadline like EU legislation. Discrepancies between implementing legislation or differences in interpretation may arise, with no mechanism to rectify them.

30. Second, such agreements might not be negotiated on the terms the UK wants, or at all. International engagement is a bargain whether it is done inside or outside the framework of European police cooperation. Just because you work outside the European framework does not mean you get all or even anything of what you want. In fact, you might get less because you have less influence. Other states could refuse to negotiate or cooperate just as we could, or ask us to pay a price on other issues. There has as yet been no public indication whether other Member States are willing to engage with us outside the EU framework, or on what terms, or what their “price” might be. Sensitive issues such as application to Gibraltar, which are now dealt with an EU context, would have to be dealt with in a bilateral context.

31. Third, Member States are likely to be reluctant to negotiate a “patchwork quilt” of arrangements with an EU partner. Even if they were willing to do so:

- they might be constrained by EU law. Post-Lisbon, Union competence has been extended in the field of JHA, including the fields covered by the pre-Lisbon instruments. As a matter of EU law, there might now be a limit to which individual Member States can negotiate terms by themselves, particularly if this was to be inconsistent with the EU acquis in the relevant field.

- there is a real risk that requests for assistance under ad hoc arrangements will go to the “bottom of the pile”. If the UK is not committed to cooperation with its EU partners under established Europe-wide mechanisms, there is a risk that other EU partners will not accord our cooperation any priority.

\textsuperscript{83} Cooperation Not Control: The Case for Britain Retaining Democratic Control over EU Crime and Policing Policy, Dominic Raab MP, Open Europe, 29 October 2012, in the Executive Summary (referred to as the Open Europe Report).
32. Fourth, however tight or efficient the bilateral or ad hoc arrangements, they result in differences in procedures which criminals exploit. The history of our extradition arrangements with Spain since 1978 is an object lesson. There were no extradition arrangements between the two countries between 1978 and 1985. Arrangements were resumed in 1985 but operated weakly until 2001. Spain became a renowned safe haven for British criminals. Since application of the EAW, the UK has secured the return of 49 of 65 of the top UK fugitives from Spain. An ad hoc approach would open up the possibility of the UK becoming a “Costa del Crime” of EU nationals and other Member States becoming a “Costa del Crime” for British nationals.

33. Fifth, the UK’s existing bilateral arrangements with non-EU countries show that these are not free from difficulty. The UK/US extradition arrangements and the McKinnon case are one example.

The European Public Prosecutor

34. Continuing to participate in the pre-Lisbon JHA instruments does not mean acceptance of harmonised criminal law, or any supposed code of Euro crimes, or a proposal for a European Public Prosecutor. The UK need not opt-in to any of these. There is in fact no proposal for a harmonised criminal law. The UK has already indicated in the European Union Act 2011 that it will not participate in a European Public Prosecutor’s Office without a referendum. Article 10 of Protocol 36 relates only to the 130 or so pre-Lisbon JHA instruments.

Operational Benefits

35. We cannot speak to the operational benefits of each and every instrument. But we believe that the operational benefits go deeper than other analyses suggest. Annex B contains an extensive list of operational benefits of police and judicial cooperation to the UK, which seeks to show this. Annex C contains an extensive list of press reports of successes resulting from EU police and justice cooperation, including cases of terrorism, murder, robbery, rape, child sex offences, and a worldwide paedophile network. They make a significant contribution to protecting the British public and ensuring that British victims obtain justice.

Remedying the Problems of the EAW

36. The Baker Review concluded that the EAW generally worked well and that its operation had been substantially improved over time. But there remain clear shortcomings in the EAW, at least in its operation. Parallel or collateral measures, some of which are included in the pre-Lisbon instruments, should deal with many of the criticisms. The ongoing parallel package of procedural rights measures (the Roadmap) is intended to raise criminal justice standards across the EU for the British and other EU nationals arrested and tried in other member states. For example, the measure on trials in absentia will prevent individuals being extradited after a trial in absentia in another member state of which they were unaware. Prisoner transfers will enable many to serve their sentences in their home

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84 Section 6(3) European Union Act 2011
85 http://www.theyworkforyou.com/wrans/?id=2011-11-15c.81154.h&s=section%3Awrans+speaker%3A11494#g81154.q0
member state. Pre-trial supervision will prevent lengthy pre-trial detention in other member
states. The measure to resolve conflicts of jurisdiction will do precisely that.

37. The United Kingdom should not only fully apply all these measures but should
support other parallel measures which will strengthen the protection of British nationals in
other EU Member States.

38. The Baker Review concluded that the main problem with the EAW was
‘proportionality’: a small number of member states overuse the EAW for small or petty
crimes (though in practice, anecdotal evidence suggests that such cases are never prioritised
by UK authorities). The European Commission has recently introduced more robust
guidelines on how to use the EAW in a proportionate way and left open the possibility of
further amendments to the EAW if necessary.86

39. The recent Advocate General’s Opinion in Case C 399/12 Radu suggested that
the EAW is covered by the proportionality principle, which limits its use for minor offences;
and that a court may refuse to execute an EAW on human rights grounds. Moreover, the
Advocate General suggested that the substantive threshold for this falls below that
established in ECHR case law, i.e. flagrant disregard of fair trial rights. Instead the threshold
should be that deficiencies in the trial substantially destroy its fairness. The standard of proof
for the complainant should be that his or her concerns are substantially well-founded.

40. If the CJEU does not follow this Opinion, we would urge the British Government to
join with other Member States in proposing an amendment to the EAW which would
establish the proportionality principle. We believe that the UK’s negotiating hand would be
all the stronger if it was clearly committed to the EAW.

The Case against Any Exercise of the Opt Out

41. On the basis of the evidence submitted, the case for participating in many of the
operational JHA pre-Lisbon measures is overwhelming. That might leave some arguing that
we should exercise the opt out and then opt back in to 40, 60, 80 or 100 measures,
depending on variations of operational assessment and ideological perspective.

We, however, believe that this would be a second best solution, not only for the technical
reasons stated in paragraphs 22 to 26, but also because:

• The operational benefits of the pre-Lisbon instruments are deeper than other
analyses suggest.

• By continuing to support some instruments which may yield little direct benefit to us
but may still do so to others, we are encouraging support for a system which
improves law enforcement and raises standards across Europe.

• The fewer the instruments in which the UK participates, the weaker its commitment
it will be perceived. This will reduce its influence and leadership. It will reduce its
capacity to lever improvements in other Member States or negotiate other texts in
this area. The UK at present gains substantially in reputation, and therefore in

influence, by its participation and leadership of organisations such as Europol and Eurojust.

- The opting back in process poses risks of negotiability, costs and timing. Why risk at all the types of operational success illustrated in Annexes B and C?

- If we remained party – as we should – to the JHA instruments of most operational importance, these are precisely the instruments which most concern Member State powers and which the CJEU would be most likely to adjudicate. If we exercised the opt out only to exclude defunct instruments or those of lesser operational importance, what is the point?

21 December 2012

ANNEX A: TABLES WITH EXTRADITION STATISTICS

Table 1: Criminals Removed from the UK

<table>
<thead>
<tr>
<th>Year</th>
<th>All Criminals Removed</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>24</td>
</tr>
<tr>
<td>2005</td>
<td>77</td>
</tr>
<tr>
<td>2006</td>
<td>151</td>
</tr>
<tr>
<td>2007</td>
<td>332</td>
</tr>
<tr>
<td>2008</td>
<td>547</td>
</tr>
<tr>
<td>2009</td>
<td>855</td>
</tr>
<tr>
<td>2010</td>
<td>1173</td>
</tr>
<tr>
<td>2011</td>
<td>922</td>
</tr>
<tr>
<td>Total</td>
<td>4081</td>
</tr>
</tbody>
</table>

Table 2: Breakdown of EU Nationals and UK Nationals Removed

<table>
<thead>
<tr>
<th>Year</th>
<th>All Criminals Removed</th>
<th>UK Nationals Removed</th>
<th>Other EU Nationals Removed</th>
<th>% of other EU Nationals</th>
<th>% of UK Nationals</th>
</tr>
</thead>
<tbody>
<tr>
<td>2004</td>
<td>24</td>
<td>5</td>
<td>19</td>
<td>79.2%</td>
<td>20.8%</td>
</tr>
<tr>
<td>2005</td>
<td>77</td>
<td>11</td>
<td>66</td>
<td>85.7%</td>
<td>14.3%</td>
</tr>
<tr>
<td>2006</td>
<td>151</td>
<td>26</td>
<td>125</td>
<td>82.8%</td>
<td>17.2%</td>
</tr>
<tr>
<td>2007</td>
<td>332</td>
<td>27</td>
<td>305</td>
<td>91.9%</td>
<td>8.1%</td>
</tr>
</tbody>
</table>

87 http://www.theyworkforyou.com/wrans/?id=2012-06-20b.112241.h&s=european+arrest+warrant+section%3Awrans#g112241.q0
http://www.theyworkforyou.com/wrans/?id=2011-11-24b.79003.h&s=european+arrest+warrant+section%3Awrans#g79003.q0

88 http://www.theyworkforyou.com/wrans/?id=2012-06-20b.112241.h&s=european+arrest+warrant+section%3Awrans#g112241.q0
http://www.theyworkforyou.com/wrans/?id=2011-11-24b.79003.h&s=european+arrest+warrant+section%3Awrans#g79003.q0
<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
<th>Returned to UK</th>
<th>Voluntary</th>
<th>Average Time</th>
</tr>
</thead>
<tbody>
<tr>
<td>2008</td>
<td>547</td>
<td>32</td>
<td>515</td>
<td>94.1%</td>
</tr>
<tr>
<td>2009</td>
<td>855</td>
<td>41</td>
<td>814</td>
<td>95.2%</td>
</tr>
<tr>
<td>2010</td>
<td>1173</td>
<td>48</td>
<td>1125</td>
<td>95.9%</td>
</tr>
<tr>
<td>2011</td>
<td>922</td>
<td>32</td>
<td>890</td>
<td>96.5%</td>
</tr>
<tr>
<td>Total</td>
<td>4081</td>
<td>222</td>
<td>3859</td>
<td>94.6%</td>
</tr>
</tbody>
</table>

**Table 3: Criminals Returned to the UK under the EAW**

**ANNEX B: BENEFITS OF EU POLICE AND JUDICIAL COOPERATION TO THE UK**

This Annex contains details of many of the UK success stories using the European Arrest Warrant, Europol, Eurojust and Joint Investigation Teams, and some of the core EU police and judicial cooperation measures.

**European Arrest Warrant (EAW)**

The EAW has dramatically reduced the time and cost it takes to bring back criminal suspects that have fled to other parts of the EU. Up to 62% of those subject to an EAW surrender voluntarily, allowing for return to stand trial on average within 14-17 days. Where the individual does not voluntarily surrender, it takes an average of 48 days. In both cases, this compares very favourably to the previous arrangements which took months and sometimes years, if at all.

- In 2010 alone, the UK extradited over 134 individuals (both UK and non-UK citizens) from other EU member states to the UK to face criminal prosecutions for crimes they had committed here. In the same year, 48 British nationals were extradited from the UK to other member states for crimes committed in those member states.

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89 http://www.theyworkforyou.com/wrans/?id=2012-06-20b.112240.h&s=european+arrest+warrant+section%3Awrans#g112240.q0
http://www.theyworkforyou.com/wrans/?id=2009-06-09c.265789.h&s=european+arrest+warrant+2008+section%3Awrans#g265789.q0

90 SOCA Annual Report 2010-11 page 93.
91 http://www.theyworkforyou.com/wrans/?id=2011-12-01c.84152.h&s=european+arrest+warrant#g84152.q0
• Over the last two years, the UK has used the EAW to extradite at least 71 non-UK nationals suspected of committing serious crimes in the UK. This includes 4 thefts, 4 robberies, 5 murders, 5 rapes, 6 child sexual offences, 9 cases of grievous bodily harm and 14 cases of fraud.92

**CASE STUDIES: Operation Captura & Crimestoppers**
Crimestoppers, the UK crime fighting charity founded and led by Lord Ashcroft, has an active and highly successful programme working with UK and Spanish authorities to track down and repatriate UK criminals that have fled to Spain using the EAW. Under the programme called ‘Operation Captura’, 49 out of the 65 top UK fugitives hiding in Spain have been identified and returned to face justice in the UK. Full details of Operation Captura and its individual successes can be found here and here.

**CASE STUDY: London Bomber**
Hussain Osman, one of the individuals involved in the July 2005 attempted London bombings was arrested in Italy under a UK issued European Arrest Warrant and extradited to the UK to face trial. Further details can be found here.

**Europol:**
While Interpol is effectively a communication hub only between national law enforcement agencies, Europol has considerable analytical, operational and support capabilities which are hugely valued by UK law enforcement authorities, prosecutors and relevant NGOs. In almost every one of the list of UK success stories in Annex C, Europol has played a major role. Europol supports UK law enforcement in a variety of ways:93

• Providing various operational support services including via its 24/7 Operational Coordination and Support Centre, mobile office for on the spot support, forensic and technical analysis, operational analysis, financial support to operations, hosting operational meetings and coordinating cross-border operations, including Joint Investigation Teams94 (in 2010, Europol was a member of 7 Joint Investigation Teams (JITs) and involved in 11 others).95

• Establishing Analysis Work Files and providing analytical support for crimes or crimes areas involving more than one EU member state.96

• Providing access to the Europol Information System (EIS) which includes EU-wide information on serious crimes and criminal suspects at large. The EIS holds over 174,000 pieces of crime information loaded up across all EU member states and member states have undertaken over 120,000 searches of the EIS a year.97

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92 [http://www.theyworkforyou.com/wrans/?id=2011-11-28c81230.h&s=section%3Awrans+speaker%3A11494#g81230.g0](http://www.theyworkforyou.com/wrans/?id=2011-11-28c81230.h&s=section%3Awrans+speaker%3A11494#g81230.g0)
• Providing secure access to sensitive operational information and information exchanges between national authorities via the Secure Information Exchange Network Application (SIENA), launched in July 2009. As at March 2011 SIENA had been used to exchange on average 25,000 messages per month.\(^\text{98}\) Over 13,000 cases were initiated on SIENA in 2011.\(^\text{99}\)

• Producing valuable reports based on the EU-wide information they receive including threat assessments, situation reports and intelligence notifications.\(^\text{100}\)

• Providing a variety of training courses for national law enforcement officers\(^\text{101}\), such as the 2011 course on “Combating the Sexual Exploitation of Children on the Internet”.\(^\text{102}\)

• Cooperating and coordinating activities with other agencies such as Eurojust, Frontex, the European Police College, the External Action Service, as well as with international security partners (e.g. US authorities under the Terrorist Finance Tracking Programme)\(^\text{103}\) and organisations (e.g. Interpol).\(^\text{104}\)

CASE STUDY: ‘Operation Rescue’
A 3 year operation launched by British Metropolitan Police and coordinated by Europol across 30 countries that led to the discovery of the world’s largest online paedophile network. 670 suspects were identified, 184 arrests were made, 230 sexually exploited children were released, including 60 in the UK. For further details See here and p.8-9.

Eurojust:
UK authorities, such as the Serious Fraud Office (SFO), regularly use Eurojust to enhance, speed up and coordinate cross-border important investigations of importance to the UK. Eurojust provides a variety of services:

• Responds to requests from member states for support with existing cases or to launch cross-border cases through Eurojust.

• Runs a Eurojust Case Management System which enables Eurojust to cross-reference national cases for relevant information and connections, and to coordinate cross-border efforts.

• Runs an On Call Coordination system providing 24/7 support for member states.

• Participates in, and provides administrative support and financing for, Joint Investigation Teams (JITs, see below).

Justice Across Borders – Written evidence

- Acts to resolve conflicts or potential conflicts of jurisdiction in cross-border cases.

In 2011, Eurojust participated in 29 JITs and funded and administered a further 16 JITs. In many of the success stories described in Annex C, Eurojust has played a critical role. In the last year alone, Eurojust has provided £500,000 in funding for JITs involving UK law enforcement authorities. In the last two years, UK authorities have requested Eurojust assistance in 166 cases. In 2011, UK authorities registered 127 cases with Eurojust. The Crown Prosecution Service (CPS) engages with Eurojust to agree individual case strategies and wider thematic approaches to crimes and criminality that cross two or more EU jurisdictions and/or involve third Party (non-EU) States.

The CPS uses the European Judicial Network (EJN) to encourage early, direct liaison between prosecutors to advance individual case issues and provide quick advice as to an individual State's practice and procedure. The European Liaison Magistrates Network is used to represent the CPS, the Serious Fraud Office (SFO), Revenue and Customs Prosecutions Office (RCPO) and the Crown Office in Scotland, especially in relation to mutual legal assistance requests and European Arrest Warrants. These networks provide the bottom-up relationships, trust and working practices that enable smooth and efficient cross-border judicial cooperation.

CASE STUDY: Vietnamese People Smuggling to the UK
In February 2011, a Eurojust co-ordinated operation involving five other countries resulted in nineteen arrests of individuals involved in the smuggling of thousands of illegal immigrants, mainly from Vietnam to the UK. For a full report, see Eurojust website here.

CASE STUDY: JIT on Roma Women Trafficked to the UK for Prostitution
In 2011, a Joint Investigation Team was set up between the UK, Czech Republic and Eurojust targeting an organised criminal network trafficking Roma women from Czech Republic to the UK to work as prostitutes. Eurojust provided analytical and coordination support for the operation and helped to resolve potential conflicts of jurisdiction early. The JIT operation led to the arrest of 11 ringleaders within 3 months of being set up. See p. 21 here.

Joint Investigation Teams (JITs):
The UK has launched and run dozens of successful JITs to date with other European national police forces and EU agencies. The UK now advocates it as a best practice form of international police and judicial cooperation. Since 2009, the UK has been involved in at least

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107 Ibid
15 JITs covering serious crimes such as drug trafficking, trafficking in human beings, illegal immigration, fraud, money laundering, vehicle crime and cybercrime.

**CASE STUDY: ‘Operation Golf’**

A joint investigation between Europol, the Met and Romanian Police, broke up an organised criminal network operating a child trafficking network in the UK and across the EU. In 2010, this saw 7 individuals arrested in the UK and the release of 28 children. In total, some 121 individuals were arrested under the Operation, 181 children (trafficked for £20,000 each and earning traffickers £160,000 each per year) were identified and released and saving the UK £400,000 through stopping related benefit fraud. For further information, see p.17-18 here and here and p. 107 here.

**Other Examples, Facts and Figures:**

- **Effective Customs Cooperation:** Naples II, the Convention on Mutual Assistance and Cooperation between Customs Administrations, allows for the exchange of information and administrative assistance between customs authorities in order to combat the illicit trafficking of goods. For example, information gained from Naples II led to the UKBA's seizure of 1.2 tonnes of cocaine with a street value of £300m – the UKBA’s biggest cocaine seizure ever.

- **European Criminal Records Information System (ECRIS):** The European Criminal Records Information System became operational in April 2012, with 8 member states currently operating ECRIS. Since it came into effect, it has already enabled UK law enforcement authorities to obtain criminal records notifications of nearly 1,700 British nationals convicted of crimes elsewhere in the EU, and nearly 1,600 non-UK EU nationals who are being prosecuted in the UK. The use of ECRIS is set to grow exponentially over time as it becomes operational in more member states.

- **Mutual Recognition of Financial Penalties:** The Council Framework Decision on the Application of the Principle of Mutual Recognition to Financial Penalties became operational for the first time in 2010. In its first two years, it has enabled UK law enforcement authorities to enforce over £100,000 worth of fines to individuals and companies based elsewhere in the EU. Some 41 cases are being pursued under the measure. The measure was proposed by the UK Government in response to two cases where foreign companies refused to pay fines for corporate failures: (i) Swedish company and ferry walkway collapse and (ii) Austrian company and Heathrow tunnel collapse.
• **Prisoner Transfers:** The EU’s Prisoner Transfer Framework Decision, which recently came into force in December 2011, should allow the UK to both improve rehabilitation outcomes and reduce the size of the British prison population by returning foreign national prisoners to the home EU member state. The transfer of the first batch of 24 non-UK EU prisoners is currently in the pipeline.\(^{118}\)

• **The Schengen Information System II,** once it comes online in 2013/4, will deliver £465m in net benefits to the UK. It will provide real time alerts extending the reach of UK law enforcement into Europe covering missing persons, lost/ stolen ID and movement of people of interest to law enforcement agencies. SIS II will provide UK law enforcement authorities with real-time data on over 27,000 people subject to a European Arrest Warrant (nearly 50% of which relate to violent/sex crimes, drugs or terrorism offences), missing persons, persons assisting the judicial authorities and over 42 million alerts on lost or stolen property.\(^{119}\)

• **Simpler and Faster Information Exchange:** The Council Framework Decision of 2006 on simplifying the exchange of information & intelligence between law enforcement authorities establishes a simple form for information requests between law enforcement authorities with an 8 hour deadline for responses.

• **Psychoactive Drugs:** The Council Decision of 2005 on information exchange, risk assessment and control of new psychoactive substances, provides for an early warning system for new psychoactive substances discovered across the 27 member states and for them to be banned across the EU. It enables UK identified measures to be banned across the EU, and for the UK to benefit from EU-wide capabilities and resources in terms of toxicology, forensic analysis, pharmacological and epidemiological studies. In 2011 alone, 49 new psychoactive substances were identified across all member states under the measure, just 6 of these had been identified by UK authorities and the largest number ever identified in one year.\(^{120}\) The new substances included, in particular, new forms of cannabis/ skunk, amphetamines, mephedrones and so called ‘legal highs’.\(^{121}\)

• **European Police Training College:**\(^{122}\) This provides 80-100 training courses to senior police officers across Europe every year. This provides a valuable mechanism for bottom-up best practice sharing and development of new cross-border crime fighting techniques. Since it is hosted and led by the UK, it helps the UK lead on practical cross-border crime fighting.

• **Networks:** The various EU law enforcement and judicial networks - European Crime Prevention Network (EUCPN)\(^ {123}\), Liaison Officers Network\(^ {124}\), Liaison

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\(^{118}\) [http://www.theyworkforyou.com/wrans/?id=2012-03-07a.98443.h&s=section%3Awrans+speaker%3A11494#g98443.q0](http://www.theyworkforyou.com/wrans/?id=2012-03-07a.98443.h&s=section%3Awrans+speaker%3A11494#g98443.q0)


Justice Across Borders – Written evidence

Magistrates Network\textsuperscript{125} and European Judicial Network\textsuperscript{126} - help facilitate cross-border crime, speed up trust and cooperation and allow for best practice sharing and development.

- **European Image Archiving System:**\textsuperscript{127} Enables the rapid exchange of images of and information about genuine and falsified documents helping to crack down on identity fraud and allows UK to benefit from EU-wide pool of forgery experts.

- **Mutual Recognition of Supervision Measures:**\textsuperscript{128} This will allow defendants awaiting trial for an offence in another member states to remain in their home country rather than being extradited and sometimes held in lengthy pre-trial detention (an oft cited complaint of the operation of the EAW).

- **Trials in Absentia:** Jointly proposed by the UK\textsuperscript{129}, France and Germany, it seeks to prevent cases where individuals can be extradited under European Arrest Warrants without having been informed of a trial and having the opportunity defend themselves.

- **Conflicts of jurisdiction in criminal matters:**\textsuperscript{130} This measure helps prevent lengthy disputes between member states over who has jurisdiction in a particular criminal case by setting out a process for resolving disagreements early.

**ANNEX C: SOME RECENT UK SUCCESS STORIES WITH THE EUROPEAN ARREST WARRANT, EUROPOL, EUROJUST & JOINT INVESTIGATION TEAMS**

**METROPOLITAN POLICE:**

**September 2012 – Sex Offences**
Police obtained a European Arrest Warrant for a former Catholic priest accused of past sex offences, who failed to answer bail. In June 2010, a man made an allegation of sexual assault at St Benedict’s School in Ealing, west London. The former priest was arrested on suspicion of sexual assault in September 2010. He was bailed to return to a west London police station in March last year but failed to appear, said police. See here\textsuperscript{131}.

**July 2012 – Online Theft Crime:**
Pavel Cyganok was jailed for five years and Ilja Zakrevski for four years for masterminding online theft crimes. A third man, Aldis Krummins, was jailed for two years for helping launder some of the cash stolen by the pair. UK police were tipped off about the criminals

\textsuperscript{125} http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/l33064_en.htm
\textsuperscript{128} http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/jl0032_en.htm
\textsuperscript{129} http://www.nio.gov.uk/enhancing_procedural_rights_and_judicial_co-operation_in_the_eu.pdf
\textsuperscript{130} http://europa.eu/legislation_summaries/justice_freedom_security/judicial_cooperation_in_criminal_matters/jl0021_en.htm
\textsuperscript{131} http://www.bbc.co.uk/news/uk-england-london-19455172
by Estonian police who suspected Zakrevski was using viruses to target Britons. Cyganok and Zakrevski used the SpyEye trojan to steal login details for online bank accounts. Stolen data was uploaded to servers to which the pair had access.

The Metropolitan Police’s Central E-Crime Unit (PCEU) said it had seized one of the servers that was based in the UK, which revealed about 1,000 machines had been infected by SpyEye. The seizure led the PCEU to other machines through which the two men were identified. Cyganok was still logged on to one of the control servers when his home was raided and he was arrested. Zakrevski was arrested in Denmark for a different crime, but because British police had issued a European arrest warrant for him he was extradited to the UK in July 2011. See here and here.

July 2012 – Blackmail:
Three people were arrested in Amsterdam and London after a Europe-wide probe into blackmail linked to animal rights extremism. A 50-year-old woman was held in Croydon, south London, on suspicion of conspiracy to blackmail. She was arrested by officers from Scotland Yard’s Counter Terrorism command, who led the investigation. Two other people were arrested in the Netherlands. A man and a woman, both 25, were arrested at a residential address in Amsterdam under a European Arrest Warrant, the Metropolitan Police said. See here.

June 2012 – Murder:
The son of a woman found dead at her home in Kingston has been arrested in northern Spain. He was arrested by police in San Sebastian on a European warrant last Friday. His mother was found dead lying on her couch in her flat on Springfield Road in Kingston on June 12. Detectives initially believed the mother had died from head injuries but a postmortem examination later revealed the cause of death as asphyxiation. A Metropolitan Police spokesman said: "On Friday 22 June a 28-year-old man was arrested on a European Arrest Warrant in San Sebastian, Spain, in connection with the murder of Margot Sheehy in Kingston on 12 June.” See here.

August 2011 – Boiler Room Scam:
Three men were sentenced at Southwark Crown Court to a total of 19 years in jail for boiler room fraud, following a long running and detailed investigation by the Financial Services Authority (FSA), City of London Police (CoLP) and Eurojust. The Crown Prosecution Service (CPS) conducted the prosecution. Tomas Wilmot, the ringleader of the operation, was sentenced to nine years imprisonment, while his sons Kevin and Christopher were given five years imprisonment each. The sentences were passed following the individuals' convictions on four offences of conspiracy to defraud which resulted in £14 million of losses. The Wilmots controlled a syndicate of boiler rooms that defrauded an estimated 1,700 investors of £27.5 million in total. Many of the victims were elderly and, in some cases, suffering from serious illnesses. The court found that the three Wilmots conspired to acquire, transfer and sell millions of low value, worthless and sometimes non-existent shares to victims in the UK. See here.

132 http://www.searchclinic.org/2012/07/online-bank-account-robbers-are-jailed.htm
134 http://news.uk.msn.com/three-held-in-blackmail-plot-probe-1
2011 - Armed Robbery:
Operation Captura, launched in 2006, is a joint operation run by SOCA, Crimestoppers, Spanish Authorities and Europol, to track down the most wanted Brits on the run in Spain ("Costa Del Crime") and return them under EAWs to the UK (see here)\(^{137}\). James Hurley, convicted killer of a police-man during an armed robbery in Hemel Hempstead, who escaped custody in 1994, was arrested in 2007 in The Netherlands for drug offences and extradited back to the UK in 2011 to stand trial for murder, see here.\(^ {138}\)

April 2011 – Murder:
A father and son who stabbed a man to death after a row at a party in south London were jailed for life. Jose Aburto-Rojas, 45, and his son Roberto, 26, were asked to leave the celebrations at a house in Brixton after rowing with Gabriel Morales. Hours later they returned and stabbed Mr Morales, 33, to death as he lay in bed with his girlfriend. Both Jose and Roberto, who fled abroad after the 2008 killing, were jailed at the Old Bailey for at least 20 years. The court heard that the two men, Chilean nationals who lived in Walworth, south London, became embroiled in a row during a birthday barbecue hosted by the victim in March 2008. They were asked to leave but returned at about 4am, armed with knives, and forced their way in before attacking Mr Morales. The pair then fled to Italy and Germany. See here.\(^ {139}\)

March 2011 – Financial Fraud:
Italian businessman Giovanni di Stefano was extradited to the UK from Spain and appeared in court on fraud charges. Andrew Penhale of the CPS Organised Crime Division said: “Giovanni di Stefano has appeared in City of Westminster Magistrates’ Court this morning on a European Arrest Warrant from Spain. Mr di Stefano is charged with 10 counts of obtaining a money transfer by deception, one of attempting to obtain a money transfer by deception, one of obtaining property by deception; one count of theft of a BMW car belonging to BMW Financial Services; three counts of money laundering; two counts under the Fraud Act 2006. The charges refer to events between 2004 and 2009 and the alleged deceptions include representations that he was a qualified Italian lawyer.” See here.\(^ {140}\)

8 February 2011 – Smuggling Illegal Immigrants:
Co-ordinated action by five countries supported by Eurojust and Europol led to nineteen arrests of individuals involved in the smuggling of illegal immigrants, mainly from Vietnam to the UK. For a full report see Eurojust website here.\(^ {141}\)

2011 – Murder:
Under Operation Captura, James Tomkins, wanted by the Metropolitan Police Service over the murder of electrician Rocky Dawson, 24, in Hornchurch, in May 2006, was arrested in Spain in 2011 and returned to the UK under a EAW, see here.\(^ {142}\)

2011 - Drug Trafficking:

\(^{138}\) http://www.bbc.co.uk/news/uk-england-suffolk-15782371
\(^{139}\) http://www.bbc.co.uk/news/uk-england-london-12955264
\(^{140}\) http://blog.cps.gov.uk/2011/03/index.html
Anthony Fraser was sought under a European arrest warrant for drugs offences in relation to a joint SOCA-Metropolitan Police Middle Market Drugs Partnership investigation. He was arrested in Gibraltar. See here.  

January 2011 – Insider Trading:  
Christian Littlewood, a senior investment banker and former Financial Services Authority (FSA) Approved Person, his wife Angie Littlewood (also known as Siew Yoon Lew and Angie Lew) and a family friend, Helmy Omar Sa’aid, pleaded guilty to 8 counts of insider dealing contrary to section 52 of the Criminal Justice Act 1993. They were alleged to have made approximately £590,000 profit from the trades. The offences related to trading in a number of different London Stock Exchange and AIM listed shares between 2000 and 2008 and were only brought to an end when the City of London Police working with FSA staff arrested the Littlewoods in March 2009. The third defendant, Helmy Omar Sa’aid, was returned to the UK in March 2010 following the execution of a European Arrest Warrant in Mayotte, one of the Comoros Islands. The case was bought by the FSA and heard at Southwark Crown Court. It was the sixth successful prosecution for insider dealing bought by the FSA and was part of its ongoing drive to tackle market abuse and promote efficient, orderly and fair markets. See here. 

October 2010 – Child Trafficking and Exploitation:  
Operation Gulf, coordinated by Europol, consisted of a Joint Investigation Team (JIT) between the UK Metropolitan Police and the Romanian National Police, to tackle a Romanian organized crime network that was trafficking and exploiting children from the Roma community. The operation's primary aim was to safeguard the potential child victims and involved 16 addresses being searched in Ilford, Essex. The children found were taken to a dedicated centre staffed by child protection experts from the police, the local authority and local health trust, where individual assessments were made on each child. The Operation resulted in the rescue of 28 children, 126 arrests, and further transnational organized crime links being identified. For a full report see the Europol website here and here and here. 

2010 – Drugs Offences:  
Under Operation Captura, Stephen Henry Pitman, from SE London, wanted since 2001 on drugs offences, was arrested on Monday 26 October 2010 in Mijas Costa, see here. 

2009 – Attempted Murder:  
Under Operation Captura, Andrew Snelgrove, was wanted for attempted murder in London, wounding with intent and possession of a firearm with the intent to danger life on 24 June 1999. He was arrested in Spain in June 2009, see here. 

17 November 2009 – Trafficking Illegal Immigrants:  
Five men arrested under European Arrest Warrants in England and Scotland by SOCA officers were suspected of participating in a criminal network trafficking thousands of illegal
immigrants into Europe, mainly from Iraq and Afghanistan. For full report see SOCA website here.  

**March 2009 – Bank Robbery:**
An organised crime gang that attempted to pull of the biggest bank theft the UK had ever seen – attempted theft of more than £229 million from Sumitomo Matsui Banking Corporation in London – was sentenced in March 2009. SOCA used technical expertise to unravel a complicated web of companies and accounts to track down the criminals. Three people were extradited to the UK under European Arrest Warrants from Belgium and Spain. Approximately £1.5 million in assets was restrained. For full report see SOCA Annual Report 2008/9 (p.19) here.  

**31 January 2008 – Human Trafficking Network:**
Eurojust and Europol assisted in dismantling a human trafficking network, supporting authorities in France and the UK to make 23 arrests of individuals involved in the trafficking network and other forms of organised crime such as money laundering and drug smuggling. For full report see Eurojust website here.  

**2008 – Suspected Gangster:**
Under Operation Captura, Noel Cunningham was wanted for conspiracy to rob, conspiracy to steal, having an offensive weapon, handling stolen goods, escape, wounding/inflicting grievous bodily harm, wounding/inflicting grievous bodily harm with intent, possessing firearm with intent. He was arrested in the Netherlands in September 2009, see here.  

**December 2007 – Child Sex Offender Deported:**
A paedophile who worked as a teacher will be extradited to serve a prison sentence for having child pornography. He will be deported tomorrow to serve five months in a Dutch prison for importing and stockng pictures of children. After his conviction for the child porn offences in the Netherlands in August 2002, he was ordered to appear to be sentenced. He did not turn up for the hearing and was sentenced in his absence but never returned to the country to serve his time. His appeal against the conviction was rejected in October 2003. Detectives from the Metropolitan Police and Sussex Police raided the man’s home armed with a European arrest warrant. See here.  

**2007 – Security Van Theft:**
Under Operation Captura, Clifford Hobbs was arrested and stood trial for the theft of £1.25 million from a security van. Arrested in Spain and returned to the UK in August 2007 and returned to the UK under a EAW, see here.  

**July 2012 – Drug Gangster:**
A key player in a major drug smuggling gang, who fled the country in 2004, was jailed for nine years for his involvement in an attempt to smuggle £2 million worth of cocaine into the UK. Richard Wright (51), formerly of Chislehurst, Kent, who was extradited from the Netherlands, was sentenced today for conspiring to import Class A drugs via Zeebrugge

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151 http://www.soca.gov.uk/about-soca/library?start=10
153 http://www.independent.co.uk/news/uk/crime/most-wanted-man-arrested-after-six-years-1784301.html
154 http://www.theargus.co.uk/news/1890771.sussex_paedophile_to_be_deported_to_holland/
155 http://www.telegraph.co.uk/news/uknews/1559595/Most-Wanted-van-robber-arrested-in-Spain.html#
back in 2004. He escaped before he could be charged but he continued his illegal activities and was arrested by HM Revenue and Customs (HMRC) officers after he had served a jail term in a Dutch jail. Mike O’Grady, HM Revenue & Customs Assistant Director Criminal Investigation said: “Wright fled the UK when circumstances got difficult and he saw we had arrested other gang members associated with the smuggling attempt. It became clear that he had continued his illegal activities in the Netherlands in the intervening period when he was arrested by our partners there for similar drug smuggling offences. Combining our intelligence and expertise for both smuggling cases has protected UK citizens and wider European communities from this habitual organised criminal.” See here.156

CENTRAL SCOTLAND POLICE:

August 2012 – Child Sex Offences:
A suspected paedophile who twice skipped bail in Scotland was arrested in the Costa del Sol. Rolf Dieter-Glaetzner, accused of abusing two young Scottish girls, spent more than six years on the run after absconding ahead of a High Court appearance. Detectives say he will now face extradition proceedings. He faces charges in Scotland over a series of violent sexual assaults on two primary school pupils, aged six and seven at the time of the alleged attacks. See here.157

GRAMPIAN POLICE:

2012 – Drug Trafficking:
Under Operation Captura, John Cearney Barker, wanted under two European Arrest Warrants for trafficking in cocaine and amphetamine to the value of over £110,000 in 1998 and 1999 within Scotland, was arrested in Spain earlier this year, see here.158

LOTHIAN & BORDERS POLICE:

February 2012 – Murder:

A man was arrested in Poland in connection with the death of a Polish man in Edinburgh. Maciej Ciania’s body was found in his flat in Dickson Street, Leith, on 14 January by his flatmate. The 34-year-old was said to have suffered a “violent and brutal” death. Lothian and Borders Police said the 25-year-old man had been arrested on a European Arrest Warrant. He is expected to appear at Edinburgh Sheriff Court at a later date. See here.159

2005 – Drug Trafficking:
Christopher Bailiff failed to appear for trial in relation to drugs charges. The European Arrest Warrant was craved from the Sheriff at Edinburgh on the afternoon of Friday 24 June 2005 and issued that night. Bailiff was arrested in Spain on the warrant on Tuesday 28 June. He consented to his extradition and returned to Scotland less than a month later. Bailiff subsequently pleaded guilty to being concerned in the supply of drugs, and was sentenced on Thursday, 1 December to five years in prison, See Notes to Editors here.160

156 http://hmrc.presscentre.com/Press-Releases/-Drugs-broker-jailed-for-9-years-67b4a.aspx
158 http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7204362.stm
159 http://www.bbc.co.uk/news/uk-scotland-edinburgh-east-fife-16996309
STRATHCLYDE POLICE:

2010 – Hit and Run Death:
Paul Lyons pleaded guilty to causing the death of Mark Fleeman on the M74 at Larkhall and attempting to defeat the ends of justice by fleeing to Spain shortly after the incident. Following information that he may be residing in Spain, the Crown Office International Co-operation Unit sought a European Arrest Warrant for Lyons which was granted at Edinburgh Sheriff Court. This warrant was executed by Spanish police and he was arrested on 23 September 2010. Lyons did not consent to his surrender but following a hearing before a Court in Madrid he was ordered to be returned to the UK to face criminal charges in Scotland. See here.161

2009 – Benefit Fraud:
Anthony Kearney was accused of fraudulent offences, including obtaining benefits from Department of Work and Pensions (DWP) and setting up false accounts. Under Operation Captura, he was arrested along with his accomplice, Donna McCafferty, within hours of a press conference in Alicante in November 2008 and returned to Scotland, see here.162

April 2009 – Rapist and Murderer:
A Slovakian man was jailed for a minimum of 25 years for the "barbaric" rape and murder of a businesswoman in a Glasgow park. Marek Harcar forced 40-year-old Moira Jones into Queen's Park as she returned home from a night out. Passers-by heard screams coming from the park. A park ranger found Jones's badly beaten body the following morning. Harcar fled to the Czech Republic, and then to Slovakia, after the murder. A European arrest warrant was granted, and he was extradited back to the UK. See here163 and page 8 here.164

KENT POLICE:

August 2012 – People Smuggling:
On Tuesday 2 June 2009 at just after 9.30pm, a hired Fiat Ducato Motor home arrived in the UK from Dunkirk, France. The vehicle was examined by officers and ten Vietnamese people were removed from inside the rear compartment. Danny Bracke and his wife, Svetlia Malinova Anguelova, were both arrested and questioned by Kent Police. Bracke was charged on 10 January 2010 and Anguelova on 29 April 2010 for assisting unlawful entry to the UK. In March 2011, both were found guilty at Canterbury Crown Court and were bailed pending being sentenced on 6 May 2011. Both Bracke and Anguelova failed to appear at the Court and were sentenced in their absence to five years imprisonment. A European Arrest Warrant was issued for each offender. Kent Police travelled to Belgium on 30 July to take into custody Danny Bracke from Beringen, Belgium. Officers from Belgium handed Bracke to officers from Kent at Ostende and Bracke was brought back to England and put before Canterbury Crown Court on 31 July. Bracke was handed a further four months on 31 July for breach of bail. See here.165

April 2011 – Murderer:

162 http://news.bbc.co.uk/1/hi/scotland/glasgow_and_west/7715974.stm
163 http://www.guardian.co.uk/uk/2009/apr/08/slovakian-jailed-murder-glasgow
164 Scottish Crime and Drug Enforcement Agency Report, 2008-9
A man who murdered his 19 year old girlfriend in Humberside and then committed an
one offence while on licence, was extradited back to the UK and held in custody after being
tracked down by police in Spain. 40 year old Raymond Gunnell, previously of St Luke’s Road,
Maidstone, was brought up in Grimsby, where he murdered his girlfriend, Alison Newland, in
1990 whom he stabbed 11 times in a jealous rage, while her baby daughter was just metres
away. He served nine years of his life sentence and was released on a life licence in
December 1999 to a bail hostel in Kent. He is then believed to have committed an
unprovoked attack on a man in a pub in Maidstone, after which he fled to Spain. A European
arrest warrant was obtained and he was arrested by authorities there two weeks ago. A
specialist team of officers from Kent Police brought him back to the UK via Heathrow to
Maidstone Police Station. He will now be returned to prison to serve the remainder of his
sentence for the murder. See here.166

2011 – Kidnapped Child Freed, Kidnappers Deported:
Another example is the forfeiture of seized cash under the Proceeds of Crime Act from a
couple at Dover Eastern Docks. A couple, originally from Somalia, were subject to an
outstanding European arrest warrant in relation to the abduction and/or kidnap of a young
boy from the Dutch Local Authorities. This child had been with foster carers in Holland.
Officers from Kent Police intercepted the vehicle with the three inside on 19 May 2010. A
search of the vehicle and belongings identified a cash sum of over 10,000 euros, which was
seized under POCA. The couple were handed to the Dutch Authorities to be subject of
court proceedings. The boy was returned to his Dutch foster parents. The money was made
subject of a forfeiture order under POCA by Folkestone Magistrates Court. See here.167

October 2009 – Murder:
A 34 year-old man was charged with the murder of a man from Gravesend six years ago.
Kamaljit Kalon, who was known as Bobby, was 31 when he was stabbed in Gordon
Promenade off Commercial Road in Gravesend on July 10, 2003. Baljinder Singh Kooner was
arrested in Paris under a European arrest warrant on September 24.
He was extradited on October 7 and taken to Maidstone police station, where he was
charged last night. He was collected from Paris by Kent police officers and will appear at
Maidstone Magistrates’ Court this morning. See here168 and here.169

August 2009 – Drug Trafficking Gangster:
A convicted drug dealer who has been on the run for nearly three years is back behind bars
after being extradited from Spain. Robert Colyer, 41, is now serving more than 10 years in
jail after police tracked him down to Malaga. The second hand car dealer, from Island Road,
Hersden, near Canterbury was found guilty of conspiring to supply controlled drugs worth
more than £2million. He absconded before facing trial, but a Kent Police investigation
revealed he was living in Malaga, Spain and a European arrest warrant was obtained. In July
Spanish authorities arrested Colyer on behalf of Kent Police. See here170 and here.171

2008 – Murder:

166 http://www.heart.co.uk/kent/news/local/convicted-murderer-extradited-kent/
168 http://www.newsshopper.co.uk/news/4671285.GRAVESEND__Man_charged_with_murder_from_six_years_ago/
171 http://news.bbc.co.uk/1/hi/england/kent/8197884.stm
Under Operation Captura, John Seton, wanted for the murder of Jon Bartlett in March 2006 in Kent, was arrested in the Netherlands and returned to the UK in May 2007 under a EAW, see here. 172

2008 - Child Rapist:
Andrew Alderman was convicted to 10 years' imprisonment for indecent assault and rape of a girl under the age of 16, between 1st January 1995 and 30th April 2004. Alderman handed himself over to authorities in Madrid in November 2008. 173

2007 - Drug Trafficking:
John Dowdall was wanted for importing large quantities of cannabis from Spain in 2003. He was tried, convicted and sentenced to five years imprisonment in his absence on the 17th May 2005. After being arrested in Spain, he was returned to the UK in September 2007. After appearing in Canterbury Crown court he was sentenced to a further four months' imprisonment, which is to run consecutively to the sentence of his original sentence. See here 174 and here. 175

THAMES VALLEY POLICE:

2012 – Child Sex Offender and Rapist:
Timothy Edmonds appeared at Oxford Crown Court for sentencing after admitting to 15 charges relating to child sexual offences on 9 December, 2011. These charges included four counts of rape of a child under 13, two counts of sexual activity with a child, seven counts of taking indecent images of a child and two counts of distributing indecent images of children. The charges relate to offences carried out against one child between January 2009 and January 2011. Edmonds’ arrest was the result of a joint operation between Thames Valley Police’s Paedophile Online Investigation Team (POLIT), the Child Exploitation and Online Protection (CEOP) Centre and the Danish National High Tech Crime Centre’s (NITEC) Proactive Unit. See here.176

HAMPSHIRE POLICE:

May 2012 – Murder:
The hunt for the killers of a Southampton man whose body was found in a burnt-out car has taken a new twist after detectives arrested a man in Rome on suspicion of murder. Yesterday’s dramatic development comes almost four weeks after Agim Hoxha was murdered and his body left in a torched car dumped at the side of the road.
Two detectives from Hampshire are understood to have flown out to Italy to make the arrest, having obtained a European arrest warrant earlier this week. The man was detained by the officers, who were working in conjunction with police and local authorities in Italy. Moves are now under way to extradite the man back to Hampshire for questioning. See here 177 and here. 178

175 http://costadelsolspaninews.blogspot.com/feeds/posts/default?orderby=updated
177 http://www.dailyecho.co.uk/news/9703043.print/
November 2010 – Child Sex Offences:
A sex offender who was named in Britain’s top ten most wanted criminals after going on the run, was finally brought to justice and jailed for ten years. Mark Brito, 45, fled abroad as soon as he heard police were investigating complaints from two girls, saying he had repeatedly abused them. He absconded when he knew he was coming under suspicion after one victim had plucked up the courage to tell her teacher, rushing upstairs at his Southampton home to pack a bag, saying he was going to be away for a few days. Detectives believe Brito went to Portugal and later moved to France where he got a girlfriend, a nurse. The fugitive was finally arrested in April, after 11 years on the run, when he committed a driving offence and was pulled over by police. He was taken to a police station for questioning where it was discovered he was wanted on a European arrest warrant prepared by Hampshire Police and the Crown Prosecution Service. Following extradition, Brito stood trial at Southampton Crown Court where he was unanimously convicted of six specimen counts of indecent assault and five specimen charges of indecency with a child. Jailing him for ten years Judge Derwin Hope told Brito his victims’ childhood had been ruined and they had suffered in silence. See here.179

December 2009 – Fatal Hit and Run:
A Polish man extradited to Britain pleaded guilty to causing the death by dangerous driving of a promising diver from Bradford, the Crown Prosecution Service said. Lukasz Banasik, 22, was flown from Poland to face the charge relating to the death of Gavin Brown. The 22-year-old, a promising international-standard diver, died after being struck by a Vauxhall Astra driven by Banasik as he walked near the Hobbit Pub in Bevois Valley Road, Southampton, on April 27, 2007. James Kellam, Crown Advocate for the CPS, said: “Mr Banasik should never have been behind the wheel that night. He didn’t hold a driving licence or have insurance. We worked extremely hard alongside Hampshire Police to bring Mr Banasik back to the UK. The execution of a European Arrest Warrant meant he finally had to face justice. Only now has he owned up to killing Gavin.” See here.180

SUSSEX POLICE:

April 2012 - Fraud:
The case was referred to the SFO in March 2006 by the Sussex Police following the winding up of Secure Trade & Title Ltd by the FSA. The ensuing joint investigation by the SFO and the Sussex Police resulted in Brian O’Brien being arrested in the USA on 8 October 2010 and handed to the custody of Sussex Police at Chicago’s O’Hare airport on 1 December 2010. O’Brien, D’Albertson and Pye appeared in Westminster Magistrates’ Court in December 2010 and were sent to Southwark Crown Court for trial. The trial of O’Brien and D’Albertson opened in January 2012. Pye had already pleaded guilty to the charges against him at a preliminary hearing in July 2011. Damien Smith was extradited from the Republic of Ireland following the issue of a European Arrest Warrant. He appeared at Westminster Magistrates’ Court in January 2012 and was sent to Southwark Crown Court for trial. See here.181

March 2011 - World’s Largest Online Paedophile Network:

180 http://www.thetelegraphandargus.co.uk/news/local/localbrad/4819774.Cowardly_driver_admits_fatal_crash/
Europol supported and coordinated investigations through Operation Rescue, bringing together 13 countries to track offenders using a website that was used to disseminated experiences and inappropriate content. See Europol website for full report here.\(^{182}\) This Operation led to 240 offenders targeted in the UK; 121 offenders arrested to date in the UK; 60 children safeguarded to date in the UK. Worldwide the figures are 670 offenders targeted across the world; 184 offenders arrested to date worldwide; 230 children safeguarded to date worldwide. This includes Ian Riley from Sussex, see here\(^{183}\) and here\(^{184}\).

2011 - Child Sex Offences:
Twin brothers, whose details were published on the Child Exploitation and Online Protection (CEOP) Centre’s Most Wanted website, are now both back behind bars in the UK, after being extradited from France. The brothers, Thomas and Kenneth Parker, were both in custody earlier in the year in France, after their details were published on the website. See here.\(^{185}\)

October 2010 – Drug Gangster:
Four men were sentenced at Maidstone Crown Court for their involvement in a drug supply network operating in the Sussex, which CPS Crown Advocate Anthony Hill described as "a prolific organized crime group concerned in the wholesale supply of cocaine". The surveillance of an illicit meeting between three men triggered a series of arrests starting in October 2008, which later revealed the extent of the network and the defendants involvement. A Ford Mondeo at the centre of that meeting was followed, searched and found to contain 122g of cocaine of 99 per cent purity. The driver was acquitted; his passenger Sadettin Uysalan pleaded guilty. The third man was followed to James Parker-McCue’s home address. During the course of the investigation, three other suspects were identified, properties searched and the threads linking all the men were unravelled. Shortly after the arrest of Darren Simpson, James Parker-McCue departed on a flight bound for Alicante and a European Arrest Warrant was issued for his arrest. Spanish Police arrested him at a birthday party in a property he owns there. See here.\(^{186}\)

SURREY POLICE:

Sept 2012 – Murder of UK Family in France:
Following a two day meeting in Annecy, France between Surrey Police, the Crown Prosecution Service, the French Judges, Prosecutors and Police, a joint UK -French investigation team (JIT) was set up in order to take forward the investigation into the murders of members of a Surrey family and a French cyclist, in the Annecy region of France on the 5\(^{th}\) September 2012. The meeting was co-ordinated and chaired by Eurojust. Detective Chief Superintendent Adrian Harper and Deputy Chief Crown Prosecutor for CPS South East, Jaswant Narwal, jointly commented after the meeting; “The establishment today of the Joint Investigation Team marks a significant step forward in progressing the murder investigation, enabling closer co-operation and greater understanding between the


\(^{184}\) http://www.bbc.co.uk/news/uk-england-sussex-10811883


\(^{186}\) http://www.cps.gov.uk/southeast/cps_southeast_news/four_men_involved_in_sussex_drug_network_sentenced/
UK and French authorities, with a single focus of bringing to justice those responsible for these heinous crimes.” See here 187, here 188 and here. 189

**August 2007 – Murder:**
A convicted murderer who absconded from a mental health unit in Surrey has been arrested in Germany. Laszlo Varga, 68, was living on licence at the Horton Haven facility in Epsom. He was allowed to leave on 8 May to visit friends, but he never returned. Surrey Police said the Hungarian man was held in Berlin under a European arrest warrant on 27 July. He is now awaiting a court hearing in Germany, before he is brought back to the UK and recalled to prison. See here. 190

**WEST MIDLANDS POLICE:**

**July 2012 – Murder:**
Martin Christopher Stafford, 46, is to stand trial charged with the murder of Michelle Gunshon, aged 38, who disappeared while working at the NEC in December 2004. Despite extensive enquiries, Michelle’s body has never been found. She went missing in December 2004, while staying in Birmingham City centre, while working as security staff at the NEC. Stafford was extradited from the Republic of Ireland in December 2011 under terms of a European Arrest warrant, by officers from West Midlands Police and charged with Michelle’s murder. See here. 191

**May 2012 - Murder:**
West Midlands Police (WMP) has shown it doesn’t give up on criminals easily, as officers tracked down two offenders who’d fled the country. One man was wanted for theft, while another has been hunted down and sentenced for a murder. Romanian Florian Baboi drunkenly beat to death 63-year-old David McArthur in the pensioner’s home. The attack took place in August 2011 and Baboi quickly fled back to Eastern Europe after his victim’s body was found by a neighbour. Investigators issued a European Arrest Warrant to bring the killer back to Britain. Officers were aided by authorities in Bucharest and the man was taken into custody on 12 September 2011. When he appeared at Birmingham Crown Court on 2 May, a jury unanimously found Baboi guilty of murder. The judge ordered the man to serve at least 23 years in prison, after which he could be deported back to Romania. See here 192 and here. 193

**December 2011 – Murder:**
A 43 year old man has been charged with the murder of a woman who went missing from Birmingham seven years ago. The man will appear before Birmingham Magistrates Court on 14 December charged with the murder of Michelle Gunshon. Officers from the Major Incident and Review Team extradited the man from the Republic of Ireland yesterday (Tuesday 13 December) and he was brought back to the UK under terms of a European Arrest Warrant. He was charged with the murder of Michelle and remanded into custody.

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187 http://www.getsurrey.co.uk/news/s/2121101_police_team_set_up_to_investigate_alhilli_murders
188 http://scotlandyard.blogspot.co.uk/2012/09/eurojust-bulletin.html?m=1
190 http://news.bbc.co.uk/1/hi/england/surrey/6926100.stm
192 http://www.constabulary.org.uk/2012/05/04/west-midlands-police-hunts-down-two-offenders-who-fled-britain/
193 http://www.cps.gov.uk/westmidlands/cps_west_midlands_news/romanian_national_found_guilty_of_murdering_birmingham_man/
Michelle Gunshon went missing in December 2004, while staying in Birmingham City centre, while working as security staff at the NEC. See here. 194

September 2011 – Murder:
A man has appeared before Wolverhampton Crown Court today (22 September) accused of the murder of a Birmingham man last month. The 34-year-old was arrested at Heathrow Airport on Wednesday evening in connection with the death of David McArthur, who was found dead at his home on Woodbrooke Grove, Northfield on 22 August. Police issued appeals earlier this month to trace a man officers wanted to speak to in connection with the incident. A man was later detained in Romania and was returned to the West Midlands on a European Arrest Warrant. He was remanded in custody to re-appear before a court in Birmingham at a date yet to be confirmed. See here. 195

STAFFORDSHIRE POLICE:

May 2012 - Kidnap:
A fugitive wanted by police in connection with a kidnap has been arrested in Spain. Martin Wolstenholme, of Stoke-on-Trent, has been the subject of an international manhunt after Staffordshire Police named him as part of their investigation into the kidnap which took place in November, 2010. Officers also took part in an appeal on TV's Crimewatch as part of their efforts to track him down. Now Wolstenholme, aged 34, is being transported to Madrid where a hearing will take place to extradite him back to Britain.

A spokesman for Staffordshire Police said: " Liaison is ongoing with the Spanish authorities to facilitate his return to the UK so that proceedings can begin concerning his case in Staffordshire." A spokesman for the Serious Organised Crime Agency said: "He was arrested in Malaga on a UK issued European arrest warrant for conspiracy to kidnap. See here. 196

September 2011 – Lorry Theft:
A 37 year-old man wanted by Staffordshire Police for more than two years has been arrested in Tenerife. David Kelly, who was formerly living at an address in North Street, Stoke, had not been seen since failing to answer his police bail in 2009. But Kelly was finally tracked down to an address in the tourist town of Los Cristianos on Monday after the execution of a European Arrest Warrant. Kelly had to appear before a Spanish court before being flown back to Britain. Kelly had been arrested in early 2009 in connection with the theft of a lorry loaded with about £300,000 of electrical goods from James Irlam logistics company, at Hanchurch. After returning to Britain earlier this week, Kelly was charged with conspiring to steal the lorry. See here. 197

2011 - Aggravated Burglary:
Jonathon Lejman, born 15/05/1981 in Stoke-On-Trent was arrested this afternoon (Thursday 24 March 2011) about 2.30pm UK time in Tenerife and was found living in a commune on a beach. Lejman was sought on an EAW for his part in an aggravated burglary in Staffordshire. On the 28 December 2008 Lejman with an accomplice kicked in the front door of a house in Stoke on Trent while the owners were asleep upstairs. Lejman proceeded upstairs to the

197 http://www.thisisstaffordshire.co.uk/300-000-lorry-raid-suspect-custody-Spanish-arrest/story-13396346-detail/story.html
bedroom and threatened the occupants before slashing a kitchen knife across the face of the male occupant. Lejman and his accomplice left the house leaving the male occupant with a broken cheekbone and a deep wound from ear to mouth. See here. 198

July 2010 – Murder of a British Soldier:
Mr Newman, a Sergeant in the Royal Corps of Signals employed in the Derby branch of the Army Careers Information Office, was shot dead on 13 April 1992. On that day he left his office in Derby city centre and walked to the car park where he had left his car. He was followed by two men who shot him once to the head. The men ran off to a waiting getaway car and made good their escape. Mr Newman died of his wounds. The Irish National Liberation Army (INLA) claimed responsibility for Mr Newman's murder. The men involved fled to the Republic of Ireland. Initial attempts to extradite them failed. A European arrest warrant (EAW) was issued on 14 February 2007. The man sought was serving a sentence in a prison in the Republic of Ireland as extradition proceedings commenced. He requested and was granted a transfer to a prison in Northern Ireland. From there he was transferred to England and arrested on the first instance warrant that underpinned the EAW. He was produced at Stafford Crown Court on 22 July 2010 and pleaded guilty to a single count of murder. He was sentenced to life imprisonment with a recommendation that he serve at least 24 years. See here. 199

WEST MERCIA POLICE:

April 2009 – Fraud:
A conman found guilty of fraud although he did not turn up for his trial has been arrested in France. David Oakley was jailed in his absence to three years and nine months at Shrewsbury Crown Court in September. He had said he was too ill to leave his Spanish home to attend the trial, which heard he netted about £100,000 through his illegal activities. West Mercia Police said Oakley was arrested in Melle on Friday. He is due to appear in a French court on Wednesday for an initial extradition hearing. Oakley was found guilty of 12 offences, including fraudulent trading and using forged cheques. A woman has also been arrested under a separate European arrest warrant on suspicion of fraud offences and she will also appear in court on Wednesday. See here and here. 200

November 2007 – Suspected Child Sex Offender:
Britain’s most wanted paedophile is to be extradited from Ireland to the UK despite a “cynical” attempt by his brother to block it. John Richard Murrell fled to Ireland after serving half of a two-year sentence for sexually assaulting a nine-year-old girl, breaching the terms of his release. The High Court in Dublin today ordered the 39-year-old be sent for trial in England even though he faces a charge in a Dublin court. The summons, for failing to notify gardaí of his whereabouts, was issued in the name of Murrell’s brother, Alan. Ordering the extradition Mr Justice Michael Peart accused the brother of cynically attempting to abuse the legal system. “It is so cynical attempt to get around the provisions of the European Arrest Warrant Act that even if I was satisfied that there was some merit in the case, my view would be that it quite clearly was such an abusive attempt … that it would be unconscionable for this court to uphold,” the judge said. Murrell is to be sent to England by

199 http://www.cps.gov.uk/publications/prosecution/ctd_2010.html#a01
200 http://news.bbc.co.uk/1/hi/england/shropshire/7986568.stm
201 http://news.bbc.co.uk/1/mobile/england/shropshire/7986568.stm
the end of December. Murrell is wanted by West Mercia Police in England to answer charges of breaching the terms of his release and now faces trial at Worcester Crown Court. See here and here.

WARWICKSHIRE POLICE:

September 2007 – Suspected Murderer:
At Leamington Spa town hall today (September 26 2007), the Warwickshire Coroner, Mr Michael Coker closed the inquest into the death of Ryszard Sawczyk and now awaits the outcome of the forthcoming trial at Warwick Crown Court. Mr Sawczyk was murdered on October 19 2005 at Evans Road, Rugby, Warwickshire. Mariusz Szpyt, aged 24 years, was charged with the murder of Mr Sawczyk in September 2006. Mariusz Szpyt will next appear at Warwick Crown Court on November 23 2007. Szpyt was extradited back to the UK from Poland on a European Arrest Warrant in September 2007. See here.

AVON & SOMERSET POLICE:

August 2011 – Suspected Child Sex Offender hiding in Spain:
A man wanted over child sex offences in Bath has been arrested in Spain. Lewis Knight, 60, was arrested by Spanish police in Torres de Segre, near Barcelona, on 23 August. He was charged with seven counts of sexual abuse in 1999 but failed to turn up to Bristol Crown Court in February 2000. After appearing in a Madrid court he was refused bail while an extradition request is considered. He now faces at least 18 charges. Mr Knight was arrested after Avon and Somerset Police issued a European arrest warrant in July. See here.

GLOUCESTERSHIRE POLICE:

August 2011 – Slavery and 20 Freed:
A man has been arrested for conspiracy to commit slavery as part of an operation targeting slavery, servitude and forced labour. Following work by Gloucestershire Police, the 19-year-old Staverton man was arrested yesterday (August 23) in Copenhagen by Danish police acting on a European arrest warrant. He will now be escorted back to the UK by Gloucestershire Police officers in the next few days. The arrest follows searches and four arrests in March in Staverton, Leicestershire and Derbyshire. During those searches 20 people forced to work as slaves were rescued. See here and here.

DEVON & CORNWALL POLICE:

February 2011 – Fatal Hit and Run:
On 6 July 2008, in Littleham Road, Exmouth, three people were walking home from a night out when a car collided with the group, pushing them 300 metres along the road and fatally injuring one of them. The car continued on its way as if nothing had happened. Paramedics arrived at the scene but despite their best efforts a 43 year old woman died. The perpetrator, Kevin Stagg, was arrested but, as the trial approached, Stagg fled to Spain.

http://www.breakingnews.ie/ireland/wanted-paedophile-to-be-sent-to-uk-338355.html?m=false
http://onlinenews.warwickshire.police.uk/wpnews_pressrelease/x/7933
http://www.bbc.co.uk/news/uk-england-bristol-14735601
http://www.gloucestershire.police.uk/Latest%20News/Press%20Releases/2011/August/item29699.html
http://www.bbc.co.uk/news/uk-england-gloucestershire-14647763
Prosecutors later applied for a European arrest warrant. Police are not sure if Stagg knew the net was closing around him but, as officers were setting off to serve the warrant, he gave himself up at the British Embassy in Madrid and was extradited back to the UK where he was remanded in custody awaiting trial. In February 2011, after a week-long trial at Exeter Crown Court, Stagg, now 56, was convicted of causing death by careless driving while under the influence of alcohol and sentenced to nine years in prison.

**October 2010 – Fraud:**
Officers from Zephyr working with Devon and Cornwall police have executed a European arrest warrant. The team targets serious and organised criminals across the South West and is made up of officers from Avon and Somerset, Devon and Cornwall, Dorset, Wiltshire and Gloucestershire. A 31-year-old man, currently residing in St Ives, has been arrested on suspicion of a series of fraud and deception offences involving falsifying work documents and fraudulent use of chequebooks. The individual concerned was wanted in Poland and has been outstanding since 2002. He has appeared before the City of Westminster court. See [here](http://www.zephyrsouthwest.com/2011/02/zephyr-execute-european-arrest-warrant/) and [here](http://news.bbc.co.uk/1/hi/england/devon/6455959.stm).

**March 2007 – Rape and Attempted Murder:**
A man arrested in Poland in connection with the rape and attempted murder of a Devon woman can be extradited to the UK, a court has ruled. The 48-year-old mother from Exeter was attacked in July 2006 and left for dead under a truck. A 24-year-old Polish national was arrested in Poznan on 9 February under a European arrest warrant. The victim was attacked while walking home after a night out with a friend in the city on 22 July. She remains critically ill in hospital with serious head injuries. A police officer from Devon travelled to Poland to oversee efforts to extradite the man. The arrest warrant included a number of offences including attempted murder, rape and robbery. See [here](http://news.bbc.co.uk/1/hi/england/devon/6455959.stm).

**DORSET POLICE:**

**June 2010 – Suspected Fraudster and Con Man:**
A Weymouth man has been arrested in France over allegations that he conned people out of tens of thousands of pounds in bogus business deals. Duncan Lawrie Herd, also known as David Mann, 44, formerly of Faircross Avenue, Weymouth is being detained south of Cherbourg in the La Manche region. His arrest comes after Weymouth magistrates issued a European arrest warrant for him in April after learning that police had tracked him to northern France. Dorset Police requested the warrant after being tipped off that Herd was living across the channel and had already been arrested on separate matters in France. See [here](http://www.dorsetecho.co.uk/news/localnews/8196517.Weymouth_fugitive__Arrest_in_France/?ref=rss).

**WILTSHIRE POLICE:**

**June 2005 – Suspected Murderer of Pregnant Woman:**
The prime suspect in the murder of Hayley Richards has arrived back in England under police guard. Hugo Quintas, who was arrested in Spain last week, will be accompanied by

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210 [http://news.bbc.co.uk/1/hi/england/devon/6455959.stm](http://news.bbc.co.uk/1/hi/england/devon/6455959.stm)
Det Supt Mike Veale of Wiltshire Police and officers from the Metropolitan Police. Quintas, 23, flew to his native Portugal on Saturday, June 11, the day Ms Richards, 23, who was three months’ pregnant, was found dead in her flat in Trowbridge. Quintas, a factory worker, then travelled to neighbouring Spain, where he was arrested last week under a European arrest warrant. See here.212

NORTH YORKSHIRE POLICE:

February 2012 – Robbery and Theft:
A fugitive is facing extradition to Poland after being tasered and arrested by police in York city centre following an international manhunt.
Tomasz Furmaniak, 30, was arrested in Swinegate by a team of officers from North Yorkshire Police, after he was spotted drinking in a bar. The man was wanted in connection with a domestic incident in the city on December 12, and although he was not charged with that offence, he received an adult caution for resisting arrest. The police spokesman said: “He was also detained in connection with a European arrest warrant.” The man was wanted in Poland on charges of robbery and theft, a spokesman for the Polish Embassy in London told The Press. See here.213

SOUTH YORKSHIRE POLICE:

February 2012 – Murder:
A 20 year old pizza shop worker has today been sentenced to 26 years imprisonment for the murder of Sheffield father Zabihullah ‘Zabi’ Rafiq. Earlier today, a jury found Maruf guilty of Zabis murder which was the result of a failed robbery attempt.

On 29 May last year, Zabi left work with around £700, the days takings. Maruf, having worked at the pizza shop for some time, knew this and so he laid in wait outside of Zabis house in Gleadless. Armed with a knife he set out to rob Zabi. During the robbery, Zabi received a single, but fatal, stab wound to the chest. He died soon after, leaving his wife and one year old child. See here.214

2009 – Drug Trafficking:
Under Operation Captura, Michael Eddleston, was accused of three counts of illicit trafficking in narcotic drugs and psychotropic substances by South Yorkshire Police. He handed himself into authorities in Majorca on 29 September 2009, see here.215

2008 - Violent Assault:
Keith Burke was involved in a violent assault that took place in the toilets of “The Top Club” bar in Edlington, Doncaster on 8 July 2001. He was convicted and sentenced to three years imprisonment for affray. He was arrested in Spain in the UK 2008. See here.216

2007 - Murder:

216 http://www.crimestoppers-uk.org/most-wanted/catching-criminals-in-spain/arrests-to-date-operation-captura
Markcus Jamal was wanted for conspiracy for murder of Nageeb El Hakem in Sheffield in 2005. He was arrested in Spain and returned to the UK in January 2007. See here. 217

WEST YORKSHIRE POLICE:

June 2011 – Bank Robbery:
Two members of an armed gang who stole £43,000 from a Darwen bank were jailed yesterday. Lee Tansey, 33, of Pegwell Drive, Salford, was one of three violent raiders who smashed the door of Lloyds TSB, Duckworth Street, with a manhole cover on June 5, 2008. They fled with a total of almost £43,000 and jumped into a stolen Audi, later found abandoned. The gang also targeted Lloyds TSB in Elland, West Yorkshire, on June 18, 2009 and HSBC, Marsh, Huddersfield, a week later and got away with around £450,000 in total. Tansey was jailed for 11 years for the Darwen and Elland raids. Rickton Mark Henry, 31 of Merridge Walk, Salford, was jailed for eight years and eight months for the armed robbery of the HSBC bank. Blood left on the smashed door of the Lloyds TSB bank in Darwen, where Tansey cut himself on the way in, was part of the forensic evidence. Tansey and Henry were later extradited from Spain on European arrest warrants. See here 218 and here. 219

June 2011 – Fraudster:
Two men responsible for a wine scam involving bogus newspaper adverts have pleaded guilty to fraud charges. Denis Le Franq, who is 35 and a Belgian national and Jeremy Gillis, 33, from Leeds, admitted conspiracy to defraud. Customers paid hundreds of thousands of pounds up front but did not receive any wine. Members of the public paid anything from £120 to £2000 a time. When police were alerted, they found the business had suddenly been wound up and Denis Le Franq had left the country. Police traced him to Prague where he was arrested on a European arrest warrant and brought back to the UK. See here 220

November 2010 – Bank Robbers:
Police investigating a string of bank robberies, including thefts in Huddersfield and Elland, have arrested a man as he waited to board a plane in Spain. Lee Tansey, 32, from Salford, was stopped by police as he was about to board a plane at Malaga Airport on the Costa del Sol. He and another younger man were both arrested on suspicion of armed robbery. Both are now awaiting extradition to Britain for questioning by police from three UK forces including West Yorkshire. The raids which West Yorkshire detectives police want to speak to Tansey about are raids on security vans in Elland and Huddersfield in June last year. A West Yorkshire Police spokesman said: "A 32 year old man and a 30 year old man were arrested on a European Arrest Warrant." See here. 221

2010 - Drug Trafficking:
Operation Return, run jointly by SOCA, Crimestoppers, Dutch police and Europol, was launched in 2010 (following the success of Operation Captura in Spain) to track down and return the UK’s six most wanted criminals believed to be on the run in the Netherlands. In 2010, one of these individuals was found, returned to the UK under an EAW and sentenced

218 http://www.lancashiretelegraph.co.uk/news/blackburndarwenhyndburnribble/9075096.Darwen_bank_raiders_jailed/
220 http://www.bbc.co.uk/news/business-13712684

DERBYSHIRE POLICE:

February 2012 – Robbery:
A man who was wanted for failing to appear at court to face a robbery charge in Derbyshire has been arrested. On February 19th 2009 a 75-year-old man was assaulted and a substantial amount of money was stolen from his home in Acresford Road, Overseal. Vasile Mihai was one of three people arrested. He was charged with robbery on March 6th 2009 and appeared before magistrates in Derby on March 7th 2009. He was granted bail by the court but failed to appear again. Mihai (25) was stopped routinely by traffic police in Germany in January, who then arrested him in relation to the outstanding matters in Derbyshire. He was returned to the UK under a European Arrest Warrant on Friday. See here.

20 September 2010 – Drug Trafficking:
Drug dealer Shane McMahon, who was located in the Netherlands following a Crimewatch appeal, was extradited back to the UK under a European Arrest Warrant in May. For full report see SOCA website here.

HUMBERSIDE POLICE:

September 2006 – Rape & Child Sexual Assault:
A Goole paedophile who was extradited from Ireland to face charges of raping and indecently assaulting an under-age girl has been given a life sentence at Hull Crown Court. Andrew Matthews (35) had never entered any pleas to 20 charges relating to the rape, indecent assault and the neglect of a young girl and was due to stand trial at Hull Crown Court in July. However, at the eleventh hour Mr Matthews pleaded guilty to nine of the charges - the other 11 will remain on file with the Crown Prosecution Service. See here.

GREATER MANCHESTER POLICE:

July 2012 – Drug Smuggling:
A key player in a major drug smuggling gang, who fled the country in 2004, has been jailed for nine years today for his involvement in an attempt to smuggle £2million worth of cocaine into the UK. Richard Wright (51), formerly of Chislehurst, Kent, who was extradited from the Netherlands, was sentenced today for conspiring to import Class A drugs via Zeebrugge back in 2004. He escaped before he could be charged but he continued his illegal activities and was arrested by HM Revenue and Customs (HMRC) officers after he had served a jail term in a Dutch jail. Mike O’Grady, HM Revenue & Customs Assistant Director Criminal Investigation said: “Wright fled the UK when circumstances got difficult and he saw we had arrested other gang members associated with the smuggling attempt. It became clear that he had continued his illegal activities in the Netherlands in the intervening period when he was

222 http://www.yorkshirepost.co.uk/news/at-a-glance/main-section/drug-gang-fugitive-jailed-for-24-years-1-3246702
223 http://www.soca.gov.uk/about-soca/library
Justice Across Borders – Written evidence

arrested by our partners there for similar drug smuggling offences. Combining our intelligence and expertise for both smuggling cases has protected UK citizens and wider European communities from this habitual organised criminal." See here. 227

June 2011 – Murder:
A man is due to appear in court this morning in connection with the murder of Giuseppe Gregory in Stretford in 2009. 18 year old Moses Mathias of no fixed abode, was arrested in Amsterdam on a European Arrest Warrant following a joint investigation by Greater Manchester Police and the Serious Organised Crime Agency. See here228 and here. 229

2011 – Firearms Offences & Conspiracy to Rob:
Sean Devalda, was wanted by Greater Manchester Police in connection with firearms offences and conspiracy to rob a Group 4 cash in transit vehicle in Agecroft in February 2007. He was arrest in Amsterdam in 2011, see here230 and here. 231

April 2011 - Murderer:
A teenage suspected of being involved in the killing of Giuseppe Gregory outside a pub in Stretford, Manchester, in May 2009 was arrested in the Netherlands yesterday. The 17-year-old was a target of Project Golf – a multi-agency initiative to tackle organised crime in Salford. He is the eighth fugitive to be caught since the project was launched seven months ago. Joint working between SOCA, Greater Manchester Police and the Royal Marechaussee in Rotterdam led to his arrest. He will be appearing at an extradition court in Amsterdam today. Giuseppe was gunned down as he sat in a car outside the Robin Hood pub two years ago. In March 2010 another two teenagers were jailed for life after being found guilty of murdering him following a month-long trial at Manchester Crown Court. See here. 232

November 2010 – Manchester Gangsters:
Two men have arrived back in the UK after being extradited from Spain under a European Arrest Warrant. Richard Smith of Pegwell Drive, Salford was charged with Escaping from Lawful Custody. He appeared at Salford Magistrates’ Court on Thursday 11 November 2010. Jared Jones of Helmsmore Road, Rossendale, was charged with Conspiracy to Commit Arson. He will appear at Salford Magistrates’ Court on Friday 12 November 2010. Both men were extradited from Spain following a joint investigation involving Greater Manchester Police, the Serious Organised Crime Agency and the Spanish National Police. Project Gulf aims to disrupt organised crime in Salford and arrest those responsible for it. 233

July 2009 – Human Trafficking, Sexual Exploitation & Forced Prostitution:
A father and son have been convicted of trafficking women into Britain from Romania and forcing them to work as prostitutes. If the women did not comply with the demands of their clients, they were beaten and raped by 23-year-old Marius Nejloveanu, who was found guilty of a series of offences following a trial at Manchester Crown Court. His father, Bogdan Nejloveanu, 51, was convicted of six trafficking charges for sexual exploitation and one of

228 http://insidethem60.journallocal.co.uk/2011/06/17/extradited-teenager-in-court-over-giuseppe-gregory-murder/
230 http://www.bbc.co.uk/news/uk-england-manchester-12369174
231 http://www.londonwired.co.uk/news.php/128143-Salford-man-held-in-Amsterdam-police-raid
232 http://www.soca.gov.uk/news/327-teenage-murder-suspect-is-8th-project-gulf-fugitive-to-be-captured-
controlling prostitution for gain. He was extradited from Spain in July 2009. See here and here.  

**LANCASHIRE POLICE:**

**June 2011 – Bank Robbery:**
Two members of an armed gang who stole £43,000 from a Darwen bank were jailed yesterday. Lee Tansey, 33, of Pegwell Drive, Salford, was one of three violent raiders who smashed the door of Lloyds TSB, Duckworth Street, with a manhole cover on June 5, 2008. They fled with a total of almost £43,000 and jumped into a stolen Audi, later found abandoned. The gang also targeted Lloyds TSB in Elland, West Yorkshire, on June 18, 2009 and HSBC, Marsh, Huddersfield, a week later and got away with around £450,000 in total. Tansey was jailed for 11 years for the Darwen and Elland raids. Rickton Mark Henry, 31 of Merridge Walk, Salford, was jailed for eight years and eight months for the armed robbery of the HSBC bank. Blood left on the smashed door of the Lloyds TSB bank in Darwen, where Tansey cut himself on the way in, was part of the forensic evidence. Tansey and Henry were later extradited from Spain on European arrest warrants. See here and here.

**2011 – Child Sex Offender:**
Crimewatch viewers were shown the remarkable story on how Colne paedophile Glen Tranter was caught thanks to a Benalmadena barwoman’s quick thinking. News soon got back to the UK and Lancashire Police. Investigating office DI Dave Groombridge from Nelson CID said: “It came as a real surprise. It was a race against time to apply for a European arrest warrant. We knew that the Spanish authorities probably would not be able to hold him for very long.” He was flown back to the UK and is currently serving six years in prison after pleading guilty to eight charges of sexual offences against children. The programme has been praised for helping to locate and convict Tranter. See here.

**2011 – Paedophile & Child Abductor:**
Patrick Pious Hancox, 68, from Dublin was arrested by the Gardai in County Longford on Tuesday 22 March. He was wanted on suspicion of child sex offences and child abduction and had broken the conditions of a notice precluding him having contact with the victim. When he failed to answer bail an arrest warrant was issued. See here and here.

**2010/11 – Drug Trafficking:**
Damien O’Connor, the head of an organised crime group involved in drug trafficking was surrendered to the UK by Belgium through a European Arrest Warrant. He was charged along with 12 others and was sentenced to 20 years and a 10 year travel restriction order. He was also ordered to pay £1,021,300. Involved Lancashire Constabulary Serious Organised Crime Police Unit. For full report see SOCA Annual Report 2010/11 (page 11) here.

235 http://www.guardian.co.uk/law/2011/jan/18/father-son-convicted-trafficking-women  
236 http://www.lancashiretelegraph.co.uk/news/blackburndarwenhyndburnribble/9075096.Darwen_bank_raiders_jailed/  
239 http://www.bbc.co.uk/news/uk-12520150  
240 http://www.crimestoppers-uk.org/most-wanted/catching-criminals-in-spain/arrests-to-date-operation-captura  
241 http://www.soca.gov.uk/about-soca/library
November 2010 – Deporting a Granny Torturer & Murderer:
One of Europe’s most wanted men has been arrested in Blackburn town centre. Gunnar Simanis was being hunted on suspicion of torturing and murdering an 80-year-old woman in Estonia. On Thursday afternoon a car was pulled over by police in Barbara Castle Way, Blackburn, for having no insurance. The 39-year-old was taken to Greenbank police station - where officers realised he was on Interpol’s ‘most wanted’ list and subject to a European arrest warrant. Yesterday Simanis, who had been living near Blackburn town centre, was set to be deported after appearing at Westminster Magistrates’ Court at an extradition hearing. According to Estonian reports, Simanis fled court in Viru, Northern Estonia, in May while standing trial for the torture and murder of 80-year-old Maria Minejeva. See here.  

August 2010 – Child Sex Offender:
A registered sex offender from Lancashire has been extradited from Holland after being on the run for three months. Dennis Bowskill, 43, from Padiham was wanted for making and possessing indecent images of children. He had been due to appear at Burnley Crown Court on 8 March 2010, but failed to appear. He was caught by Dutch police at Amsterdam railway station in June after a European arrest warrant was issued. Mr Bowskill, who has been described by Lancashire police as "one of the UK's most wanted sex offenders", was featured on BBC Crimewatch and in the Dutch media while he was wanted by police. See here.  

June 2010 – Firearms & Drug Smuggling:
A man has been arrested in Poland as part of a Lancashire police investigation into the importation of firearms and drugs. The 22-year-old was held in Augustow, north-east Poland, by the National Polish Drugs Squad on a European arrest warrant, Lancashire police said. He was arrested as part of Lancashire's serious and organised crime unit's Operation Greengage. The man now faces extradition back to the UK. See here.  

November 2009 – Bank Robbery:
A robber who was part of a Liverpool gang who threatened security guards with knives and a hammer has been jailed for seven years and three months after a Crimewatch viewer spotted him in Spain. Ian Jones, 24, from Missouri Road, Clubmoor, pleaded guilty to robbery at Preston crown court on October 16. The raid took place on February 17, 2006 when a security van was making a cash delivery to the post office in Liverpool Old Road, Walmer Bridge, Preston. After the guards were threatened Jones and two accomplices made off in two stolen vehicles later abandoned and set on fire. Having been arrested in March 2006 he skipped bail but was arrested in Spain under a European arrest warrant and returned from Madrid to Lancashire. See here.  

2009 – Drug Smuggler:
Nigel Hunt, from the Rawtenstall area of Lancashire, was jailed for five and a half years in 2004 for conspiracy to supply controlled class A drugs. A convicted drug dealer who has been on the run for 18 months has been arrested in Spain. Nigel Hunt, from the Rawtenstall area of Lancashire, was jailed for five and a half years in 2004 for conspiracy to supply

http://www.lancashiretelegraph.co.uk/news/8678141.One_of_Europe_s_most_wanted_men_found_in_Blackburn/
http://www.bbc.co.uk/news/uk-england-lancashire-11003533
http://news.bbc.co.uk/1/hi/england/lancashire/7428421.stm
Justice Across Borders – Written evidence

controlled class A drugs. But he absconded from Kirkham Prison in August 2006, prompting a manhunt which ended in his arrest at Madrid airport after he flew in from Thailand. Lancashire Police said he was currently awaiting extradition to the UK. The force’s Serious and Organised Crime Unit was granted a European arrest warrant in December 2006. See here.246

**July 2005 – Fraudulent Trading:**
The defendant was extradited from Spain on a European arrest warrant in February 2005. The trial of three other defendants (which concluded in March 2005) had already commenced. Williamson was therefore proceeded against separately. He pleaded guilty to fraudulent trading contrary to section 458 of the Companies Act 1985 and was sentenced to three years’ imprisonment, ordered to pay confiscation of £130,000 and disqualified from acting as a company director for twelve years. See here.247

**MERSEYSIDE POLICE:**

**July 2012 – Pensioner Murder:**
Merseyside Police detectives travelled more than 2,000 miles to apprehend a murder suspect who fled to Romania after a pensioner was strangled in his Liverpool home. The 65-year-old was found at the address in Green Lane after a call from his concerned brother – retired Halewood priest Father James Finnigan – explaining that the retired teacher had not been in touch. It has emerged detectives identified their suspect within six months of Mr Finnigan’s death but had difficulty locating him as it was thought he had left the country to return to his native Romania. Last year magistrates in Liverpool granted officers a European arrest warrant for Constantin, 27, who knew Mr Finnigan. See here.248

**April 2012 - Gangster:**
Kirk Bradley was arrested under a British-issued European arrest warrant in an apartment in the Bijlmer area of Amsterdam, the Serious Organised Crime Agency (SOCA) said, with police indicating he was wearing flip-flops, shorts and a T-shirt when detectives swooped. His uncle Raymond Bradley, from Woolton, was also arrested for possession of cocaine with intent to supply. Kirk Bradley was shocked when officers burst through the door of his luxury apartment in Amsterdam. He had no idea we were on to him. See here.249

**January 2011 – Drug Gang:**
Four members of a sophisticated drugs gang have been jailed for a total of 47 years after conspiring to smuggle 40kg of heroin into the UK. Brothers Ian and Alan Farley, who led the smuggling ring, were caught after a 12 month operation by Merseyside Police. This culminated in a third member of the gang, Malcolm Lewtas, being arrested in Ramsgate with 10kg of heroin packed in 1/2 kg blocks. Investigative teams also suspected Paul Merkelbach of running the Dutch side of the operation and were determined to bring him before the courts in the UK with the rest of the gang. Police teams and prosecutors from the Crown Prosecution Service (CPS) worked with Dutch authorities to arrange a search of Merkelbach’s home where a further 30kg of heroin was found, also thought to be bound for

246 http://www.barcelonareporter.com/index.php?/news/comments/wanted_drug_dealer_held_in_spain/
248 http://www.liverpoolecho.co.uk/liverpool-news/local-news/2012/07/19/merseyside-police-fly-over-2-000-miles-to-apprehend-murder-suspect-100252-31425246/#ixzz233qQlXD4
249 http://metro.co.uk/2012/04/05/uks-most-wanted-man-kirk-bradley-arrested-in-amsterdam-377839/#ixzz28KoRSRHN
the streets of Merseyside and the North West of England where it would be worth around £2million. Ian Davies, Head of the Complex Casework Unit, CPS Mersey Cheshire Group, explained: "Once we had our suspects arrested in the UK, we contacted the Dutch authorities to ask permission for officers from this country to go to Holland and collate evidence. When we were ready to charge, we issued a European arrest warrant and Merkelbach was quickly arrested by Dutch Police.” See here. 250

**CUMBRIA POLICE:**

**2006 – Prison Escapee:**
An escaped prisoner who spent more than 10 months on the run has been tracked down to a Spanish tourist resort. George Skelton escaped from Haverigg Prison in August, last year. But Cumbria police have today confirmed Skelton was arrested in Alicante, Costa Blanca, and is now in custody. It is believed the 31-year-old was captured by Spanish officers for committing domestic offences. He has also been connected to a theft of a plasma screen TV from a bar in Benidorm. Skelton now faces extradition back to England. A Cumbria police spokesman today said: “George Skelton has been detained in prison in Alicante and a European arrest warrant has been executed by the Spanish authorities. Cumbria police are now going through the extradition process.” See here. 251

**2006 – Rape:**
A teenager is facing extradition to England after being arrested in Ireland on suspicion of raping two teenage girls at last year’s Appleby Horse Fair. Detectives confirmed that a 17-year-old from Crory Ferns, County Wexford, was being held following an investigation launched after the 2005 fair. Formal moves to extradite him to the UK are now underway. The arrest follows a probe into the alleged rape of two 13-year-old girls and a 14-year-old girl who were visiting Appleby during last year’s fair. See here 252 and here. 253

**SOUTH WALES POLICE:**

**2011 – Child Sex Offences:**
Under Operation Captura, Dominic Stephen Powell, wanted for sex offences in Wales, was arrested in Spain in 2011, see here. 254

**GWENT POLICE:**

**February 2007 – Arson:**
A man who has been wanted by police for the past six years will be extradited back to Wales within weeks, Dublin’s High Court has ruled. Roger Gardener, 61, from Blackwood, in Caerphilly county, is accused of conspiracy to commit arson with intent to endanger life in August 2000. He was arrested in Mill Town, Malbay, Co Clare, in October after a six-year hunt by Gwent Police. It followed the issue of a European arrest warrant last August. See here. 255

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250 http://www.cps.gov.uk/mersey-cheshire/cps_merseyside_cheshire_news/drugs_gang_jailed/
251 http://www.nwemail.co.uk/news/runaway_prisoner_captured_in_spain_1_486765?referrerPath=/2.3567
252 http://www.newsandstar.co.uk/news/horse_fair_rape_claims_teen_set_for_extradition_1_330197?referrerPath=/2.1692
253 http://news.bbc.co.uk/1/hi/cumbria/6194358.stm
254 http://www.bbc.co.uk/news/uk-15391748
255 http://news.bbc.co.uk/1/hi/wales/south_east/6336349.stm
NORTH WALES POLICE:

November 2006 – False Accounting & Deception:
Edward Cosgrove’s business, Cosgrove Packaging Ltd, made video and DVD cases. The company moved from Manchester to Deeside (North Wales) in February 2003 with the aid of a Welsh Assembly development grant of £390,000. However, relocation did not improve the company’s financial position and so, in order to paint a rosier picture for trade finance companies, Cosgrove began to raise false invoices and despatch notes to suggest that the business was still healthy. In April 2003 Cosgrove obtained approval for another grant (£200,000) from the Welsh Assembly having claimed that the company was trading profitably even though in reality it was now dependent on false accounting to maintain its relationship with the finance companies. Before the second grant was paid, the business was put into receivership and the receivers uncovered the truth, reported it to North Wales Police and in May 2005 an SFO investigation began. Cosgrove moved to Germany and refused to return to the United Kingdom to be interviewed. A European arrest warrant was issued and he was returned to the UK to be charged in June 2006. In October 2006 he pleaded guilty and was sentenced to four years’ imprisonment on each of seven counts of false accounting (to run concurrently) and three years on the one count of attempting to obtain a money transfer by deception (also to run concurrently). See here. 256

November 2011 – Drug Smugglers:
Weapons and £35,000-worth of hard drugs were seized yesterday in dawn raids linked to the murder of North Wales postman Paul Savage. Ten people - all with links to the Mold area - were arrested after police executed 13 search warrants in North Wales and Cheshire. One Mold man was arrested in Holland and was last night awaiting extradition. The 22-year-old Mold man held in Holland was arrested at Maastricht by Dutch police following the issue of a European arrest warrant by UK authorities. He was expected to appear in court in Holland this morning, pending a request by North Wales Police for his extradition. See here. 257

SUFFOLK POLICE:

September 2012 – Major Fraud:
Toni Muldoon has pleaded guilty to two counts of fraud at Ipswich Crown Court. The 66-year-old Briton is facing a long prison sentence after admitting his part in a €7.4 million internet escort and ‘debt elimination’ scam. Muldoon was arrested at Miramar Hotel in Fuengirola in May under a European Arrest Warrant, following a long investigation started by Suffolk trading standards. A neighbour said after the arrest: “We hadn’t seen Tony Baloney for a while and wondered where he had gone. We have had to put up with years of late night parties, screening porn films and wife-swapping events.” He was extradited to the UK in June. Today the former timeshare entrepreneur, who enjoyed a lavish lifestyle in Spain with at least two yachts and several luxury cars, pleaded guilty to two counts of conspiracy to defraud at Ipswich Town Court. The swindle is alleged to have involved 14,000 victims in the UK. No pleas were entered on the charges of money laundering Muldoon was also facing, which will lay on file. Muldoon will now be remanded in custody and sentenced at a later date. See here and here. 258, 259

July 2012 - Murder:
Suffolk Police can confirm that a man who been wanted for questioning in connection with the murder of 66-year-old Peter Avis at his home address in Bury St Edmunds on Friday 13 January 2012, and who has more recently been detained in Poland for another matter, has returned to the United Kingdom. Pytor Melaniuk, 28, returned to the UK this afternoon Tuesday 3 July under a European Arrest Warrant. Melaniuk is currently being held in custody at the Martlesham Police Investigation Centre and will appear before Ipswich Magistrates Court tomorrow Wednesday 4 July charged with murder. See here and here and here.

NORFOLK POLICE:

Sept. 2012 – Fraud:
The trial of George Katcharian and Cemal Esmene is opening at Norwich Crown Court. They are accused of defrauding the New Apostolic Church in Germany and Mr Graham Dacre, a Norfolk businessman and philanthropist.

Jane Mitchell, reviewing lawyer for the CPS Central Fraud Division said: “George Katcharin was arrested in Germany in December 2011 on a European Arrest Warrant. The Crown Prosecution Service successfully sought his extradition so that he could stand trial here on serious allegations of fraud. When I considered all the evidence from this case, including much from abroad, under the Code for Crown Prosecutors, I concluded there was a realistic prospect of conviction and that a prosecution was in the public interest. Katcharin faces two counts of conspiracy to defraud over proposed investment schemes which the prosecution say mislead and deceived both the New Apostolic Church and Mr Dacre. Cemel Esmene is also accused of defrauding Mr Dacre. Both men face further counts for money laundering conspiracies for transferring alleged criminal property to bank accounts in the UK and Lichtenstein.” The trial is expected to last four weeks. See here.

June 2012 – Child Sex Offender:
A man who sexually abused pupils in his care at a Norfolk boarding school has admitted a number of charges against him today. Alan Adrian Brigden was a maths teacher at a school in West Sussex between May and October 1977. He then taught maths at St George’s School in Wicklewood near Wymondham between September 1979 and August 1980, where he used the surname Morton. Following the publicity for the Slade trial, a complaint was received against Alan Brigden relating to the time when he was a teacher in West Sussex. Inquiries established that Brigden and Morton were in fact the same person. In both cases, Brigden took a boy on a trip and sexually assaulted him. Enquiries to trace Brigden were carried out with the assistance of the Overseas Tracking Team from the Child Exploitation and Online Protection (CEOP) Centre and the Serious and Organised Crime Agency (SOCA). It was established that he had been granted Dutch citizenship and was living in Amsterdam. A European Arrest Warrant was sworn and in August 2011 Alan Brigden was

259 http://www.ipswichstar.co.uk/news/ipswich_spain_costa_del_crook_admits_role_in_multi_million_pound_web_fraud_1_1529271
261 http://www.bbc.co.uk/news/uk-england-suffolk-18697846

148
arrested on behalf of UK police in Amsterdam. Extradition proceedings began, and Brigden was brought to the UK in January 2012. He was charged with indecent assault (6), assault with intent to commit buggery (4) and gross indecency with a boy (4). See here.

August 2008 – Child Sex Offences and Child Pornography:
A man has been flown back to the UK from the Czech Republic to face allegations he abused young girls. Patrick Burnell, 21, was arrested in Prague, where he had been living, in July after a European arrest warrant was issued at Norfolk Police's request. Police in the Czech capital said Mr Burnell was suspected of 16 offences. They include sexually abusing children, making and owning child pornography and other offences in Britain, allegedly committed between 2003 and 2006. See here and here.

ESSEX POLICE:

2011 – Drug Trafficking:
Jamie Dempsey, born 13/05/1978 in Essex was arrested this afternoon at about 2.40pm UK time at a residential property in Benahavis, Marbella, Spain by the Policia National and Guardia Civil. Dempsey was sought on an European Arrest Warrant for conspiring to supply cocaine and facilitation of the use of criminal property. It is alleged that between 30 March 2009 and 23 April 2009, Dempsey conspired with others to supply 299kgs of cocaine, with an estimated UK street value in excess of £80million. See here.

2009 – Drug Trafficking:
Adam Hart was wanted by the Serious Organised Crime Agency (SOCA) accused of being involved in the conspiracy to supply controlled Class A drugs, namely Cocaine. He was arrested in the Netherlands on 2 December 2009.

NORTHAMPTONSHIRE POLICE:

May 2012 – Murderer Deported:
A man wanted for murder in Poland was among several suspected violent criminals rounded up in a crackdown by police in Northamptonshire. Police arrested the man in Wellingborough on Thursday. He was detained under a European Arrest warrant. "He is to be returned to Poland on suspicion of a domestic-related murder," a police spokesman said. See here.

HERTFORDSHIRE POLICE:

October 2005 – Murder:
A husband held in France last month after his wife's body was found in the boot of her BMW car has been brought back to England for questioning. Derek Symmons, 62, has been arrested for the murder of his wife Christine, 59, at their £1m home at Loudwater near Rickmansworth, Herts on 5 September. He was arrested by French police at Macon the

265 http://news.bbc.co.uk/1/hi/england/norfolk/7543366.stm
266 http://www.ipswichstar.co.uk/news/man_extradited_over_child_abuse_charges_1_165992?ot=archant.PrintFriendlyPageLayout
269 http://www.bbc.co.uk/news/uk-england-northamptonshire-17967692
following night. Mr Symmons was held there while French police made sure Mrs Symmons, a hairdresser, had not died in France. Mr Symmons, a businessman, had been remanded at a detention centre at Varennes le Grand, near Macon. A European Arrest Warrant was granted to Hertfordshire police who brought Mr Symmons back to England on Wednesday night. See here.²⁷⁰

NOTTINGHAMSHIRE POLICE:

October 2012 – Antique Rhino Horn Theft:
UK police are seeking the extradition of a Co Limerick man they want in connection with the theft of a €200,000 rhino horn, the High Court was told today. Michael Kealy, of Abbeylands, Askeaton, Co Limerick, was released on €15,000 cash bail to await trial on an European Arrest Warrant. His case was adjourned until October 9. Detective Sergeant James Kirwan told the court he arrested Keily in a carpark at Fidtown, Piltown, Co Kilkenny today at 7:45am. He said he told him he had a warrant from the UK which alleged he had been involved in the robbery of a rhino horn from an antiques dealer at Nottingham and Newark, a market town in Nottinghamshire. See here.²⁷¹

July 2012 - Murder:
A man has appeared in court charged with the murder of Bulwell dad Danny Parekh. Joshua Davey (20), of no fixed address, appeared at Nottingham Magistrates Court last Friday. He was detained in Malaga, Spain under a European arrest warrant and extradited to the UK. His arrest followed liaison between Nottinghamshire police and authorities in Spain. See here.²⁷²

March 2010 – Violent Criminal Deported:
Nottinghamshire Police’s Foreign National Crime Unit has tracked down and arrested a man in Ollerton who entered the UK illegally while on the run from custody in Greece. Abdesselam Rahrah, a 36-year-old Algerian national, is accused of entering the UK with a false passport to locate his former partner, who had moved here from Greece. He has also been arrested and interviewed regarding offences of violence and threats to kill the woman, who has since left the UK. Before arriving in the UK, Rahrah had been gaol by the Greek authorities after being found guilty of fraud and theft offences, but he absconded from custody and went on the run. Rahrah traced the former partner to Ollerton, where he had begun living with her and where he was arrested last week. He was subsequently charged with committing fraud by false representation and possessing false documentation with intent and has been remanded in custody. Nottinghamshire Police say a European Arrest Warrant is expected from Greece to have him returned to prison there. See here.²⁷³

LINCOLNSHIRE POLICE:

January 2012 – Suspected Rapist Deported:
The UK Border Agency have deported a foreign national, wanted for serious crimes in their home country. A Latvian criminal, living in Lincolnshire, was deported on 5 January. Romans Jekabsons, aged 40, was arrested on 4 December 2011 by officers from the UK Border

²⁷⁰ http://news.bbc.co.uk/1/hi/england/beds/bucks/herts/4338044.stm
²⁷³ http://www.newarkadvertiser.co.uk/articles/news/International-fugitive-arrested
Agency's immigration crime team after a European Arrest Warrant was served. He was wanted by the Latvian authorities for raping a 15-year-old female at gunpoint in his home country in May 2005. Jekabsons fled Latvia before he could be sentenced, and came to the UK before the arrest warrant was issued. The Latvian authorities sentenced him in his absence to 10 years’ imprisonment. See here.274

2008 – Robbery:
Under Operation Captura, Daniel Johnston, between September 2004 and January 2006 Johnston is wanted for carrying two robberies, one attempted robbery and one theft in licensed stores in Derbyshire, usually armed with a knife. He was arrested in Spain in December 2008, see here.275

LEICESTERSHIRE POLICE:

October 2011 – Deporting Foreign Drug Smuggler:
A Polish man, convicted of drug trafficking in his home country, has found there is no place to hide in Leicester after being caught by officers. The courts in Poland issued a European Arrest Warrant for Slawomir Jasiecki, aged 37. Officers from the UK Border Agency and Leicestershire Police tracked the wanted man down to his home in Anstey Lane where he was arrested on the 7 October 2011. Fake Lithuanian identity documents in his name were found at the Anstey Lane property. Jasiecki appeared at Westminster Magistrates Court on 8 October 2011 where he was bailed before being extradited from the UK on the 18 October. 276

July 2009 – Violent Criminal Deported:
A violent criminal has been deported to his native Poland. Marcin Krol fled Poland before he was to serve sentences for robbery, causing death by dangerous driving and various drugs offences. The 31-year-old, whose crimes were committed in 2000 and 2003, travelled to the UK and was jailed for a serious assault in Leicestershire in 2007. Leicestershire police served a European arrest warrant on Krol this month – before he was to be released from prison. He was escorted to an airport where he was put on a Polish military flight to his home country, where he will serve the sentences for the crimes he committed there. See here.277

DURHAM POLICE:

April 2012 – GBH and ABH:
An offender jailed for assaults carried out nine years ago has finally been brought to justice after fleeing to Spain.  Rory Burn was arrested for assaulting two men in a confrontation outside the Whitehills pub, in Waldridge Lane, Chester-le-Street, in April 2003. Both men were injured, one seriously, suffering a fractured skull and loss of hearing. Burn, then aged 25 and living in nearby Glanton Close, was arrested and charged with causing grievous bodily harm with intent and assault causing actual bodily harm, as well as possessing an offensive weapon.  He was bailed, but failed to turn up for a subsequent trial and was tried in his absence, at Durham Crown Court, in July 2004. A warrant was issued for Burn’s arrest by Judge Peter Armstrong, who imposed a four-year prison sentence. It emerged that Burns had fled to Spain before the crown court trial. His location in Spain came to the attention of

277 http://www.thisisleicestershire.co.uk/Violent-criminal-deported-Poland/story-12046497-detail/story.html
Durham Police late last year and the force made a joint application with the Crown Prosecution Service for a European Arrest Warrant to have him returned to Britain. Officers from Durham travelled to Madrid on Tuesday and arrested Burn before escorting him back to the North-East. See here.  

**NORTHUMBRIA POLICE:**

**December 2011 – Rapist:**
John Renner Dillon today appeared at Newcastle Crown Court and was given a discretionary life sentence, of which he must spend a minimum of three and a half years imprisonment for Rape. In December 1982 the victim of Dillon’s crime was asleep at her home in Walker, Newcastle upon Tyne when she awoke to find 16 year old John Renner Dillon in her bed. He then raped her. He was tried but found not guilty. In 2005 Northumbria police, as part of their continuing investigations into old and undetected crimes, sent samples taken from the victim for scientific examination. In 2006 scientific advances meant that scientists were able to obtain DNA from one of those samples. A search was made and a match was found. The DPP gave his consent for a re-trial. Dillon however could not be found. In 2002, after failing to attend court for an unrelated offence of rape, he had fled the country, eventually being located in 2007 living in Dublin. A European Arrest Warrant was issued for that unrelated offence of rape; but that arrest warrant allowed for Dillon only to be arrested for the unrelated rape offence. Prosecutors therefore had to apply to both the Court of Appeal and the High Court of the Republic of Eire to get consent for Dillon to be re-tried for the 1982 offence of rape. That consent was obtained and Dillon appeared once more before Newcastle Crown Court charged with the Rape that he had committed when he was 16 years old. Unlike 1983, this time he admitted his guilt and was sentenced to a discretionary life sentence. See here.

**2007 – Child Sex Offence and Child Rape:**
A suspected paedophile wanted for questioning by police in the region has given himself up. Paul Anthony Bures was wanted over connections to an alleged sex ring. He was also wanted for 13 offences, including four rapes of boys and six serious sexual assaults on boys. They are alleged to have taken place over the last two years in the Kent area. Yesterday, a spokesman for Northumbria Police said: “Further to an appeal, a 53-year-old man has given himself up at Canterbury Police Station in Kent and will be appearing in North Tyneside Magistrates Court tomorrow morning.” It is understood Bures was being sought following the arrest of a 57-year-old man. Peter Melling, whose last address was Torrievieja in Spain, was charged with 24 sex offences against children. Melling was arrested by police in Bulgaria on July 22 on a European arrest warrant. The allegations relate to five child victims from North Tyneside, with offences allegedly taking place in Northumbria, Hartlepool, Kent, London and Spain in an eight-year period between 1998 and last year. See here and here.

**OTHERS:**

278 http://www.thenorthernecho.co.uk/news/9636158.print/
279 http://www.cps.gov.uk/northeast/cps_northumbria_news/man_convicted_of_rape_more_than_28_years_after_the_offence /
280 http://www.thefreelibrary.com/Child+sex+suspect+to+face+charges+today.-a0170116986
27 February 2012 – Child Sex Offenders:
In just over a year of investigations, joint Operation Atlantic, coordinated through Europol, has identified 37 child sex offenders – 17 of whom were arrested for child sexual molestation and production of illegal content. See the report in full on Europol website here. 282

17 February 2012 - Smuggling Illegal Immigrants:
Coordinated action through Europol with France, Greece, Belgium and UK resulted in six arrests of members of a criminal network smuggling illegal migrants from Afghanistan to Europe. It is believed that the main organiser smuggled around 5000 individuals over a ten month period, collecting EUR18 million, making them one of the most prolific facilitators of illegal immigration in Europe. For a full report see Europol website here. 283

9 March 2011 - Document Forgery:
An organised crime group producing false documents for use by irregular migrants was successfully disrupted through a joint operation involving French, Belgian and UK authorities with the support of Europol. The operation, which resulted in the arrest of 12 individuals, targeted a French-based Pakistani and Bangladeshi organised crime network that provided fake EU passports and supplied them to migrants who used them to travel unlawfully to the UK. For full report see the Europol website here. 284

5 July 2011: Smuggling Illegal Immigrants:
An operation co-ordinated through Eurojust and Europol with participating authorities from France, Portugal and UK dismantled a Chinese network involved in the facilitation of illegal migration into the UK. For a full report see the Europol website here. 285

8 February 2011 - Smuggling Illegal Immigrants:
Co-ordinated action by five countries supported by Eurojust and Europol made nineteen arrests of individuals involved in the smuggling of illegal immigrants, mainly from Vietnam to the UK. For a full report see Eurojust website here. 286

15 December 2010 – Worldwide Paedophile Network:
Efforts of various national authorities, coordinated through Eurojust, uncovered a worldwide paedophile network. Offenders were identified and arrested and numerous victims were rescued. For a full report see Eurojust website here. 287

8 September 2010 - Pirated Material:
Eurojust coordinated operation involving 13 countries, including the UK, has closed down or seized 48 servers and groups of servers as part of a network hosting pirated material. The pirated material was estimated to represent a loss of authors’ rights and income for production companies of up to EUR6 billion in Europe. Sixteen people were arrested. For full report see Eurojust website here. 288

29 June 2010 – Human Trafficking and Forced Labour:

A man involved in the trafficking of illegal immigrants and forcing them to work primarily in cannabis factories in the UK, was surrendered to Hungary on a European Arrest Warrant. For the full report see SOCA 2010 Annual Report (p.18) here and here.

12 May 2010 – Illegal Immigration, Drug Trafficking & Terrorism Financing:
Eurojust coordinated action against an organized criminal network operating in Afghanistan, Pakistan, Romania, Albania and Italy. The group was involved in illegal immigration (including to the UK) and drug trafficking in order to finance Islamist terrorism. Through international coordination eleven suspected ring leaders were arrested. For full report see the Eurojust website here.

14 December 2007 - Armed Robbery:
A joint police operation involving Estonia, Finland and UK authorities and coordinated by Europol and Eurojust was carried out against suspected members of a criminal gang who were believed to have carried out a series of armed robberies in the UK.

6 November 2007 – Terrorism:
Eurojust assisted in the issuance of European Arrest Warrants and coordinated action in several Member States (including the UK), resulting in the arrest of 26 suspects involved in terrorist activities. The group specialised in forgery of residence permits, ID cards and passports, as well as human trafficking and smuggling of cigarettes. These activities were designed to collect funds to be used in terrorist actions. For full report see Eurojust website here.

13 June 2007: Organised Criminal Gang:
Eurojust and Europol coordinated action in six countries (including the UK), against a transnational Albanian criminal network involved in human trafficking through European Arrest Warrants issued by Belgium. For a full report see Eurojust website here.

2010 – Armed Robbery:
Anthony Craggs, was wanted for two armed robberies using firearms that occurred in Bournemouth and Edinburgh in 2003. A total of £90,000 was stolen as it was being delivered to two branches of the Abbey National by Securicor guards who were violently assaulted during both of the robberies. He was arrested in Spain and returned to the UK under a EAW, see here.

2008 – Drug Trafficking:
Alan MacDonald Gordon, was accused of supplying controlled drugs in the Scottish Highlands. He was arrested in Spain in November 2008, see here.

December 2011 – Child Rape:
Police have arrested a British man in Almería in connection with a string of sexual offences, including rape. Acting on a European arrest warrant issued by Maidstone Crown Court, plain
Justice Across Borders – Written evidence

clothes police detained 66-year-old L. Morris at his Los Gallardos home in connection with the rape and sexual assault of his step-daughter and his step-daughter’s child. The offences allegedly took place in the UK between 1972 and 1977 when his step-daughter was nine years old, and continued until she reached the age of 13. The attacks on the step-daughter’s child, who is not directly related to Morris, allegedly occurred much later, between 1993 and 1995. In total, Morris is accused of four counts of rape, 12 counts of indecent assault and 12 counts of gross indecency, according to Kent police. The arrest was made on November 23 at Morris’s home address, although Spanish police only released details of the case last week. See here.  

2011 – Conspiracy to Kidnap & False Imprisonment:  
After action under Operation Captura, Dean Lawrence Rice, born 12/06/1961 in Exeter, was convicted in his absence to life imprisonment for conspiracy to kidnap & false imprisonment. He was arrested in Spain on 23 February 2011, see here.  

2010 – Drug Trafficking:  
Glen Cornick, a former Royal Marine, suspected of being involved in a plot to import more than 20 tonnes of class A and B drugs into the UK, was extradited by Spanish police through a European Arrest Warrant issued by UK authorities. Through European networks, SOCA in partnership with police in Spain and the UK seized over 50 kilos of cocaine and four tones of cannabis. For full report see SOCA website here.  

2009 – Currency Counterfeiting:  
Under Operation Captura, Ronald Priestley, wanted for currency counterfeiting offences and arrested in Malaga, Spain, in October 2009 and returned to the UK under a EAW; he was tried and convicted in Leeds Crown Court, see here.  

July 2012 – Murder:  
A man will appear in court under a European arrest warrant for the murder of a Bolton woman. 31-year-old Kelly Davies was found in June at her home in Farnworth by paramedics. A post mortem examination revealed she died from stab wounds. A 35-year-old man from the Bolton area is due to appear in court after being arrested by Dutch police in the Netherlands last month. See here.  

2010 – Drug Trafficking:  
Terence Leslie Shields, wanted in connection with the importation of 5kg of diamorphine in 2000 was arrested in the Netherlands in January 2010, see here.  

2009 – Drug Smuggler:  
Under Operation Captura, Mark Ronald Brown, from Liverpool, was wanted in connection with the importation of class A drugs and was believed to be the head of an organised crime

297 http://www.costa-news.com/content/view/8740/121/  
298 http://www.crimestoppers-uk.org/most-wanted/catching-criminals-in-spain/arrests-to-date-operation-captura  
gang responsible for the importation of hundreds of kilos of heroin into the UK. He was arrested in the Netherlands on 17 December 2009, see here. 303

2008 – Shooting:
Under Operation Captura, Robert Spiers, was wanted in connection with a shooting in a UK public house, He was arrested in Spain in July 2008 after being on the run for two years and returned to the UK under a EAW to face trial in Manchester, see here. 304

2010 – Child Rape:
Under Operation Captura, Mark Anthony Smith, from North Shields, was wanted in connection with a rape of a child under 16, gross indecency with a girl under the age of 16, indecent assault of a girl under 16 and attempted rape of a girl under 16. He was arrested in Spain in 2010, see here. 305

2008 - Drug Smuggling:
Donald Haisman was wanted for drug offences and arrested in Belgium in February 2008. See here. 306

2008 - Mortgage Deception:
Lisa Sanderson was wanted for obtaining property mortgages by deception (3 offences in total, jointly with 7 others with a total monetary value of £1.2 million). She was arrested in Portugal in September 2008. See here 307

2007 - Tobacco Smuggler:
Ian White, a tobacco smuggler who masterminded a £6 million VAT scam, arrested in Spain. He was tried, convicted and sentenced to six years imprisonment in his absence on the 11th March 2004. He was returned to the UK on the 20th September 2007 and after appearing in court he was sent to prison to start serving his sentence. See here. 308

2006 - Drug Smuggler:
Anthony Simmonds was wanted for importing large quantities of cannabis from Spain and cheating VAT of £4 million. He was arrested in Spain in December 2006 and returned to the UK in early 2007. After appearing in court his sentence of three year's imprisonment was confirmed. He was also given a three month sentence in respect of the absconding, which is being served consecutively. 309

304 http://www.salfordonline.com/lawandorder_page/7921-shooting_at_brass_handles_pub_-_man_charged.html
305 http://www.dailymail.co.uk/news/article-1277753/Martin-Anthony-Smith-One-UKs-wanted-held-Spain-child-rape.html?ITO=1490
308 http://www.crimestoppers-uk.org/most-wanted/catching-criminals-in-spain/arrests-to-date-operation-captura
Background and Current Environment

To facilitate trade and commerce the European Union, has created an area within which there is free movement, or minimal restrictions on the movement, of goods, services, capital and people. This has been a considerable success for business driven on by the hugely increased capacity and use of the internet and the growth in availability of cheaper travel. Many thousands of EU citizens now live and/or work or have second homes in other EU states. Whilst the commercial benefits and advantages for individuals are clear, this new area created an environment in which criminals, and particularly organised crime networks, could also operate more easily.

The EU’s answer to the challenge presented by cross border crime was to develop the so called Third Pillar arrangements and an EU Area of Freedom, Security and Justice. A range of Third Pillar instruments and institutions have been introduced to assist in the exchange of information and in the investigation and prosecution of cross border crime. The institutions particularly Europol and Eurojust have improved police and prosecutorial collaboration to levels impossible to contemplate 20 years ago. These are required to keep pace with the new fast moving criminal environment within which national investigators and prosecutors now have to operate. They must tackle sophisticated criminal networks working individually or linked to other criminal networks committing crime across the EU and beyond, including complex fraud such as MTIC fraud, trafficking of drugs, people, vehicles and arms, sales of pornographic images of children and the laundering the proceeds of their success.

Twenty years ago Letters of Request to obtain evidence from abroad were relatively rare; the CPS sent out about 300 each year. Nowadays the new environment has meant that any prosecutor handling a serious case is likely to have to deal with an international element within it and has to have to have the skills to draft a Letter of Request. It is no longer true that only those dealing with complex fraud, organised crime and terrorism cases are likely to require assistance from foreign jurisdictions. Indeed a few years ago a senior Metropolitan Police Service officer told me that in London as many as 80 % of “non-domestic” homicide cases had an international element: victim, witness or other key part of the case linked to a foreign jurisdiction. I am sure the Committee would be interested to know what those figures are today.

Some of the Problems

The EU now has 27 member states, and Croatia will join in 2013, which means that domestic authorities in over 30 different jurisdictions have to work together on cross border crime in this new “open” borders environment. I say 30 jurisdictions as within the UK we have our own separate jurisdictions in Scotland and Northern Ireland and also Gibraltar which is considered part of the EU and under the UK umbrella for these purposes.

Not only are the 30 systems themselves different but the key players within each system have different powers and responsibilities. So, in France, the equivalent of a UK police
superintendent with investigative powers and related authority would probably be an investigating judge and later in the enquiry a prosecutor. In Germany or Sweden the equivalent is likely to be a German/Swedish prosecutor. A police officer of equivalent rank in those countries would be required to seek a prosecutor’s authority to permit action to be taken which the UK a police superintendent could take under his/her own authority.

The distinctions do not stop there. Whilst police in the UK can coordinate different investigations, national or international, in some civil law EU states police officers, and Belgium is one example, cannot co-ordinate investigations. They do not have that power; it lies with the prosecutor or the judge who oversees and has responsibility for the investigation. It is important for effective cross border investigation/prosecution that the key people with complementary powers can communicate with each other meaningfully whether they are police, customs officers, investigating judges, or prosecutors. The Eurojust arrangements allow that and frequently UK police officers have been able to interact with their EU equivalents who invariably are not police officers.

Restricted language and linguistic skills also create significant barriers to co-operation between practitioners in the field and should not be underestimated. Even when practitioners have some language skills these are frequently not good enough to communicate meaningfully and effectively on the technical legal and policing issues that need to be addressed in meetings to coordinate international investigative and prosecution action against criminal networks. To address this Europol and especially Eurojust have modern operational meeting rooms with state of the art technology to provide secure translation facilities with the additional capacity to video link securely to those who are unable to attend meetings in person as well as showing PowerPoint and video presentations.

Key Third Pillar Measures

The most important and challenging areas of PCJ co-operation to deal with cross border crime are set out below with the Third Pillar institutions that are charged with handling them:

- Obtaining and analysing investigative intelligence and information; (Europol)
- Obtaining “difficult” evidence for use in court for prosecutions and other complex proceedings e.g. asset restraint, forfeiture and confiscation; (Eurojust)
- Co-ordination of cross border investigative and prosecutorial activity; (Eurojust)
- Joint Investigation Teams (Eurojust and Europol);
- Extradition - surrender by European Arrest Warrant (EAW) (Eurojust)
- Clarification of judicial prosecutorial, court and other records (Eurojust)

I will comment on what in my view are the most important and effective operational Third Pillar measures designed to address, improve and expedite co-operation and so those that I feel area of most significance for the UK in the Opt Out/Opt Back debate.

Europol

I am sure others will comment and provide detailed evidence and data on Europol. I know Europol receives enormous support from UK police forces, ACPO and SOCA in terms of input to its information database, and the UK benefits from the analytical capacity it
Mike Kennedy, former President of Eurojust and former Chief Operating Officer at the Crown Prosecution Service Officer – Written evidence

provides. Eurojust and Europol work together well; in addition to formal co-operation agreements, there is ever closer collaboration between the two organisations which were located together in The Hague as their work is complementary and mutually beneficial. The comprehensive information analysis and work done to produce the EU Organised Crime and Terrorism Threat Assessments is of significant benefit not only in Europe and to the UK but also in the wider world. The work Eurojust and Europol do organisationally together on Europol’s Analytical Work Files (AWF) and the collaboration between the teams of staff at the UK desks of both organisations should not be overlooked.

Eurojust

Eurojust is first network of mutual legal assistance specialists to be established working permanently together in one location in any part of the world. Its 27 national members may be either: a prosecutor, a judge or a police officer with equivalent competence. This definition helps to break through some of the professional barriers that can frustrate and undermine collaboration between police, prosecutors and judges when authorities for different countries try to tackle cross border crime. Eurojust members work to assist prosecutors and investigators to deal with problems relating to investigations and prosecutions being conducted in their home countries as well as providing assistance to their counterparts. Eurojust’s particular strengths are being able to provide very rapid responses and solutions when needed by using Third Pillar instruments to resolve complex legal issues either in preparing or obtaining evidence for cross border investigations and prosecutions or in providing answers to problems in on going cases.

Eurojust also has the facilities and capacity to coordinate action cross border investigation and prosecutions ensuring that legal barriers are identified and issues resolved. Typically this might involve organising coordinated searches at the same time on the same day at the addresses of different suspects belonging to criminal networks operating across several jurisdictions; or the arrest of a number of members of a criminal network on the same day at the same time or similarly the coordination of the freezing of the bank accounts held in different jurisdictions by a number of suspects. I have mentioned Eurojust’s impressive formal meeting rooms allowing prosecutors and investigators to work together to exchange information, discuss strategies and agree coordinated actions. Eurojust Annual Reports provide data on the huge increases in case referrals since the organisation was established in 2002. The UK’s authorities are a leading user of Eurojust and a wide range of cases have been resolved there from serious fraud and terrorism to homicide and child pornography. Although EU member states are responsible for the salary costs of their own national members and deputies, who collectively act as the Eurojust Management Board, all Eurojust’s support staff, facilities and administration costs are funded by the EU. The direct cost to the UK is minimal involving the salaries of only two or three staff. Eurojust also funds the travel and subsistence costs of one prosecutor and one investigator to attend at approved co-ordination meetings. So the cost to the home authorities of furthering cross border investigations and prosecutions in the EU through Eurojust is much reduced.

Eurojust acts as a cement to bind together, improve and comment upon the operational effectiveness of a number of the Third Pillar instruments. Eurojust has many advantages for the UK authorities that would be lost if the Opt Out was not followed by an immediate Opt Back into the Eurojust arrangements. UK prosecutors and police officers would be unable to use an extremely valuable tool and denied access to a unique network of expertise.
Mike Kennedy, former President of Eurojust and former Chief Operating Officer at the Crown Prosecution Service Officer – Written evidence

There are some concerns in the UK that because the Lisbon Treaty stated that a European Public Prosecutor (EPP), to which the UK has long been firmly opposed, should come from Eurojust and that retaining membership of Eurojust would be tantamount to the UK joining or approving the EPP. I feel this is a misguided view and that the UK like many other member states who hold the same anti-EPP view, would not be in danger of being part of the EPP simply by retaining a seat for the UK national member at Eurojust.

Such has been the success of Eurojust that the USA, Norway and Croatia have all paid for their own representatives to be present in The Hague and play a part when their countries are involved in the cross border cases with which have been referred to Eurojust. Other countries have appointed specific contact points, some of whom visit The Hague on a regular basis, to link their countries’ mutual legal assistance work with Eurojust’s members.

**European Arrest Warrant**

The EAW has in my view improved and streamlined the previous extradition processes enormously. It has been a great success. It has transformed the extradition landscape within the EU making the process entirely for the courts, removing political or diplomatic elements and making the process subject to strict and clear time deadlines and, importantly ensuring that countries must extradite their own nationals to face trial in other member states. However the procedures are not perfect and there are justifiable criticisms about EAWs being invoked disproportionately in minor cases. The UK is not the only country to be affected by such cases. Often EAWs are issued by countries which, because they must apply the legality principle, have no choice or discretion and must seek extradition. I believe these problems can be addressed quickly and effectively with EU partners who face similar issues by either negotiation with those states issuing EAWs in very minor cases by seeking an amendment to the Framework Decision on the EAW. These matters may be addressed favourably in the forthcoming judgement of the EUCJ in the case of Radu. The opinion of the EUCJ’s Advocate General is encouraging in this respect.

There is little doubt that the EAW is a far more efficient mechanism for dealing with fugitives more quickly than the Convention or Treaty extradition arrangements that existed between EU states prior to 2004. When I was head of the CPS International Division in 1994 it was not unusual after arrest for fugitives to take over two years to be returned from some EU states to face trial here. Nowadays the average time for return under the EAW is closer to 50 days. Good examples of the EAW are legion from failed terrorist bomber Hussain Osman in 2005 to the Kent school teacher recently returned from France for abducting a pupil. There is some evidence that the success of the EAW has encouraged criminals to base their activity outside the EU. I feel sure that any new arrangements to replace the EAW will almost certainly operate on a longer timescales. Quite apart from additional delays new arrangements will almost certainly involve extra cost for the CPS and foreign authorities that were formerly partners in the EAW scheme.

There is a huge public safety risk in removing the EAW arrangements. The numbers of fugitives wanted in other EU states who are arrested in London alone is significant. The absence of the rapid EAW process will inevitably mean that those people arrested, who are clearly a danger to society, must either be released on bail for longer with the attendant risk to the UK public, or be detained in custody here for longer at the UK taxpayers’ expense.

**Joint Investigating Teams (JITs)**
The Third Pillar instrument creating JITs team is one of the great innovations of the past decade in the fight against transnational crime. Again the UK authorities have been at the heart of this initiative and formed the first JIT with the Netherlands in 2004/5 to deal with a drug trafficking network and have been part of many other successful JITs. Eurojust and Europol have together developed considerable expertise and a support team to provide a wealth of advice, model agreements, and legal texts to form the basis of agreement to allow new JITs to be established quickly between the authorities in member states when those involved have not established JIT before. Most importantly significant EU funding for JITs is also available to investigating/prosecuting authorities in member states through Eurojust so these important but expensive investigations are not a burden the budgets of domestic authorities. Again I do not feel this is a Third Pillar tool that should be denied to the UK authorities.

An Opt Out - A giant step backwards

A block Opt Out with no Opt Back would remove UK police and prosecutors from participating in and contributing to Europol and Eurojust and mean a return to the uncertainty of ad hoc co-operation arrangements and that existed before the turn of the century. Does the UK really want to play no part in successful EU organisations in which non-EU states: Norway, USA, Switzerland and many others place their people because they see them as an effective tool and are eager to be involved?

Before Third Pillar institutions such as Eurojust were formed most of the work to facilitate international cooperation in criminal cases was done by individuals or a small number of specialists within each country who developed and maintained links with their relevant counterparts abroad. Although there was a formal framework to allow cooperation through the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters, the UK did not ratify this until 1990. So the effectiveness of these relationships and the assistance provided depended on the trust and confidence of individuals who managed relationships personally relying on their address book of contacts to deliver results. Potentially unhealthy reciprocal relationships relying on the principle: “If you help me then I’ll help you” would develop. When individuals were promoted, moved on or retired that trust and confidence often took years to rebuild. The creation of Eurojust and Europol permanent networks of specialists located together, at low cost to member states, with the objective of supporting and improving the effectiveness of national authorities’ investigations and prosecutions. It has changed the way multilateral collaboration works and has dramatically improved the effectiveness of the response to organised crime networks that operate transnationally.

The Reason for the Opt Out Decision

The decision to consider exercising the Block Opt Out of PJC measure appears to be driven first by concerns that the Court of Justice of the European Union (CJEU) being able to exercise jurisdiction over the UK in respect of existing pre-Lisbon Treaty Third Pillar measures; and, second, that there is an avowed intention across the EU to create and EU criminal justice jurisdiction. The first seems a strange anomaly as the UK has recently agreed to submit to the CJEU’s jurisdiction to at least one measure the European Investigation Order (EIO) that is currently being negotiated. There is also a strong case to say that, where there are weaknesses, the UK should be able to influence the CJEU to rule to improve the
Mike Kennedy, former President of Eurojust and former Chief Operating Officer at the Crown Prosecution Service Officer – Written evidence

fairness and the effectiveness pre-Lisbon Third Pillar instruments. The second point might be a desire in the minds of a small number of committed Europhiles but it is a desire that can be blocked in ways far less damaging to the UK than invoking an Opt Out particularly with Opt Backs.

Equally the UK has high calibre prosecutors, police officer civil servant and diplomats who are perfectly capable of negotiating and delivering the changes that might be needed to the EU instruments that would obviate the need for an Opt Out.

Opting Out then Opting Back - Risks

Law enforcement and prosecutorial agencies as well as the courts, whether in this country or abroad, require clarity and certainty to be able to operate effectively. This is all the more important when they are dealing collaboratively with international counterparts. The Opt Out and potential partial Opt Back will bring huge uncertainties.

Taking the EAW as the obvious example, unless there is an Opt Out with an immediate Opt Back in to measures there will be uncertainty and an absence of clarity that will create scope for a wealth of legal challenges to the operation of instruments such as the EAW. Anything other than an immediate Opt Back in will create a gap which, if extradition is to continue, will require carefully crafted interim legislative arrangements or measures. For example EAW processes which are part way through the courts when an Opt Out occurs will be challenge able in the courts on the basis the UK is no longer party to that process. I suspect interim legislation will probably be required in both the UK and in partner states, to enable fugitives to be returned and/or other co-operation to take place. Such interim measures will also bring uncertainty and undoubtedly be subject to challenge regularly. Similar arguments apply to other instruments.

The UK has been at the heart of and has led the EU in PCJ issues. No other country has had held so many leadership roles in Third Pillar institutions. The UK credibility and contribution is appreciated and valued by our EU partners and it would be undermined if not totally lost were the UK to Opt Out whether or not there is an Opt Back into some measures.

Our own criminal justice system is not perfect but there is much we can contribute to improve other EU systems both to our own advantage and in terms of those states themselves. I will mention two areas touching significantly on the human rights of suspects but which also affect prosecutors. First remands in custody prior to in a number of EU states too often take an unacceptably long period and there is rarely bail pending trial. We could and should influence the so called European Supervision Order to improve this situation. Secondly the treatment of suspects in other jurisdictions is often such that those arrested are denied the right of access to advice from a lawyer and/or to an interpreter in the course of interrogation or questioning during an investigation.

As a former prosecutor I know that what prosecutors need to prove their cases is clear and admissible evidence. They want to know that if evidence is obtained from abroad will not be subject to challenge and be ruled inadmissible for being obtained unfairly, or subject to an abuse of process challenge because a fugitive was interview without access to legal advice a lawyer. There is much that needs to be done to improve criminal justice in the individual EU states. The UK will be in a stronger position to do that by being part of the Third Pillar
structures; exercising UK influence from outside those structures will be difficult if not impossible.

Conclusion

Distinctions should be drawn between the Home Secretary’s list of Third Pillar measures under consideration. Most are Framework Decisions but some are Joint Actions which are less binding than the Framework Decisions and so likely to have little impact on the UK. I suspect that, if needed at all and if desired, they ought to be much more easy to Opt Back into than the Framework Decisions which are unanimously agreed by all EU member states and frequently require national legislation to ensure implementation in each member state.

There are many Third Pillar measures, some are extremely beneficial to the UK’s law enforcement and prosecution agencies and to the UK courts. Some have less impact and others are either obsolete or no longer relevant.

I can see no operational benefit to UK investigators or prosecutors in Opting Out of all the Third Pillar. On the contrary an Opt Out of these measures will create significant risks for the UK and huge operational benefits will be denied to UK authorities. Opting out of all Third Pillar measures and opting back into those measures it is deemed desirable to retain, also presents almost as great a range of practical and public safety risks and costs.

Either approach is additionally very likely to undermine the credibility of the UK police and prosecuting authorities, and the UK as a whole in the eyes of their EU counterparts. The UK will be seen as not committed to the fight against cross border crime in the EU, and or not committed to improving collaboration and the effectiveness needed to bring cross border criminals to justice. One wonders, even though it is legally possible, if other member states will have the necessary goodwill and be willing to allow the UK to opt seamlessly back into selected Third Pillar measures.

UK investigators and prosecutors will not be able, even at very substantial cost to the UK taxpayer, to replicate the 21st century arrangements, tools, facilities and networks that are currently available to them under the Third Pillar.

On the “polluter pays” principle there is an argument that as the UK, with other member states, have created an environment where commerce and criminals can operate more easily then the UK, along with other member states, has an international obligation to do all we can to ensure that best possible measures are in place to deal with the criminality bi-product.

Finally

If it has not been arranged I would recommend that the Committee takes a day to visit Eurojust and Europol in The Hague to understand fully how both organisations operate and the facilities they offer to UK investigators and prosecutors. I believe it is important to see at first-hand what will not be available to UK authorities if there is an Opt Out without an Opt Back into Third Pillar measures.

14 December 2012
Lynda Lacy –Written evidence

**Introduction**

My Lords, Ladies & Gentlemen as an MoP (Member of the Public) and OAP (Old Aged Pensioner) I would like to take the opportunity to submit this document to your select committee. This has been my second attempt and turned around within a 2 day period. I’m at a disadvantage as I’m naive of the Law and not legally trained. I’ve aimed to be more provocative than the politically correct because we the public don’t get a vote on the Government at the heart of Europe and our only contribution is the ever increasing burden of taxes. Realising Eastern Europe has been broken down into in component parts (ie. LV, LT, etc) each with a single vote whilst the United Kingdom of Great Britain and Northern Ireland as a whole (4 separate nations within 1) has just a single vote and soon a defunct veto. Rightly or wrongly we are disadvantaged in the current voting system and consistently in a minority with more than 14% of the EU’s population and less than 3.7% of the voting power.

As the political dynamics of the EU change the West will be forced to surrender more democracy & freedom than we were lead to believed when I voted “Yes” for back in 1973.

**Should the Government Exercise its Block Opt-Out?**

Many miscarriages of justice are envisaged in relation to “Crime Does Not Pay” and the “Right to Remain Silent” in criminal Money Laundering by switching the “Burden of Proof” from the prosecution to the defence. This would not be so bad if EuroJust allowed your defence to be heard in court. And for good measure if found guilty of charges of Money Laundering you automatically default into the league of “Organised Crime”. Thus a single conviction has a double indemnity clause.

The 3rd Directive “Money Laundering” & “Terror Financing” revokes the right to remain silent but under the Acts of Terrorism the right to remain silent is already written into case Law. How can you receive a fair trial if you are dammed if you do and dammed if you don’t? If criminal law cannot prove Money Laundering due to a lack of prima facia in the majority of cases, this is not the fault of the criminals but the fault of the criminal law itself. Civil Law and / or a Criminal Assets Bureau would also have a similar desired effect “Crime Does Not Pay” minus the injustice of the existing EU Laws which are not fit for purpose.

If EuroJust proves successful with this type of white collar crime, it’s likely to revoke the right to remain silent in similar cases such as tax avoidance or insider trading, etc. Thus many more people could be convicted without evidence and an unwillingness to talk and thus by default this system of justice removes innocence.

**Financial Effects of Opt-Out**

The social & financial cost of the unmanned EU frontier has a multiplying effect which boarders on the obscene with devastating effects on society at every level including the public purse. The density & velocity of Economic Migration is about to reach supernova with disastrous and dangerous consequences, especially if it were to explode.

The new monopoly of the European Central Bank is another danger zone as it hopes to gain access to 6000+ banks and their entire accounts. With these laws the first priority should
be to protect the UK and minimise Capital Flight to tax heavens in an effort to preserve the wealth of the nation. As the laws become more arbitrary throughout the EU this could have a greater impact at the national level. More specifically since EuroPol & Eurojust are working in tandem to extract monies via a “Gestapo Regime” and writing the laws in favour of “bag the swag” irrespective of solving crime or investing in proper Law & Order.

Heavy judicial costs could be minimised through greater efficiency, standardisation, shared good practices and cutting back on waste whilst offering citizens, businesses, crown & country more security and giving back responsibility for good financial practices. The tax payers those forgotten & ignored people who ultimately pick up the tab are increasing dismayed at the industrial machine and army of administration, bureaucrats and legal eagles all wrangling away on our behalf based on the assumption they have the advantage of asymmetrical information. If given a say we would prefer to invest in accountants who could audit and sign off the accounts. Since the information revolution has happened and the general public can become a “DIY lawyer” if one has enough cheek and defiance.

Wider Implications if the Government's Opt-Out
A David & Goliath scenario could follow pursuant to an Opt-out with the EU exerting its muscle over the little Britain’s using its economies of scale.

A tactic increasing used by the EuroPol is the propaganda machine, a tool to “character assassinate” individuals hence unfair trial by media and there are plenty of recent examples (i.e. Jimmy Saville or tax avoider Jimmy Carr). A malicious and vindictive EU could easily set up a propaganda campaign by blackmailing the Nation thus we are pulled back into line by the negative impact.

However, the most likely event would be a Swiss type relationship with the UK being released amicably. Thus the UK could relish in its “escape to victory” and move forward in pursuit of good tiding and re-joining the rest of world, whilst the rest of Western Europe in particular look on in envy and regret at the loss of their Democracy & Freedom.

The Most Beneficial PCJ Measures
Since becoming an Orwellian society surveillance equipment has become a major tool in crime prevention, detection & criminal prosecution such as street cameras and access to data & multimedia equipment. The London Riots exposed the BlackBerry Gap, the use of social media to organise and the Polices inability to halt or intervene whilst the civil unrest happened, mostly due to social conditioning of the police. Hence they stood back, watched, recorded and waited whilst the eerie aftermath of the public mood soon became apparent. Only once the public verdict was known were the police confident to round up and successfully prosecute the rioters without fear of recrimination on grounds of race using the surveillance of the City.

Diplomatic intervention in relation to extradition ensured prima facia evidence was available and a high probability that a case could be successfully prosecuted before a person was dispatched aboard.

Home Secretary Statement 15/10/2012
The Home Secretary made a good speech indicating that it’s better to Opt-Out and renegotiate on those PCJ’s that are in the national interest. Here! Here!
Reliance on the PCJ & EAW
MS have the opportunity to release EU citizens & residents on bail allowing them to return home prior to trial reducing pre-trial detention. If an individual fails to show up at court then an EAW can be issued for their surrender to face prosecution or detention, if an appeal case. Database systems such as SIREN are available in 27 MS’s recording & alerting all police forces of warrants issued which also flag up at various hotspots such as airports, etc.

No diplomatic incidents have been publically reported in relation to cross boarder covert operatives in relation to an EAW. But under the existing system there would be no choice but to surrender these government agents if requested with or without evidence. The most simple and innocent example could include a person drunk & peeing in the street whilst this would be a fine in the UK, another EU country may have sentence of a year or more.

Failure to Implement & Open to Infringements
The UK has partially opted out of the order to freeze assets & evidence which is documented, thus no infringements for this particular none implementation. Freezing Assets is not part of the UK remit as they have already realised the inadequacies of the EU Laws in relation to “Crime Does Not Pay”.

The European Investigation Order could have consequence for the UK and Europe.

ECJ having Jurisdiction
The laws of Nature and the Laws of Man are there to be broken especially if they create a sense of burden or a hurdle to be overcome. Newton discovered gravity and wrote a Law but the Wright Brothers broke that Law with the creation of flight. This paradox is often highlighted between National & EU Law when reality doesn’t fit the paradigm. With the nation expected to suffer direct effect and the EJC suffering no effect directly or indirectly as it’s nothing more than an empty vessel without a soul.

Not Opting Out Benefits
With the Lisbon proposal the UK could opt out of the EAW FD and replace it with a system of Agreements & Arrangements. NL & BE have been experimenting with a "Free Movement Zone" through the "Penal System" rendering "Surrendered" prisoners across their boarder to serve a detention. With the Penal System outside the jurisdiction of the EU Commissioner, the commissioner has already official responded to a citizen that Article 31 supersedes Article 26 and thus the EAW FD and more specifically the Surrender is already defunct prior to the enactment of Lisbon.

The UK could take advantage of this Free Movement Zone and remove all undesirables off the Island. Alternatively, Lisbon is about to create an Economic Boom in the Prison Rental Business and Northern Ireland has plenty of spare capacity. It also makes good business sense to be able to release prisoners in any MS where there is an arrangement and further charges pending. If there are multiple MS interested in an individual you could open up an auction and collect premium fees but it could also cost you premium rates if the situation is vice versa.

This could be the start of a new Free Market Economy with the “Horse Trading” of Prisoners without the hassle of surrender or access to Judicial Systems and Human Rights thus removing the expensive Lawyers and passing the reign of power in these matters to the
Lynda Lacy – Written evidence

civil servants of the Justice Department and Prison Commissioners of the individual MS’s because once a person becomes locked up they automatically become less than human.

**EAW Advantages & Disadvantages in Continuation**
This report has been based on an individual case, a dual national (GB/IE) prisoner extradited pursuant to a European Arrest Warrant (EAW) from Spain (ES) to Belgium (BE) to serve a Detention Order in July 2011 (whilst out on appeal and free to return home). Initially the prisoner was deposited in a high security remand centre Forest Vorst Prison (BE), then January 2012 the prisoner was moved to Wortel (BE) before being annexed to Tilburg Prison (NL) a rental caretaking facility across the NL International Boarder.

At the time of writing this report the individual concerned is still serving out his BE sentence in Tilburg NL whilst his BE Surrender Certificate is safely under lock & key in Wortel BE. Thus Prisoner & Surrender Certificate are separated by an international boarder, each residing in their allocated kingdoms and this has been confirmed by the Prisoner himself. At this point you will realise the EU Commissioner has sanctioned a “Free Move Zone” via “The Penal System”. The EU doesn’t recognise “Surrender” on a par with “Extradition” and thus has failed in all its obligations to Mutual Recognise other MS in relation to the EAW & the subsequent surrender of citizens and thus no barriers to potential abuse of civil liberties throughout the “Penal System” as it is outside the EU Commissioners remit.

The Lisbon Experiment – A tenancy agreement and contract to supply workers supported by BE, NL and the EU Commissioner unbeknown to the remaining 25 MS parliaments and the peoples of Europe. Thus there are no guarantees or safety nets in relation to “Surrender Certification” which is already enacted by the act of omission of BE, NL & the EU Commissioner and thus Julian Assange was right to take refuge in Ecuador as he could have been sent to the USA via SE with a private arrangement as confirmed by the words of the Commissioner Letter.

Here is a list of documents legalising "Free Movement" via the "Penal System"

- **BE/NL Copin 51, EuroJust 28**
- **BE/NL Bilateral Agreement** & **EN Google translate**
- **BE Senet Q&A’s**
- **Accessibility of the Bilateral Agreement**
- **Article 25 - Impunity**
- EU Commissioner Sanctioning a “Free Movement Zone” through the “Penal System”.

**Institution Costs of Opt Out**
As the EU is working to implement the Community Method, EuroPol will become more like ”Bounty Hunters” & “Treasure Hunters” which is a misuse of real Police resources. This will have a greater Human Cost as Europe becomes increasing lawless with old criminal gangs being replaced by new criminal gangs as crime prevention has not been part of the EU’s strategy as they only want to disrupt crime. I believe the EU wants to use “Criminal Assets” to help prop up the ailing €uro by cyphering off captured assets via a secret tier within EuroPol, with real police only getting involved in targeting and the initial investigations.

Italy is an ideal place for Criminals to start disappearing through the Penal System as nobody is likely to bother doing a headcount on the Camorra. The Vatican City (Not a member of
the EU or part of the EAW) has a Bilateral Agreement to house its prisoners in Italy. They are now holding onto the pope’s former Butler and this makes one curious to why the change of tactics especially since the Church is also coming under mounting suspicion of covering up paedophiles and money laundering, is this another attempt for the EU to breakdown wealthy institutions and erode European faith as in the case of Gay Marriage. EuroJust also has a remit if the existing laws do not produce the desired outcomes then they can be rewritten, many these new laws do not adhere to the human rights. Currently they are writing new laws to take the Shoes of the Children of people convicted of particular crime.

In an ideal world you want your police & justice on the right side of the law, not left of the political agenda.

**Which PCJ should the Gov Opt into**
The Government should be very careful about what they opt into as the EU is heading towards a communist regime. They should only opt into EU laws which are compatible with Human Rights & existing UK Laws.

**Opt in on a Case by Case Basis**
This might be the most desirable option as it gives the UK real flexibility to take advantage of the just and omit the unjust, as time goes by the EU abuses will become more apparent.

**What Form would Co-Operation Take**
Co-operation should continue along a similar line as the EU but the UK should add in its own safety features. The EAW is not all bad but it does need to be improved with the right to say “No” or where is the evidence.

In an effort to co-operate more efficiently the UK should deny the incorrect use of EAW’s, currently the EAW has been used as an EIO which is not properly ratified throughout the EU.

Surrender of GB citizens should be guaranteed as agreed in accordance with the certificate prior to surrender thus maintaining the integrity of both the person & the certificate. Those surrendered from home & abroad should be given the same assurances which is not the case under existing arrangements.

A System of bilateral & multilateral agreements & arrangements can be used providing they are not secret & published in accordance with the freedom of information to ensure equality of access to the Law.

In the event that Prisons become big business then the rules should be tightened up to exclude none EU MS's to prevent prisoners being moved to countries such as the USA or Russia.

**Article 276 TFEU**
I have not researched EuroJust greatly but I’ve come across their “Not fit for Purpose” justice but I do believe this is a very dangerous article and I’ve already come across both EuroPol and EuroJust having no accountability from reading various websites and publications. At present EuroPol comes under the remit of the de facto Malmstrom Commissioner who is the Public Relations Officer for that department as an academic
idealistic as opposed to a realist. Thus the real power of the Police & Justice come under a figure head unknown to the public, this is the EU’s Achilles heel.

**Implications for Rep of Eire**

Ireland already has reservations about surrendering its peoples and its experienced first-hand the “Stick & Carrot” policies of the EU. The vast majority of Ireland exports including its people are for the UK Market. The UK is IE’s biggest export market and both countries have common language, a good working relationship, history and tradition including Law & Order. Since home rule IE law has been based on UK Law and points debated by the House of Lords and their outcomes are used as case law within the Republic.

*6 January 2013*
1. The Law Society of England and Wales is the independent professional body, established for solicitors in 1825, that works globally to support and represent its 160,000 members, promoting the highest professional standards and the rule of law. This memorandum of written evidence has been drafted in close consultation with the Society’s Criminal Law and EU committees, both of which are comprised of leading practitioners in their fields.

The 2014 opt-out decision

Question 1: Should the Government exercise its block opt-out?

2. In the Society’s view the case for exercising the opt-out has not been made and doing so is likely to cause significant difficulties for criminal investigations and to lead to increased costs.\textsuperscript{310}

3. The Society starts from the premise that systems need to be in place to facilitate effective cross-border co-operation in criminal justice matters between Member States and provide for corresponding procedural rights for victims and suspects. There is no reason related to the operation of the criminal law in England and Wales to opt out of the pre-Lisbon EU police and criminal justice (PCJ) measures that the UK previously chose to opt into. There also appears to be no benefit to the UK in exercising the opt out if all that is ultimately achieved is that the UK will subsequently opt back into some of the more beneficial measures, whilst at the same time incurring considerable cost. The Government has not pointed to any harm arising from the existing provisions.

4. Clarifying misconceptions

5. Subsequent to the ratification of the Lisbon Treaty, the UK has opted into a number of further PCJ measures, including the Directive on minimum standards for victims of crime, Measure A (on the right to interpretation and translation) and Measure B (on the right to information in criminal proceedings) of the procedural rights framework as well as negotiations for a European Investigation Order. The exercise of the opt-out would not therefore remove the UK from the sphere of EU criminal justice. Nor would the exercise of the opt-out remove the UK from the jurisdiction of the Court of Justice of the European Union (CJEU), in respect of which it has already accepted the jurisdiction in relation to the post-Lisbon measures which have been opted into and would further need to do so for any pre-Lisbon measures into which it wishes to opt back.

6. The UK would not, as of right, be able to opt back into the instruments from which it opts out. It may only do so, following negotiation, with the agreement of the relevant EU institution.

7. The Society believes that the European Arrest Warrant (EAW) Framework Decision can be improved but offers a better and more efficient system than the previous arrangements. Whilst it may be possible to revert to such arrangements in some cases, these are likely to prolong extradition proceedings thereby increasing detention and

\textsuperscript{310} The Society previously called for a full and open public consultation.
court costs incurred by the UK. The Society believes that it will be easier to influence the reform process if the UK does not exercise the opt-out.

8. For any further measures the UK retains the right to consider whether to opt in on a case-by-case basis. The debate as to whether or not there should be a European Public Prosecutor is therefore a separate issue.

9. **Effect on substantive law**

10. It seems unlikely that a decision not to exercise the opt-out would have a detrimental effect on English substantive law. The measures concerned (only a few of which could be argued to have a link to substantive law) are simply the development of practical means for the Member States to investigate and prosecute crime with a cross-border dimension, and execute criminal justice decisions in cases involving multiple Member State jurisdictions. Many are mutual recognition measures, an approach developed as a means of facilitating cooperation without impinging on Member States’ legal systems.

11. **Concern regarding potential cost**

12. The costs of exercising the opt-out, given the lack of potential gain to the UK, should be highlighted as a significant concern, particularly at a time when the budgets of all UK criminal justice agencies are facing unprecedented reductions.

**Question 2: What are the likely financial consequences of exercising the opt-out?**

13. The costs of exercising the block opt out will include not only the costs imposed by the Commission and the Council but also any domestic costs (including those of any transitional arrangements). It is impossible to estimate what these costs will be without knowing (a) what measures, if any, into which we will opt back; and (b) how exactly the Commission and Council will identify and assess the direct financial consequences ‘necessarily and unavoidably incurred as a result of the cessation of [the UK’s] participation in those acts’ (as envisaged in Protocol 36).311

14. These costs could incorporate not only costs to the EU institutions but also the costs to the other 26 Member States of instituting changes which could be substantial.312

15. Moreover, both prosecutors and defence practitioners (from the UK and in the other Member States) would require training to understand which measures the UK is still subject to, any transitional measures and any new framework.313

**Question 3: What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?**

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311 TFEU, Protocol 36, Title VII, Article 10.
312 There could also be further losses; for example, it is believed that the UK has already spent a considerable amount on preparations to join the Schengen Information System II, both through paying 18% of the contributions to the EU budget in this regard between 2007 and 2012 and also making domestic preparations. See House of Lords, EU Committee, 9th Report of Session 2006-07, “Schengen Information System II (SIS II)” HL Paper 49, paragraph 32. Paragraph 33 sets out the Home Office’s estimate of the cost for UK implementation at £39 million. In addition, if the UK’s involvement in the European Police College (CEPOL) (currently located in the UK) ended, the Society believes that this would need to be moved to another Member State, at further cost.
313 As an example, the Republic of Ireland has repealed the extradition arrangements that existed with the UK prior to the adoption of the EAW Framework Decision. If the opt-out were exercised, there would need to be a new extradition arrangement between the UK and Ireland.
16. The UK has over many years helped to shape the development of EU criminal justice policy, for example, through the development of the concept of mutual recognition, which has enabled measures to be developed that do not impinge on substantive national laws. As the third largest Member State by population size, the UK plays an important role in the EU in fighting serious cross-border crime. If the UK were to opt out, the impression may be created that it does not see a high level of cooperation with other Member States as necessary in order to address cross-border crime. This could extend to other areas of policy as the Commission and other Member States may view an exercise of the opt-out as yet another instance of the UK failing to engage in EU justice initiatives. Account should also be taken of intangible costs such as the UK’s potential loss of influence within institutions like Eurojust, Europol and the European Police College (CEPOL).

The UK’s current participation in PCJ measures

Question 4: Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

and

Question 5: In her 15 October statement the Home Secretary stated that “… some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

and

Question 12: Which, if any, PCJ measures should the Government seek to opt back in to?

17. The Society refers the Committee to the very careful and thorough analysis of the benefits and disadvantages of all the measures in the paper produced by the Centre for European Legal Studies. None of the measures can be characterised as harmful to the criminal justice system. Overall, many of the measures offer benefits to the UK. Some measures may be obsolete. It is not clear why the UK needs to opt out of these rather than negotiate with other Member States to have them amended or annulled.

18. In this evidence, the Society broadly identifies the benefits of the various measures, and the consequences should these be lost. If an opt-out occurs, the Society would therefore urge the Government to seek to opt back into the majority of these measures (besides any that are obsolete), unless they are already superseded by new provisions. In particular:

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314 The Society understands that Europol is currently supporting approximately 700 investigations concerning organised crime and terrorist networks, and that the UK is actively involved in over 200 of these.

315 See, for example, closing remarks concerning the UK in speech by Vice-President of the European Commission and EU Commissioner for Justice Viviane Reding on 6 December 2012: http://europa.eu/rapid/press-release_SPEECH-12-918_en.htm?locale=en

18.1. mutual recognition measures, including the EAW (ideally modified (see endnote xvi), though this may not be practical); the European Supervision Order (see response to Question 7); the measure concerning the mutual recognition of custodial sentences (so UK prisoners can serve their sentences here, and non-UK residents convicted here can serve their sentence in their own Member State); the measure concerning the mutual recognition of financial penalties allowing fines over a certain threshold to be enforced in another Member State;

18.2. measures establishing the organisations Europol and Eurojust, which facilitate cross-border co-operation in the investigation and prosecution of offences; and the

18.3. various mutual legal assistance police and prosecution cooperation measures, which allow information and data-sharing, and cooperation in cross-border investigations.

19. There is particular value in Europol, Eurojust and CEPOL. Many of the measures are intrinsically linked and will all come into play during the course of an EU-wide investigation and prosecution: for example, the use of data sharing measures to detect a crime, or the whereabouts of a suspect; the involvement of a liaison magistrate; the obtaining of an EAW; the setting up of a joint investigation teams.

Question 6: How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

20. The Society understands that the UK relies to a significant extent on the EAW to ensure a more efficient surrender of persons than was possible under the previous regime. Statistics show that in 2003 (the final year under the old system) globally the UK received 114 extradition requests and surrendered 55 people. In 2010, the UK surrendered 1,068 people to other Member States, issued 256 EAWs, and 116 people were surrendered to it.

21. The Society understands that it takes roughly between 14 and 17 days to surrender an accused who consents to such action from one Member State to another and 48 days if he or she does not consent. Under the previous regime, it could take approximately one year for a successful extradition process with some famous examples lasting for many years, costing taxpayers a significant amount of money.

22. Opting out of the EAW scheme would be unlikely to reduce the number of extradition requests made to the UK as this appears to be more a function of free movement rather than any aspect of the EAW procedure.

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317 A Review of the United Kingdom’s Extradition Arrangements (Following Written Ministerial Statement by the Secretary of State for the Home Department of 8 September 2010): Presented to the Home Secretary on 30 September 2011 (known as the "Scott Baker Review"), Appendix D Extradition Figures, page 461.
318 Ibid, pages 462-463. The Society understands that the statistics quoted are for calendar years. In Part 5.3 of the report (pages 116-117), figures up to 2009-10 are available for business years.
Question 7: Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

23. The UK’s implementation record in relation to PCJ measures is generally very good and the risk of infringement proceedings is therefore seen as small. In general, the Society understands that the Commission only tends to initiate infringement proceedings after a Member State has systematically breached its obligations for a sustained period.

24. A notable measure that the UK has not yet implemented is the European Supervision Order (ESO), which is designed to institute a system of ‘Eurobail’ (in essence, pre-trial bail to enable the person to continue to be at liberty but subject to supervision in one Member State, pending their trial in another). This is unfortunate as it is believed that the ESO could alleviate some of the difficulties encountered by individuals extradited under an EAW before an issuing Member State is ready to try them.

Question 8: What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

25. The CJEU’s role is:

25.1. to interpret EU legislation so that it can be applied uniformly across the Member States; and

25.2. to settle legal disputes between Member State Governments and EU institutions, including infringement proceedings.

26. The Society is not aware of any CJEU judgments relating to PCJ measures that have posed problems for the UK. Of the relatively small number of cases that had been referred for preliminary rulings, many of those proved to be useful in clarifying uncertainty. Recent cases including the joined cases of Magatte Gueye and Valentín Salmerón Sánchez, X and Maurizio Giovanardi and Others also seem to indicate that the CJEU is respectful of the criminal justice systems of the Member States.

27. The UK is already subject to the jurisdiction of the CJEU in all other fields of EU law. It has also accepted the jurisdiction of the CJEU for the post-Lisbon PCJ measures it has opted into and would further need to accept its jurisdiction for any further measures into which it wished to opt back. Accepting the CJEU’s jurisdiction for some measures but not others would risk incoherence and further complexity. It also appears that the UK courts would benefit from having the right to issue references for preliminary rulings in PCJ matters. For example, in the recent Assange case, the Supreme Court was required to consider the meaning of ‘judicial authority’ in the EAW Framework Decision.

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320 The deadline for implementation was 1 December 2012.
321 Article 276 TFEU also seeks to provide what practitioners view as fairly broad guarantees that the EU institutions cannot interfere with the functioning of Member States’ domestic criminal justice systems.
322 Magatte Gueye (C-483/09); Valentín Salmerón Sánchez (C-1/10); X (C-507/10); and Maurizio Giovanardi and Others (C-79/11).
323 Assange (Appellant) v The Swedish Prosecution Authority (Respondent), [2012] UKSC 22. Please see inter alia Lady Hale at paragraph 185.
The Supreme Court noted that it was not possible to refer the matter for interpretation to the CJEU and so considered the CJEU's approach to interpretation and the likely conclusions that the CJEU might have come to.

28. One concern being raised in some quarters in relation to the CJEU being able to take jurisdiction over the pre-Lisbon PCJ measures is that this might create uncertainty for Member States.\(^{324}\) This, however, is an inevitable feature of all legal systems where courts have a role in interpreting legislation. As noted, the limited PCJ case-law from the CJEU has to date generally been helpful in clarifying uncertainty. Furthermore, uncertainty is unlikely to be avoided in the case that the opt-out is exercised. The opt-out itself is likely to raise complex legal questions in the UK, in other Member States and in the CJEU. For example, there will be issues as to whether, if the UK leaves some of the measures concerned in its national legislation (for example, the EAW), requests could still be recognised and adhered to by other Member States (which would seem to depend on how they had enacted the EU legislation in their own domestic law); and whether, if previous Council of Europe agreements have been superseded by new legislation in other Member States, those Member States could still revert to them. Legal lacunae are also likely to arise in any transitional period.

**Question 9: If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?**

29. As explained above, the benefits of being subject to the jurisdiction of the CJEU would be to enable UK courts to make requests to the CJEU for preliminary rulings to obtain guidance on interpretation leading to greater clarity and, potentially, less delay on further cases raising the same point.

30. Concerns have been raised about the time that it could take to deliver rulings. The Society understands though that the CJEU has expedited procedures available, including the urgent PPU procedure, should the case be particularly urgent. The Society understands that the shortened time limits are adhered to, so that rulings can be issued quickly in such cases. For example, according to the CJEU 2011 Annual Report, the average time taken for such procedures was 2.1 months in 2008 and 2010 and 2.5 months in 2009 and 2011.

**The potential consequences of exercising the opt-out**

**Question 10: The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?**

31. The EAW has improved the process of surrender between Member States within the EU. The time to extradite a person has been significantly reduced. Legal representatives are therefore able to deal with extradition cases much faster than was the case with the previous extradition system in place in the UK and this has also reduced the amount of

\(^{324}\) The Society also understands that there is a separate criticism that the CJEU is not accountable to the European Parliament or national parliaments in its decisions. This is no different from the UK courts and reflects a misunderstanding about the role of a court.
time that a suspect could be held in pre-trial detention. If the UK ceased to participate, these benefits would be lost.

32. The Society believes that the EAW can be improved but that it remains a better system than the previous arrangements (see response to Question 14). The flaws in the current functioning of the EAW Framework Decision existed (together with others) under the system in place prior to the EAW. The Government should seek to work with the other Member States, many of whom have similar concerns, to improve the EAW and supplement it with further safeguards. Moreover, measures to improve the use of the EAW are already available. For example, section 21 of the Extradition Act 2003 provides that if an extradition would be incompatible with rights contained in the European Convention on Human Rights within the meaning of the Human Rights Act 1998 then the individual concerned must be discharged. There is also a pending case before the CJEU concerning the relationship between Convention rights and the EAW. The Advocate General’s Opinion suggests that in cases involving an EAW:

32.1. it should be considered whether detention is proportionate; and

32.2. it should be possible for the competent judicial authority of the executing Member State to refuse a request for surrender on human rights grounds in exceptional circumstances.

Question 11: What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

33. There is already a practical effect on clients who could potentially face extradition, who are being advised that it is possible that the current framework in place may be changed as from December 2014. This has led to a great deal of uncertainty. Transitional measures have not yet been agreed if the opt-out is to be exercised, leading to further uncertainty.

34. The offences which involve mutual legal assistance through Eurojust and Europol are in the main the most serious and complicated investigations and prosecutions involving cross-border organised crime in a number of Member States and concerned with terrorism, trafficking in drugs and human beings and firearms, money laundering or VAT carousel or missing trader fraud. If any one Member State were either permanently or temporarily unable to participate, complex prosecutions in more than one Member State would be prejudiced because it would be difficult to coordinate simultaneous arrests. Furthermore, mutual trust and confidence between pan-European police officers and

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326 In a case this year, the Supreme Court held, taking into account the section 21 requirement (and Article 8 of the Convention on the right to respect for private and family life), that an individual who was the subject of an EAW should not be surrendered. R. (on the application of HH) v Westminster City Magistrates’ Court and F-K v Poland, [2012] UKSC 25.

327 Opinion of AG Sharpston in Ministerul Public - Parchetul de pe lângă Curtea de Apel Constanța v Ciprian Vasile Radu, Case C-396/11, delivered on 18 October 2012.
prosecutors would be reduced impacting upon the effectiveness of investigations. The ability of the UK to participate in joint investigative teams would also be prejudiced.

**Question 13:** How straightforward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

35. The Society is not convinced that it would be straightforward for the Government to opt back in to specific measures on a case-by-case basis. Different procedures would apply depending on the treaty protocol applying to the measure concerned.328 Some measures require unanimity of the Member States while others only require the approval of the Commission. This is likely to be a complex process.329 Protocol 36 states that both the EU institutions and UK ‘…shall seek to re-establish the widest possible measure of participation of the United Kingdom in the acquis…without seriously affecting the practical operability of the various parts thereof, while respecting their coherence’. The Society does not know how this requirement will be interpreted, but the EU institutions are likely to want any outcome of negotiations to represent a coherent package of measures. Consequently, if the UK only wishes to opt back into a small number of individual measures, it may be required to opt back into further related measures to avoid concerns regarding inoperability or incoherence.

**Question 14:** What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

36. The functioning of the Council of Europe Conventions, particularly the 1957 European Convention on Extradition330, was inefficient leading to unnecessary cost and long pre-trial detention periods for suspects. The new EU measures, such as the EAW, have in general been seen as improvements. Where some Member States were not signatories or have not implemented the conventions or there is a risk that such conventions can no longer apply due to superseding legislation in particular Member States, the UK may be required to negotiate bilateral arrangements which would be time-consuming and increase complexity.

14 December 2012

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328 Either Protocol 19 on the Schengen acquis integrated into the framework of the European Union or Protocol 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice.

329 On 10 December 2012, the Financial Times article "UK warned over bloc opt-out" included the following: ‘... Cecilia Malmström, EU home affairs commissioner, told the FT that all other member states would first have to agree on each such step. “On each of these opt-ins, there will have to be a negotiation and the other member states will have to agree,” she said, adding that it would be complex because “of these 136 laws, many are very connected”.

Law Society of Scotland –Written evidence

Introduction

1. The Law Society of Scotland aims to lead and support a successful and respected Scottish legal profession. Not only do we act in the interests of our solicitor members, but we also have a clear responsibility to work in the public interest. That is why we actively engage and seek to assist in the legislative and public policy decision making processes.

2. To help us do this, we use our various Society Committees which are made up of solicitors and non solicitors and ensure they benefit from knowledge and expertise from both within and outwith the solicitor profession.

3. The Criminal Law Committee of the Law Society of Scotland (the Committee) welcomes the opportunity to respond to the call for evidence published by the House of Lords Select Committee on the European Union with regard to the UK’s 2014 Opt-out Decision (Protocol 36) and should like to respond as follows:-

2014 Opt-out Decision

Question 1: Should the Government exercise its block opt-out?

1. The Committee notes the Prime Minister’s statement at a press conference in Brazil on 28 September 2012 that United Kingdom would exercise its “Opt-out” in terms of Protocol 36 to the Lisbon Treaty before the end of this year albeit that this can be done at any time before June 2014. The UK may give notice that it no longer accepts the acts of the Union in the field of police co-operation and judicial co-operation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon. The Committee notes that in giving such notice, all measures will then cease to apply in the UK as from the date of the expiry of the transitional period being 31 December 2014. The Committee further notes that the UK must therefore opt-out of all these measures or none at all. The UK also has the right to opt into individual measures.

2. On 5 October 2012, the Law Society of Scotland, together with the Law Society of England & Wales and the Law Society of Northern Ireland stated that “the wholesale opt-out could have very serious consequences in fighting cross border crime from both a practical and cost perspective. Such a decision should not be taken before a thorough consideration of the implications with input from the experts who are certainly not all working in Government. Even if the UK is able to “opt back in” to some measures, this is likely to lead to confusion, complexity and cost. This important decision should not be seen as a totemic pro/anti EU issue. It should be taken on its own merits, based on practical experience and objective information.”

3. The Committee’s position on the proposed opt-out remains very much in accordance with these comments.

4. The Committee believes that the pre-Lisbon PCJ measures which can be opted out of en bloc are in the main reciprocal and the UK accordingly benefits as do all other Member
States in fighting cross border crime. The European Arrest Warrant in its current form has been subject to some criticism from various parties, notably Fair Trials Abroad but operates better than previous Council of Europe Conventions or bi-lateral arrangements. Also, there are a number of post-Lisbon Treaty PCJ measures to which the UK has opted into or is in the process of opting into and is accordingly subject in these areas of jurisdiction of the Court of Justice of the European Union (CJEU). It is wrong to suggest that any UK opt-out would remove the UK from that Court’s jurisdiction.

Question 2:
What are the likely financial consequences of exercising the opt-out?

1. The Committee believes that there would be considerable costs involved in exercising the block opt-out. The Committee notes that there would also be a need to develop measures and mechanisms in order to substitute for the pre-Lisbon measures opted out of which would in itself be expensive.

2. The Committee makes specific reference to extradition proceedings which would now of course become more prolonged and, in custody cases creating significant additional cost.

3. Also, costs would not only apply to the UK but also to the EU Institutions and the other EU Member States.

Question 3:
What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

1. Reference is made to the Centre for European Legal Studies Working Paper entitled “Opting out of EU Criminal Law: what is actually involved?”(i) the Committee notes paragraph 32 of the Paper and agrees that “the UK’s withdrawal from these instruments would seem to send a negative message as regards the UK’s attitude to law and order, and international efforts to further it. By withdrawing from them, the UK would appear to be telling the other Member States (and indeed its own citizens and the rest of the world) that it considers the forms of anti-social conduct they are aimed at – terrorism, money laundering, people smuggling, cyber crime and so forth – are not so grave as to require international cooperation to deal with them effectively.

2. Also, it should be noted that significant numbers of UK citizens already live within the EU but outwith the UK and, on the basis that the opt-out is exercised, they will continue to remain subject to these measures while they remain outwith the UK.

3. The Committee is concerned that any disengagement rather than attempts to reform such difficulties there are with European Arrest Warrant procedure will result in harming the interests of UK citizens living elsewhere in Europe.

4. Also, it is likely to create tensions with other Member States where law enforcement agencies will be hampered in assisting them.
5. The Committee notes that there is a possibility that an isolated incident could create significant tensions e.g. one suspected of an act of terrorism elsewhere in the EU who subsequently flees to the United Kingdom with a resultant prolonged extradition process due to the unavailability of the European Arrest Warrant.

The UK’s current participation in PCJ measures

Question 4:
Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

1. The Committee refers once more to the Paper produced by the Centre for European Legal Studies (CELS) which analyses the benefits and disadvantages of all the measures.

2. In summary, and given that a number of pre-Lisbon measures will be superseded by subsequent measures or indeed characterised as ‘defunct’, there seems no point at all in an opt-out particularly as none of the pre-Lisbon measures can be considered harmful to UK interests.

3. The CELS Report at paragraph 25 thereof divides the measures into the following categories (1) instruments intended to influence substantive criminal law; (2) instruments intended to influence national criminal procedure; (3) police cooperation measures and (4) instruments designed to secure mutual recognition.

4. The Committee draws particular reference to the principle of mutual recognition which has enabled measures to be developed without adversely affecting domestic legislation.

Question 5:
In her 15 October statement the Home Secretary stated that “Some of the pre-Lisbon measures are useful, some less so, and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

1. While the Committee recognises that the Home Secretary’s categorisation is a useful basis for their consideration, the question must remain as to whether opting out of a measure which is defunct serves any useful purpose. The Committee noted that the roles played by Europol, Eurojust and CEPOL (the European Police College network) should not be underestimated as these agencies participate in EU wide investigation of crime and subsequent prosecution by way of data sharing measures, identifying the whereabouts of a suspect and the obtaining of a European Arrest Warrant.

Question 6:
How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?
1. The review of the United Kingdom’s extradition arrangements presented to the Home Secretary on 30 September 2011 (the Scott Baker Review) which provides, at paragraph 5.3 thereof, the number of surrenders to the UK and surrenders from the UK under Part I of the Extradition Act 2003 which brought the European Arrest Warrant Framework into domestic legislation.

2. In particular, the Committee notes in the last business year 2009 to 2010 there were 71 surrenders to the UK and 699 surrenders from the UK.

3. The Committee also refers to the Official Report of the Scottish Parliament of 25 October 2012 where, in answer to a question from Colin Keir MSP to ask the Scottish Government how many criminals have been brought back to Scotland through the European Arrest Warrant, the Cabinet Secretary for Justice (Kenny MacAskill), responded ‘separate statistics for those returned under European Arrest Warrants and those returned under other arrangements have not been kept in all years. However, since the beginning of 2004, between 60 and 70 persons have been returned to Scotland under a European Arrest Warrant’.

4. In response to a further question on the opt-out, the Justice Secretary stated that reversion to the Council of Europe Convention on Extradition of 1957 would not be as satisfactory and that the actions and attitude of UK Government towards Europe are jeopardising the Administration of Justice in Scotland. The Committee is concerned that opting out of the European Arrest Warrant would result in increased burden for all agencies of the Criminal Justice system then having to operate on a more cumbersome extradition process.

**Question 7:**
Has the UK failed to implement any of the measures and thus leave itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

1. The Committee is not best placed to respond to this question but understands that infringement proceedings will only be initiated by the European Commission where a Member State has been in systematic breach of obligations for a sustained period. It is the Committee’s understanding that the United Kingdom’s implementation record in relation to Police and Criminal Justice measures is very good and the risk of infringement proceedings accordingly is minimal.

2. The Committee notes further that once the European Supervision Order (ESO) has been implemented this should minimise some of the practical difficulties encountered by accuseds who are extradited under a European Arrest Warrant before the issuing Member State is even prepared for trial.

**Question 8:**
What would be the practical effect of the Court of Justice having jurisdiction to interpret these measures? Have past Court of Justice Judgements caused any
complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

1. The Committee is not aware of any complication caused by CJEU Judgements regarding the operation of PCJ measures in the United Kingdom.

2. It should be noted that the United Kingdom is already subject to the jurisdiction of the Court in all other fields of EU Law and, in particular the jurisdiction of the Court has been accepted for the post Lisbon Treaty PCJ measures which have been opted into.

Question 9:
If the opt-out was not exercised, what would be the benefits and the drawbacks once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice.

1. The Committee emphasises the benefit of being able to seek clarification from the CJEU by the UK Courts for preliminary rules in order to obtain guidance on interpretation. The Committee notes that there has been significant implementation of the relevant measures and it is accordingly difficult to envisage any situation where European Commission enforcement would cause concern.

The potential consequences of exercising the opt-out

Question 10:
The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

1. The Committee notes that Scotland has been making use of the European Arrest Warrant.

2. The Committee recognise that issues of proportionality, the Issuing State’s state of preparedness for trial and the Issuing State’s obligation to remove the warrant if extradition refused are some of the criticisms of the European Arrest Warrant and the Committee accordingly agrees that it is in need of reform.

3. The Committee further notes however that the Council of Europe Convention on extradition is returned then, while this applies to all Council of Europe Countries, it is restrictive in that extraditable offences are limited to those attracting a year or more by way of imprisonment or (if a sentence has already been imposed) actual sentences of over 4 months.

4. The Committee believes that there are good reasons for these restrictions in extradition generally, but not in an environment where there is considerable travel due to freedom of movement.
Accordingly, it would not be in the UK’s interests for individuals who commit crimes in other EU Member States to be able to treat the UK as a safe haven, knowing that their offending was either non-extraditable or that it was likely to be subject to a more cumbersome extradition process for another country to seek return by that route.

**Question 11:**
What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross border crime?

1. The Committee notes, that if the measures pre-Lisbon are already entrenched in practice. Also, other EU Member States have drafted their domestic legislation with reference to the existing measures and there is the unintended consequence that the law of another Member State could be left with a UK shaped gap on the basis of an opt-out which only transpires after the opt-out has been exercised.

2. These are matters which are not insuperable but there are of course time and cost implications not to mention the possibility of accuseds escaping justice.

**Question 12:**
Which, if any, PCJ measures should the Government seek to opt back in to?

1. The Committee is not in a position to comment on each measure in detail but refers to mutual recognition measures including the European Arrest Warrant.

2. The Committee refers again to paragraph 32 of the CELS Report and questions whether such a negative message should be sent out by the United Kingdom.

**Question 13:**
How straightforward would it be for the Government to opt back in to specific PCJ measures on a case by case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

1. The Committee believes that this would not be straightforward at all. It is the Committee’s understanding that this could not be done until after December 2014 and that some measures require the approval of all Member States, but others only the approval of the Commission. The Committee highlights a potentially curious situation where there is mutual recognition in terms of the European Investigation Order (Post Lisbon) but not with the EAW.

**Question 14:**
What form could co-operation with other Member States take if the United Kingdom opt-out of the PCJ measures? Would it be practical, or desirable, to
rely upon alternative international agreements, including Council of Europe Conventions?

1. The Committee highlights the probability of delay in a revert to alternative international agreements including Council of Europe Conventions. It should be noted that such delays brought forth the introduction of new EU measures such as the European Arrest Warrants which have been considered improvements to extradition between Member States in the first place. Accordingly it would not be practical or desirable to rely upon alternative international agreements including Council of Europe Conventions. The Committee note that some EU Member States were not signatories nor have implemented the Council of Europe Conventions and accordingly such conventions would no longer apply due to superseding legislation. Therefore, the UK may well be required to negotiate separate arrangements with each and every Member State in this position.

Question 15:
Is Article 276 TFEU which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

1. The Committee is concerned that the fact that this Article limits CJEU jurisdiction over pre-Lisbon EU Criminal Justice and policing measures appears to be a factor in the Government’s current thinking on exercising the opt-out. Accordingly it is irrelevant to the decision on the opt-out and what should be considered the fact that post Lisbon measures, a number of which have been previously referred to and which the United Kingdom has opted into, are subject to the jurisdiction of the CJEU.

Question 16:
If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

1. It is the Committee’s understanding that the Republic of Ireland has repealed pre-existing extradition arrangements with the UK prior to the adoption the EAW Framework decision. Accordingly, if the UK withdraws from the EAW, new extradition arrangements would require to be entered into between the UK and the Republic of Ireland.

14 December 2012
Liberal Democrat UK MEP Group –Written evidence

Evidence from Liberal Democrat Members of the European Parliament

1. This evidence is submitted on behalf of the delegation of Liberal Democrat Members of the European Parliament. It is drafted largely by Baroness Sarah Ludford MEP, who has worked on EU justice & home affairs (JHA) measures since 1999 as a full Member of the Civil Liberties, Justice and Home Affairs (LIBE) committee which deals with all European JHA legislation including in the field of policing and fighting crime, working closely with what are now the European Commission’s Directorates-General for Justice and Home Affairs.

The importance of EU JHA measures and UK participation

2. It is well acknowledged that free movement of goods, persons, services and capital in the EU single market (even for those like the UK not in Schengen) brings in its inevitable wake the ability of major organised crime to operate freely, such as in smuggling of drugs and people, terrorism, cybercrime, financial crime and money-laundering, thus making crossborder police cooperation essential. It was also recognised, and enshrined in the EU's 1999 Tampere programme which launched the 10-year programme of criminal law measures - legislated in the so-called 'Third pillar' as "decisions' and framework decisions' - that there also needed to be much swifter and more effective procedures to bring suspects to arrest and trial. This was to be achieved, and was in fact achieved, through alignment of definition of crimes and penalties and through mutual recognition of judicial decisions.

3. Successive UK governments, not least the present coalition, have all strongly supported the EU single market and its completion. That very fact alone makes non-participation in the crime-fighting elements of the single market illogical. But in addition the practical worth of tools like the European Arrest Warrant, Europol, Eurojust and Joint Investigation Teams, criminal record-sharing, the Schengen Information System and the various law enforcement and judicial networks has been amply demonstrated and the committee will no doubt receive detailed evidence in this regard from experts and practitioners.

4. The pressing need for the UK to remain a participant in EU police and judicial cooperation cooperation has already been recognised publicly by many senior former police, intelligence officers and prosecutors, and indeed now serving police officers. The former head of the Serious & Organised Crime Agency Bill Hughes has been vocal in the last six months on this subject. At a European Criminal Law Association seminar on Dec 10th, former senior UK prosecutor and former President of the European prosecutors’ body Eurojust Aled Williams explained the problems for law enforcement in the UK if the opt-out deprived the UK of effective European cooperation. In addition, and significantly, serving Metropolitan Police Commander Gibson at the same event reportedly explained the worries felt by the police at the prospect of the opt-out depriving them of a range of instruments they consider to be vital in the fight against trans-border crime.

5. UK influence and leadership in this area has been amply demonstrated by the presence of British personnel in senior positions - 2 former Directors-General of the European

Commission's Justice & Home Affairs Directorate-General, 2 former Presidents of Eurojust, and the serving Director of Europol Rob Wainwright - as well as the location in the UK at Bramshill of the European police training college CEPOL. The UK also has one of five permanent CJEU Advocates General. The UK has been particularly prominent in anti-terrorism and in the exchange of information between law enforcement authorities. UK officials both in Brussels and London who advise MEPs on JHA matters appear indeed to be more active, better organised and better briefed as to how to inform the EU policy-process than their counterparts in other Member States.

6. It would seem not only perverse but dangerous to throw away that tradition of leadership by choosing to become a bystander, losing influence on vital issues of international security which will continue to affect UK interests irrespective of any decision on opt-out, and thereby prejudice the safety of British citizens. Indeed, it could risk Britain becoming a haven for international criminals if they felt that they were less likely to be extradited and brought to justice due to UK non-participation in the normal streamlined EU investigation and prosecution instruments.

The UK's record in EU JHA cooperation post-Lisbon

7. Since the Treaty of Lisbon came into force the UK has opted in to a majority of measures under Chapters 4 and 5 of Part III TFEU. The 8 opt-ins are 6 Directives which have already been adopted and 2 still being negotiated. This shows that far from wishing to pull out of EU JHA cooperation, the UK generally considers that it is valuable. There are also a few measures under negotiation to which the UK has not yet opted in, but even in these cases MEPs can observe that the UK seeks actively to influence the decision-making process in Brussels so as to allow the UK to opt in to the measure post-adoption.

8. Although the 2014 opt-out of course does not cover the post-2009 policing and justice measures, it does affect them in the sense that UK influence and political capital is undermined by the knowledge among our partners that the UK may withdraw from a considerable chunk of pre-2009 measures. Indeed, there is considerable misunderstanding of the Protocol and of the Home Secretary’s ‘minded to opt out’ announcement, with some having the impression that the UK intends to pull out, or indeed has already pulled out, of all EU policing and judicial cooperation. This inevitably makes our European partners less likely to engage to create legislation which accommodates the UK and/or the common law.

9. The active involvement of British MEPs in the intensive and complex legislative process in the European Parliament contributes to there being a better understanding of the specificities of the British common law system. When arguments are put in a cogent manner, with support from UK officials and experts, they go down very well and colleagues tend to be flexible in searching for solutions, not least because of the regard in which the UK legal system, judiciary and police are held.

Factors in the opt-out decision

10. The decision on whether to exercise the mass opt-out under Protocol 36, and indeed the decision on the list of measures to seek to opt back in to, must be based on rational analysis of the practical and operation effectiveness of these measures, not on ideological prejudice. It would be unacceptable if the need to keep the UK secure was overridden by political considerations to satisfy Eurosceptics.
11. In a more satisfactory world, the previous government would not have left the present one with the toxic legacy of Protocol 36. It is difficult to discern why they did so. It is worth recalling that all the 130 or so measures that are covered by the Protocol were adopted by unanimity by the Member States, which means that the UK government could have vetoed any one of them. The absence of any veto suggests that texts were satisfactorily negotiated so as not to prejudice any vital national interests. The Home Secretary at the time of the negotiations, Charles Clarke, has acknowledged in evidence to your committee that the Protocol was unnecessary even in political terms, saying:

'I regret that the opt-out in these areas was agreed by the British Government - the Labour Government - at the time. I do not think that the so-called red line on this was necessary either in public opinion terms or in terms of the overall political situation'.

And of course it needs to be recalled that the UK (or any other Member State) could now pull the 'emergency brake' under Articles 82 or 83 of the TFEU if ‘the fundamental aspects of its criminal justice system’ are affected, which is an effective protection.

Mr Clarke went on to say to your committee:

'I believe that co-operation with other European police and security agencies and with other governments in these areas is an absolutely central part of our capacity to police and make secure our country - the national interests of the UK - against the various threats that come from international criminality. To weaken that capacity would be very serious and problematic.'

11. Exercising the Protocol 36 opt-out, at least as an ideological gesture, would compound what seems to have been neither an evidence-based nor even a politically ‘necessary’ decision by the last government to demand the Protocol. All the practical implications must be properly explored before any such decision could be contemplated, and your committee is to be applauded for stepping up to the mark in this respect.

12. One main argument put forward by those advocating an opt-out is that it will ensure the UK is safe from European Commission and EU Court of Justice (CJEU) enforcement powers. This derives from a myth that the Luxembourg Court threatens ‘expansive’ judgments in the area of police and criminal justice. In the Pupino judgement the Court did uphold the legal validity of framework decisions (in the case in point, the framework decision on victims’ rights) and the obligation on the courts of Member States to interpret national law in conformity with them, but this was hardly surprising or shocking.

13. This judgement indeed did not seem to cause consternation in London; in fact the UK has opted in to the new post-Lisbon Directive on victims’ rights in criminal proceedings and was not frightened off by the CJEU jurisdiction that it entails. The fact that the UK has opted in to 8 policing and criminal law measures since the Lisbon treaty came into force suggests that enforcement powers are not a ‘bogey’ for the Ministry of Justice and Home Office. They may well have been reassured by the CJEU ruling in Gueye and Sanchez in September 2011 which, while confirming the obligation to implement a framework decision, made clear this included considerable leeway for Member states to interpret it. This seems to demonstrate a willingness to respect Member States’ criminal law regimes and not ‘over-interpret' EU

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333Judgement of 16 June 2005
334Judgment of 15 September 2011
measures in this field. The fact that the UK is opting in to the vast majority of ‘repeal and replacement’ versions of measures that fall under the mass opt-out, thereby accepting that continuing participation in those measures entails CJEU jurisdiction, seems also to suggest that the Court’s jurisdiction is not in reality a problem for the UK in the JHA area.

14. No evidence has emerged to suggest that the UK runs a substantial risk in practice of infringement proceedings. The UK has a good implementation track record compared to some other EU Member States. It is true that a small number (14) of adopted pre-2009 measures have not been fully implemented by the UK, causing a theoretical possibility of post-2014 infringement proceedings. Some are admittedly caught in a ‘freeze’ of Protocol 36 deliberation and it is unfortunate that they are not implemented (eg those on bail and probation would usefully ease some of the EAW problems, as mentioned below). However others are minor or redundant, while yet others are the subject of revision in Brussels, for example the European Evidence Warrant (EEW) which is set to be superseded by the European Investigation Order (EIO).

15. The European Commission’s workload is too great and its resources too few for it to pursue non-implementation of old decisions or framework decisions. It is far more likely that if the Commission considers a measure to be of importance, but sees that it has been poorly implemented in Member States, it will make efforts to propose a new and more workable Directive or Regulation to replace the old measure. This has indeed been the case with the EEW of which implementation proved very problematic across the EU. As the capacity of the police to gather evidence in criminal cases in foreign jurisdictions is an important one, a new Directive was mooted, and there was no talk of the Commission launching into aggressive infringement proceedings in respect of the EEW. (In the event, the proposal by 8 Member States of the EIO preempted a Commission proposal on this topic).

16. In any case, Commission and CJEU enforcement powers are needed just as much in the JHA area, and are just as valuable to the UK, as they are in fields like the single market, regulatory, environment law etc to ensure full and consistent implementation by all Member States. The CJEU’s fairly recently acquired right to adjudicate over Chapters 2 and 3 of Title V TFEU on border checks, asylum and immigration law as well as civil law has passed largely unremarked in the UK. The possibility for UK judges to ask for preliminary rulings from the CJEU will also offer the UK - through its legal system - an extra opportunity to seek to shape EU law.

17. UK police need to be able to count on smooth and effective cooperation with the rest of Europe and UK citizens need to be able to rely on certain minimum standards when travelling abroad. Therefore, far from being afraid of CJEU powers, it is in the interests of UK policing and of our citizens who might be arrested, extradited or the victim of a crime abroad that they should exist and be used when necessary to ensure fair and responsible behaviour by all 27 states in properly implementing EU rules. The jurisdiction of the CJEU should not be viewed as unacceptable meddling in our legal system, but as an opportunity to ensure that the rule of law triumphs over political backsliding or inept administration in other Member States.

335 See 2 written answers to Lorely Burt MP in July 2012 saying that a total of 14 measures had not been implemented or fully implemented:
http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120703/text/120703w0004.htm#120703137003316
http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120704/text/120704w0001.htm

336 Preliminary rulings permitted since the Lisbon Treaty came into effect (Art 267 TFEU).
Challenges in seeking to exercise the opt-out

18. Proponents of exercising the mass opt-out suggest that the UK has little to lose as it can opt back into the most operationally vital ones as well as into future new proposals. However the prospect of a UK even partial pullout from police and justice instruments and inconsistency of UK cooperation in Europe does not endear us to our EU partners whose patience is already stretched by UK cherry-picking. The Council has in the past turned down closer UK involvement in Frontex as well as participation in the Visa Information System database. Sarah Ludford regularly tables legislative amendments in the European Parliament which seek to ensure a fuller UK participation in operationally important Schengen instruments, but the success of such endeavours depends on the goodwill and cooperation of colleagues from the other Member States and their general belief that 'more UK' is better than 'less UK'.

19. Britain is of course already a non-participant in the major EU projects of the euro and Schengen, has an individual opt-in for justice and home affairs, a special protocol interpreting the charter of rights, and a uniquely protected rebate on the budget. While the reasons for all of these special measures may – to some extent - be understood by other Member States and non-British MEPs, it would be very unfortunate to add to that list a mass opt-out from policing and crime instruments. This could create the perception of disengagement for no good substantive reasons and mean that UK interests carried far less weight in negotiations, including on post-Lisbon JHA measures we do opt in to. One could even ask whether questions could be raised in a future Treaty revision about UK retention of its Advocate-General at the CJEU, or at least the permanent right to one, if it opts out of yet another major area of the Court's jurisdiction?

20. Some commentators have postulated that the UK should be able to participate in some measures post opt-out on some kind of 'voluntary' basis which would not imply CJEU jurisdiction, but the Protocol of course opens no such option. Indeed, the Commission has on the contrary the right to limit the UK's cherry-picking, even of measures that it would fully participate in under normal EU rules, by applying a test of 'coherence' given that many measures are inter-related. Likewise the Council must decide by unanimity on any application from the UK to opt back into measures which build on the Schengen aquis. A block opt-out under Protocol 36 followed by pick-and-choose as to the opt-back-in may be quite difficult even to achieve technically in a way that would be efficient. The EU Home Affairs Commissioner Cecilia Malmstrom was reported recently as saying that 'on each of these opt-ins there will have to be a negotiation and the other member states will have to agree,' adding that it would be complex because 'of these 136 laws, many are very connected'.

21. Therefore the picture painted by some of the UK's ability to choose at will into what measures and how it opts back in simply does not stand up to scrutiny. Professor Steve Peers in particular has explained the labyrinthine and uncertain processes involved in opting back into particular measures, should the block opt-out be exercised. The Westminster

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337 For example Open Europe in Cooperation not Control; the Case for Britain Retaining Democratic Control over EU Crime and Policing Policy by Dominic Raab MP, November 2012
338 Financial Times, Dec 9th 2012
Parliament needs to be fully briefed on the level of certainty of the UK being able to opt back into a certain list of measures prior to it taking a final decision on the opt-out.

22. Westminster will also of course need to be aware of the possibility, even likelihood, of costs falling on the UK, as is permitted under the Protocol, in certain cases of withdrawal or even of withdrawal and later re-entry. One example might be if the UK disconnected from the Schengen Information System as this would have direct measurable costs.

23. The notion that policing relationships between the UK and the rest of the EU could be conducted through 'Memoranda of Understanding' referring perhaps to old Council of Europe Conventions exposes the major disadvantage of withdrawal from EU measures which are precisely designed to cut red tape. For the UK to seek to engage from outside the EU legal framework would inevitably cause legal conflicts and extended procedures which would be not only ineffective but costly. It would be unwise to assume that other EU states could or indeed would simply and quickly revert to any pre-existing arrangements. There could be risky gaps in the capacity of UK law enforcement and judicial authorities to deal with cross-border criminality and indeed for other EU states needing to work with the UK.

24. Some propose that the UK should seek to negotiate a new deal along the lines of Denmark's in 1992\(^339\). While this may not be entirely out of the question, it would require a great deal of legal preparation and negotiation, and would not be in time for the opt-out deadline. In any case it should be borne in mind that the Commission has turned down about half of Danish requests to join EU instruments and there are considerable political forces in Denmark now seeking a UK-style arrangement on police and judicial cooperation with the EU. It would also mean the UK being excluded from its privileged position of being able to take part in Council negotiations even when it has not opted into a certain instrument at the time of proposal. From the European Parliament it can be observed that UK officials find it extremely useful to be in effect involved in negotiations as this ensures detailed oversight of proposed wording in legal instruments and enables coalition-building. It also allows close working with the European Parliament and provides MEPs with an understanding of UK positions.

The European Arrest Warrant

25. This deserves special mention as not only the most important but also the most (in the UK) contentious EU measure in this field. The European Arrest Warrant is not without problems and the European Parliament has been seeking to address these for many years together with NGOs and legal experts. We have pushed for observance of Council and Commission best practice guidelines on how it should be implemented and for flanking measures on defence rights to ensure fair trials and avoidance of unnecessary detention or serving of sentences away from family and friends. In that respect, it is unfortunate that the UK has chosen not yet to implement the framework decisions on bail\(^340\) and probation\(^341\) as these would help not only ameliorate harsh treatment in individual cases but also deflect some of the luridly critical headlines. A legislative amendment of the EAW text could also be an option, although that is not without some risks.

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\(^339\) Protocol 22 to the Lisbon Treaty on the position of Denmark

\(^340\) Framework decision 2009/829/JHA of 23 October 2009, on mutual recognition of decisions on supervision measures as an alternative to provisional detention

\(^341\) Framework Decision 2008/947/JHA of 27 November 2008 on mutual recognition of judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions
26. Some Member States, though not the UK, have opted to allow CJEU preliminary rulings prior to the normal jurisdiction of the Court in 20014. This has resulted in a case on the proportionate and proper use of the EAW being brought before the CJEU from Romania, and an opinion from Advocate General Eleanor Sharpston, which we see as very helpful, has been issued\(^\text{342}\). If the Court follows the AG, this will be a demonstration of how reform is both possible - through the very same CJEU which raises apparent fear of oppression - and happening. It is clear that the UK can do more to influence the way Britons abroad are treated by the law enforcement authorities of other Member States by working within the system than by leaving it.

**Conclusion**

27. It is against the interests of UK security and legally unnecessary to exercise the mass opt-out. UK ability to negotiate satisfactory outcomes on post-Lisbon JHA instruments we wish to participate in will be weakened as we will not be seen to have a continuing and reliable engagement in JHA. There are also likely to be wider political and economic costs through a diminished negotiating hand on other EU matters. If Protocol 36 is triggered, the mass opt-out must in be accompanied by strong efforts to ensure that key measures are opted back into.

19 December 2012

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\(^{342}\) Opinion of 18th October 2012
Northern Ireland Executive –Written evidence

I am grateful for the opportunity to submit evidence to the Committee on the UK’s Opt-out Decision (Protocol 36). My response focuses on question 16 – If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area.

The last decade has seen enhanced co-operation between authorities in Northern Ireland and the Republic of Ireland in the field of criminal justice. In July 2005, the Irish and British Governments signed the Intergovernmental Agreement on Co-operation on Criminal Justice matters. This agreement has provided a framework for effective practical co-operation across a wide range of areas including rehabilitation of offenders, probation, forensic science, support for victims of crime and sex offenders.

The devolution of justice powers has provided a real opportunity to further enhance working relationships between and across the criminal justice agencies on both sides of the border.

There is consequently a close working relationship between my Department and the Irish Department of Justice and Equality. This relationship is crucial given the practical and operational considerations arising from the UK’s only land border.

It is this border that gives rise to distinct issues for my Department to consider in the context of the UK’s 2014 Opt-out decision. For example, operationally there have been significant benefits arising from the European Arrest Warrant. My Department also plans to legislate in the forthcoming Justice Bill to permit the mutual recognition to judgments and probation decisions across EU member states. The mutual recognition of judgments imposing custodial sentences is considered of benefit to Northern Ireland, given our cross-border co-operation with the Republic of Ireland.

I have discussed this matter with Alan Shatter TD, Minister of Justice and Equality, at a recent IGA meeting. He shares my concerns at the potential effects of, in particular, abolishing the use of EAWs by the UK and highlighted that the Republic no longer has in place the legislation that preceded FAWs.

I have been told by the Home Secretary and the Lord Chancellor that in making the final decision the devolution settlements will be taken into account, together with the practical implications of all the options for all parts of the UK. I welcome both the recognition that there may be different operational impacts of an opt out decision for the constituent parts of the UK and the assurance to consult with the devolved administrations before final decisions are made. However, I remain concerned that the potentially very significant effects on Northern Ireland may not be fully recognised in Whitehall. It is vital that the decisions made are those in the best interests of all parts of the UK.

David Ford MLA
Minister of Justice

12 December 2012
Measures subject to the 2014 Decision - 15 October 2012.

This response will focus on the cross border law enforcement provisions in the former Police and Judicial Cooperation in Criminal Matters (PJCCM) measures. It is written from an EU legal academic perspective. The writer is not in a position to discuss the actual use of these provisions by prosecutors or the UK’s law enforcement authorities, or is in a position to comment on administrative costs. In addition it should be noted that this writer is of the view that this is a very important and complex area, and cannot be adequately examined in six pages of text. The writer has recently written a full book on just one aspect of the PJCCM provisions, namely counter-terrorism (from a cross-pillar EU perspective).

The writer is of the view that it would be a mistake to opt out of the existing PJCCM provisions. The writer does not believe that the current situation is perfect. Many of the provisions were written in haste, to deal with particular circumstances on the ground, or originated from different (institutional/ member state) authors. A project bringing coherence and further refinement of the measures, to make them more efficient, effective, and only used in the most serious of circumstances, would be welcome. This however would require all EU member states, and their various government departments and law enforcement agencies to be involved in this review. It is the writers view that the UK should not use it’s opt out, but rather use its leadership role in this area to engage in reform of the legal and practice framework.

The 2014 opt-out decision

1. Should the Government exercise its block opt-out?

No. The EU PJCCM cross border legal provisions have been developed over a long period of time, and are based on cross border law enforcement experience in particular geographic areas of the EU. There has been an argument for a long time that these provisions should be codified, and be available in an easier to use format for law enforcement officials and prosecutors. The split in roles between police, investigating magistrates and prosecutors differs quite widely across the EU. These differences have been reflected in EU legal provisions in this area. The role of the police in the UK is filled by not only police in other EU member states, but also by investigating magistrates. This “translation of concepts” applies, in one context of another, in most EU member states, not just the UK.

The cross border law enforcement provisions are currently difficult enough to find for academic lawyers who have time to do research. They are even less accessible for active law enforcement officers who are engaged in cross border law enforcement operations at, say 3.00 am in the morning, when only Eurojust’s 24/7 on call centre (since the recent reform of Eurojust)343 is available to deal with complex cross border criminal law and evidentiary enquiries. A piecemeal opt back in is going to add complexity to an already complex situation. In any event, any post opt out cross border law enforcement will happen with the UK’s EU neighbours, who will be continuing to use the current provisions, regardless of the

UK’s position on the opt out, and will require UK law enforcement officials to continue to follow the well-trodden path which has been developed for the balance of the EU. It is highly unlikely that our EU partner countries are going to develop new systems and mechanisms just for one EU member state. Many of these provisions also apply to the EFTA states of Norway, Iceland, Switzerland and Lichtenstein. Denmark is increasingly taking a different course from the rest of the EU. This writer is unable to comment on the position of Denmark. No academic research appears to have been published in English on the current position of Denmark.

2. What are the likely financial consequences of exercising the opt-out?
Not known by this writer.

3. What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

Presumably it will be seen as an unnecessary annoyance. In addition the UK will lose what is in effect its leadership role in the area of cross border law enforcement. This is evidenced not only by the UK’s current leadership of both Eurojust and Europol, but also the UK’s “intelligence led policing” model, which was designed by Kent County Constabulary, as the policing model that is to be used in cross border law enforcement operations.

The UK’s current participation in PCJ measures

4. Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

These are practical/practice issues. This writer, as an academic, will not comment on these issues.

5. In her 15 October statement the Home Secretary stated that “… some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

This question cannot be addressed in a 6 page document. In addition a number of provisions, in particular the EU Convention on Mutual Assistance in Criminal Matters 2000, passed pursuant to the PJCCM third pillar, is not listed in the minister’s joint letter of the 15th October 2012. In addition provisions need to be understood in the context of their interaction with international, national provisions as well as pre-Lisbon first and third pillar provisions. Looking at PJCCM provisions in isolation is going to provide a distorted view of reality.

6. How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

This is a question for the Crown Office.

7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

This is a matter for the Home Office and Ministry for Justice to examine, on a case by case basis. Given the complexity of this area, and the interaction with other legal provision of the EU, this will be a lengthy task. In addition a number of the measures may be reflected in classified practice manuals, not available to the general public/academia. State liability for non-implementation of directives is not going to apply to the pre-Lisbon legal tools of common positions, framework decisions, decisions and conventions (international treaties), as provided for in Article 34 EU pre-Lisbon. Framework decisions, decisions and conventions require action by individual member states. None of these documents, however, or the few joint actions which continue to be relevant, which originate from the post-Maastricht version of the EU Treaty (Article K.3.2.(b) EU), have direct effect. Both framework decisions and decisions are binding on the member states. Conventions follow, for the UK, the usual international law dualist approach, requiring “adoption in accordance with their respective constitutional requirements”. Member states are, however, required to implement the laws within the required time limit set by the Council.

8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

The issue of the interaction with common law is irrelevant to the provisions on cross border law enforcement. There are substantially different policing and prosecution structures and laws across the EU. This is respected by the EU. The EU can only, post Lisbon, act on cross border law enforcement provisions in accordance with the provisions of the post-Lisbon Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU). Article 4.1 TEU expressly states that “competences not conferred upon the Union in the Treaties remain with the Member States.” Article 5 TEU post-Lisbon, deals with the principle of conferral. The long standing principle of subsidiarity, which the UK parliament has a role in protecting, will post-Lisbon apply to the PJCCM provisions for the first time, as PJCCM becomes subject to the “main-stream” EU law, and be supranational, rather than intergovernmental. This will happen post the five year phase in period of the Lisbon Treaty.

Further, Article 4.2 TEU which provides that Union will respect member’s “essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State.” This is reinforced by Article 72 TFEU which provides that the EU will “will not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security.” Internal security in this context is understood to mean standard law enforcement functions, drug trafficking, organised crime, etc. It also covers the policing aspects of counter-terrorism. There are framework decisions in place providing standardised base line

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345 Case C-6-9/90; Francovich and Bonifaci v. Italy [1991] ECR I-5537.b.
346 Protocol no 2 on the application of the principles of subsidiarity and proportionality attached to the post-Lisbon TEU and TFEU, Article 6.
347 Pursuant to Protocol (No 36) on Transitional Provisions attached to the post Lisbon TEU and TFEU.
legal frameworks across the EU on both drugs trafficking\textsuperscript{348} and organised crime,\textsuperscript{349} in order to insure that there is a shared basic understanding of what these crimes are across the EU, and thereby facilitate, \textit{inter alia}, cross border law enforcement, prosecution, and the European Arrest Warrant.\textsuperscript{350} Also Article 73 TFEU provides that it is up to individual member states, and therefore not the EU, to deal with any arrangements that they want to enter with regard the coordination of “competent departments of [member state] administrations responsible for safeguarding national security”, such as the UK Secret Service or the Secret Intelligence Service in the UK, thereby respecting individual member states’ national sovereignty.

In addition to the above further differentiation needs to be taken into account post-Lisbon for cross-border law enforcement provisions. A different, ‘special’ legislative procedure is to be used for cross border law enforcement operations,\textsuperscript{351} while the ‘ordinary’ legislative procedure is to be used for other aspects of the AFJ policy area. The ‘ordinary’ legislative procedure is the re-branded co-decision procedure, has a high level of involvement by the European Parliament. The ‘special’ legislative procedure involves the Council acting unanimously, after having consulted the European Parliament. More sovereignty therefore rests with the individual EU Member States under the special legislative procedure, with the Home Office ministers very much in control of developments in this area.

If, given the above very clear red lines do not resolve matters dealing with the shared competence of EU- member state relations then the standard EU wide principle of subsidiarity will apply. This matter is governed by Article 5.3 TEU, which, as with previous versions of the treaties, provides that the “Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

At a Court of Justice level there have been few cases on law enforcement provisions given the three options for accessing the ECJ under Article 35 EU, pre-Lisbon. There have been three cases\textsuperscript{352} when the UK tried to opt back into provisions that it was formally out of, pursuant to its Visas, asylum and immigration Schengen opt out, which continues in the post-Lisbon legal framework. In all three cases the UK was refused admission to what were deemed developments of that part of the Schengen acquis which the UK maintained an opt-out. This was on the basis that there was a block of legislation in a particular area, and the UK was not going to be left back in to bits and pieces of it. There are two important cases worth noting at this point, the \textit{Maria Pupino} case,\textsuperscript{353} which required national laws to be interpreted in a way which was consistent with the provisions of Framework decisions, used to approximate laws in the pre-Lisbon era. Also the key case of the Court of Justice ruling,

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\textsuperscript{351} Treaty on the Functioning of the European Union, Article 89.


\textsuperscript{353} Case C-105/03, Reference for a preliminary ruling from the Tribunale di Firenze (Italy), in criminal proceedings against Maria Pupino, OJ C 193, 06/08/2005 p. 3.
in Grand Chamber in *Kadi* should be noted.354 In that case Advocate General Maduro stated that (para 35 of his opinion) “extraordinary circumstances may justify restrictions on individual freedom that would be unacceptable under normal conditions”, however “where the risks to public security are believed to be extraordinarily high” there is a requirement on the courts to “fulfil their duty to uphold the rule of law with increased vigilance”. This would be a clear indication as to the approach of the Court of Justice in post-Lisbon cross border law enforcement and counter-terrorism provisions. Any further efforts to anticipate how the Court of Justice would rule on a particular case would, at this stage, be guessing.

What is going to be much more problematic to the UK is the use the Court of Justice will make of the post-Lisbon upgrade of the EU Charter of Fundamental rights, despite the UK and Polish opt out of this upgrade. Academic commentary is questioning the potential legal effect of these opt outs, given that the EU Charter was already having an effect on ECJ case law pre-Lisbon when the charter had only a “guidance” effect – the current legal status of the charter vis a vis the UK. However these are concerns with regard to a different UK protocol attached to the post-Lisbon treaty framework, and are not concerning the effect of the use of the option under this protocol.

9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

The European Commission would have the same competence, once EU laws have been passed, in policing and criminal justice, as it always has had in commercial matters. Presumably the same adjustments that were made to ensure compliance with commercial matters will now have to be made in government departments dealing with justice and home affairs matters.

**The potential consequences of exercising the opt-out**

10. The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

The main benefit of the European Arrest Warrant is that it removes politics from the “extradition” process. The UK has encountered a number of problems recently trying to extradite individuals to the US and Jordan. These experiences need to be contrasted with the relatively smooth running of European Arrest Warrant (EAW). Prior to the entry into force of the EAW politics interfered with the operation of extradition requests of suspected terrorists from the Republic of Ireland, and Costa del Sol was known in the UK as Costa del Crime. Large numbers of fugitives from UK justice residing in the south of Spain were returned to the UK using the EAW. In addition, criminals and terrorists know that problems traditionally arise at borders between jurisdictions, and seek to exploit these jurisdictions. Unexpected jurisdictions can assist in matters which would traditionally be seen as bilateral. See for example the news report of a Real IRA conviction in Lithuania.355


11. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

Not known by this writer.

12. Which, if any, PCJ measures should the Government seek to opt back in to?

All those which are currently in force. It is difficult to anticipate what type of crime will turn up next. Even if a provision has never been used in the past, it might be needed in the future. Making cross border law enforcement more difficult could lead to serious operational consequences. Uncertainty and a lack of clarity could be equally damaging.

13. How straightforward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

This is a matter which should be addressed to the other Ministers for Home Affairs/ Justice of the EU, and the Commission. Opting back in is a two way process. The three occasions356 the UK wanted to unilaterally opt back into PJCCM provisions permission was refused, at both the Council and European Court of Justice level.

14. What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

This writer would assume that it will be exactly the same as before, with the UK having less of a say on the further development or amendment of the provisions. In addition there is a risk of the UK’s interests loosing priority vis-à-vis other EU member states, say if it requested the return of a fugitive under an international extradition request, at the same time as that same fugitive was being sought by another EU member state using the EAW. If another EU member state has negotiated a complicated legal and practice framework for working with 26/27 other EU member states, and a number of EFTA states, it is highly unlikely that they would be prepared to design and implement a separate legal and practice framework just for one country.

15. Is Article 276 TFEU, which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

Yes, it should be. The EU, pre Lisbon, was only interested in cross border law enforcement provisions. Post-Lisbon, laws which this UK government have opted into are going to have a much more profound impact on UK law enforcement and prosecution. This writer is specifically referring to the recent directive on the trafficking in human beings,357 which required a profound change in the (internal to the UK) legal framework in the treatment of victims of trafficking. It is understood that these changes reflect what the UK has always

356 See fn. 10 above.
regarded as “best practice”. The recent directive on victims rights\textsuperscript{358} is also likely to have a profound effect. This government has also opted into this provision.

16. If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

Most of the UK/RoI cross border law enforcement provisions are on the basis of traditional bilateral arrangements. The European Arrest Warrant is, however, important in the UK/RoI relationship in this area. This question should be addressed to the RoI authorities.

\textit{19 November 2012}

Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council – Written evidence

Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council – Written evidence

This written evidence is submitted on a personal basis by Jean-Claude Piris, the former Legal Counsel of the European Council and of the EU Council and Director General of the Legal Service of the EU Council (1988-2010), at the request of the Special Committee on the European Union of the House of Lords.

- This written submission does not deal with all questions raised by the Select Committee. It does not either describe the EU measures concerned, their content and effect, all issues on which existing documentation is abundant and sometimes of an excellent quality.

QUESTIONS 1 AND 13

- It seems that the Government has already announced its intention to decide on the block opt-out, and then to try and «opt-back-in» some of the measures in question. In accordance with Protocol 36, the decision to opt out is entirely at the discretion of the British Government, without any need of consent or even of consultation of the other EU member states or of the Commission.

- However, there are two difficulties:

-the first one is that, when deciding in a discretionary manner to opt out or not, the Government will not be allowed to preserve those EU instruments which it might find useful for British interests and security. It will have to decide either an opt-out on all 136 measures on police and criminal law adopted by the EU before the entry into force of the Lisbon Treaty («pre-Lisbon PCJ») or no opt-out at all;

-the second one is that the «opt-back-in» is not a decision which can be taken by the British authorities. The UK can only express a «wish» (article 10, paragraph 5, Protocol 36). The decision(s) will belong, according to the cases, either to the EU Council, deciding unanimously, or to the Commission, which will probably wish to ask for the views of the European Parliament and of the Council. These decisions might be taken on a case-by-case basis, meaning that the British wishes could receive different answers and/or at different times.

1 See Alicia Hinarejos, J.R.Spencer and Steve Peers, CELS Working Paper: «Opting out of EU Criminal law: What is actually involved?», University of Cambridge, September 2012, 80 pages. I would, however, disagree with the legal interpretation given in § 163, page 50, of this Paper of the provisions of Protocol 36. I do not think that Protocol 36 «impose(s) an obligation upon the Commission to permit the UK to join any non-Schengen-related pre-Lisbon policing and criminal law measures it wishes to participate in, unless there is an inextricable link with another measure which the UK does not wish to participate in»). I think there will be no such legal obligation for the Commission: the decision will legally remain at its discretion, while taking into account the elements referred to in Protocol 36 («shall seek to...»).
Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council –
Written evidence

-4 As everybody agrees that some of the measures in question would be helpful and even in
some cases crucial to preserve, if possible without any time gap, in order to help better
protecting the British interests, a decision to opt out would therefore unavoidably be based
on a gamble, ie betting that the Commission and the other EU member states would accept
quickly, and more or less entirely, the wish-list of the UK.

-5 Would such a bet be reasonable?

-6 Protocol 36 provides that both the UK and the EU institutions «shall seek to re-establish
the widest possible measure of participation of the UK in the acquis of the Union in the area of
freedom, security and justice without seriously affecting the practical operability of the various parts
thereof, while respecting their coherence». Moreover, in principle, it will be in the interest of the
other EU member states that the UK opts back in to some of the measures in question. If
the UK wish-list were to be generous, the chances of an affirmative answer will therefore
be theoretically better than if the list were to be very selective, but it would depend on the
concrete measures listed. For example, the Council might be reluctant to accept that the
«Schengen package» (not concerning the control at borders of course) be open for the
United Kingdom.

-7 At the end of the day, the fact will remain that the decision will have to be taken either by
other EU member states or by the Commission. Such a decision will be highly political and will depend on the general political climate of
relations between the UK and other EU countries at the time when the decision will be
made. Nobody can now predict what this climate will be at that time. It might be influenced
by a number of other issues not linked with the matter, such as difficulties in adopting the
EU multi-annual budget, disputes about the first legislation on establishing a Banking Union,
or differences of view about envisaged solutions to solve durably the Eurozone’s problems.

-8 If the political climate is bad, other member states might react negatively to British
requests to opt-back-in, in a manner which they may perceive as «pick-and-choose», ie
aiming mainly or only at the SIS II system, the European police databases and the European
Arrest Warrant.

-9 Therefore, I think that the decision to opt out would unavoidably be a bet. The risk would
be that the UK’s internal security might be a little bit less protected, either for a long period
of time in the case of a (complete or partial) negative answer to one or several of the UK’s
important wishes, or for a shorter period in the case of a delay in obtaining a green light
from the Council or the Commission, at least on some of these wishes.

QUESTION 3

-10 If the Government decided to exercise its right of opting out, this would be adding an
important chapter to the list of issues on which the UK has positions different from those of
the vast majority of the other EU countries. Moreover, this decision would also have a

359 While the decision of the UK to opt out must be notified before a precise date, ie on 1st June 2014 at the latest, there is
no time limit, either for the UK’s notification of its wish-list to opt back in, or for the decisions of the Council and the
Commission on the answers to be given to this list after the 1st December 2014. Also, both the wish-list and the answers
given to it might be taken and notified, either in one single decision, or through a series of successive separate decisions.
Given the procedure to be followed, a time gap between the opt-out and the opt-back-in (which aims at measures «which
have ceased to apply» to the UK) would, in any case, be difficult to avoid.
Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council – Written evidence

potential impact on the internal security of those countries. I think that this will certainly have negative effects on the general political climate mentioned above. Moreover, it might have an accelerating effect on the speed of the eurozone on its way towards closer integration.

QUESTIONS 4 AND 12

-11 All pre-Lisbon PCJ measures were adopted with the positive vote of the British Minister in the EU Council. Therefore, these measures must have been considered, at least at the time of their adoption, as beneficial for the UK and its internal security.

-12 Among others, one of these measures which is important is the 2002 framework-decision on the European Arrest Warrant, the positive effects of which for the UK are undisputed. Other measures which are of a similar importance and which help preserving UK’s internal security are those which permit a better cooperation between the police services of the EU member states, including the so-called «Prüm system» which provide an access to centralised databases of finger-prints, DNA and vehicle registration, as well as the measures on mutual assistance and recognition and the police aspects of the future SIS II.

-13 Another important consequence of a possible opt-out would be that the UK’s representatives, experts and services would not be admitted anymore to participate in such agencies as Europol, Eurojust, Cepol (the European Police Academy, which has presently its seat in the UK) and to benefit from their databases, as well as those of the Customs Information System, the FADO system, ECRIS, etc...

-14 It is a matter of fact that these measures have proven to be helpful and efficient in fighting cross-border criminality and terrorism and in improving law enforcement. I personally think that it would be a loss for the UK not to be able to benefit from them anymore360.

QUESTION 9

-15 If the Government decided not to exercise its right of opting out, the UK will have to check if all necessary domestic measures have been taken in order to respect the commitments it has taken in the past by approving some of the measures in question361. In principle, the UK implements reasonably well its legal obligations; therefore, it should not be a great problem. In case of non or incorrect compliance, the UK might be subject to the enforcement powers conferred in the EU Treaties upon the Court of Justice of the EU.

-16 On the other hand, the same obligations and enforcement powers will be imposed on all other EU countries. Thus, I would expect that all pre-Lisbon PCJ measures will be better respected and implemented in the future, as compared with the past and present situation. As these measures are aimed at combating international criminality and terrorism, this should be a win-win effect for all.

360 However, it is probable that some of these measures will be amended before 1st December 2014. In the case where the UK would opt in the revised new texts at the time of their adoption, these measures will be outside the possible scope of the British opt out and the UK will continue to benefit from them.

361 About a third of the 136 measures in question do not require any national measure of implementation, given their aim of establishing a new european structure or procedure, or being of a practical or administrative nature.
Jean-Claude Piris, former Legal Counsel of the European Council and of the EU Council – Written evidence

-17 This being said, I also think that some minor pre-Lisbon PCJ measures are either obsolete, not well legally drafted, or disregarded by a number of EU countries for different reasons. The Commission should urgently be tasked to review these texts and propose either their abrogation or their revision.

QUESTION 10

-18 The implementation of the 2002 European Arrest Warrant is relatively satisfactory and brings positive effects for the countries involved. Undisputed figures show that the system is much quicker, simpler and cheaper than the previous systems of extradition between EU member states. It is my opinion that for the UK to leave this system would be costly and significantly detrimental to its interests, as the existing Council of Europe’s instrument is much less effective.

-19 This does not mean that some amendments should not be requested, as I think that the texts which have established the European Arrest Warrant could certainly be improved.

QUESTION 11

-20 If the Government decided to exercise its right of opting out, the British law enforcement authorities would lose access to the EU databases centralising data coming from the police services of other European countries, including to the future SIS II (the UK has and is still contributing financially to this important project). This decision would also cut these authorities from the exchange of information with these services, in particular through Europol, Eurojust and the Prüm system.

-21 I do not see any advantage to be expected for the efficiency of the fight against cross-border criminality and terrorism, neither for the UK, nor for the other EU member states.

11 December 2012

362 See the 2011 «Scott Baker Report», quoted in the CELS paper referred to above, at paragraph 97.
The Police Foundation –Written evidence

About the Police Foundation
The Police Foundation is the only independent charity focused entirely on developing people’s knowledge and understanding of policing and challenging the police service and the government to improve policing for the benefit of the public. The Police Foundation acts as a bridge between the public, the police and the government, while being owned by none of them. Founded in 1979 by the late Lord Harris of Greenwich, the Police Foundation has been highly successful in influencing policing policy and practice, through research, policy analysis, training and consultancy.

Introduction
1. Under Protocol 36 to the EU Treaties, as amended by the Lisbon Treaty, the UK is entitled to withdraw from approximately 130 EU policing and criminal justice measures. The Government has until 31 May 2014 to decide whether to continue to be bound by the measures, or whether to use its right to opt out. The right to opt out is exercised en bloc, i.e. all pre-Lisbon measures must be opted out of in one go. Application could then be made to opt back into specific measures.

2. The Home Secretary has announced that the government is currently minded to use its right to opt out of all the pre-Lisbon police and criminal justice measures and then negotiate with the European Commission and other member states to opt back into those individual measures which are judged to be in the national interest. At this stage it is not clear which measures the Home Office would plan to opt back in to, which it would like to opt out of completely, and the reasons for this approach. We can only therefore set out below a brief general response. We hope to be given additional opportunities to present our concerns in response to further consultations on this topic.

Participation in pre-Lisbon policing and criminal justice measures
3. The measures in question include those which have significantly benefitted cross-border policing, including the European Arrest Warrant (EAW), the European Supervision Order, the European Criminal Records Information System, and those laws establishing the EU’s judicial and policing agencies Eurojust and Europol. There is no doubt that there are flaws with some aspects of these measures and the EAW has, in particular, attracted criticism. However the measures represent a package of mutual legal assistance and mutual recognition which together greatly aid policing across Europe, enabling the British police to find and extradite serious criminals hiding in the UK as well as to demand the return of those criminals who have committed offences here and subsequently fled abroad. Indeed, the benefits of the current system are so clear that many of its previous critics are in firm agreement that, despite its problems, opting out could place the British public at serious risk of harm.

4. Much of modern crime is organised, international and cross-border and constitutes a serious threat to the UK, both in terms of financial cost and public safety. According to SOCA’s 2009/10 UK Threat Assessment:

‘…towns and cities all over the UK are affected by organised crime, with areas plagued by drug abuse and associated volume crime; by organised immigration crime, including the

363 http://www.homeoffice.gov.uk/media-centre/speeches/home-sec-eu-justice-statement
exploitation of illegal immigrants in the sex trade and as cheap labour; by violent crime, particularly the availability and use of firearms; by fraud, including the corruption of public officials’.

5. ‘Local to Global’, the Government’s strategy for tackling the cross-border threat of organised crime, consists of three elements:
   • Stemming the opportunities for organised crime to take root;
   • Strengthening enforcement action against organised criminals, including a commitment to tackling criminal finances; and
   • Safeguarding communities and businesses by reducing their vulnerability to victimisation.

We believe that exercising the opt-out, and in particular opting out of measures that relate to cross-border policing, would seriously undermine all three of these aims. Victims, criminals, evidence, and data for investigation and for prevention are located across different European countries as well as more widely. A system of mutual assistance, recognition and support across the EU is therefore vital to ensure that the British police have access to the information and cooperation they need to fight organised crime in the UK efficiently and effectively.

6. In part because of the threat to the UK, Britain has been at the forefront of policing and crime cooperation in Europe, including the creation and part-funding of the ECRIS database and the hosting of the EU Police Training Centre at Bramshill. The Director of Europol is British, as is the former President of Eurojust. The standard of cross-border policing in Europe has improved because of the UK’s efforts and expertise, as well as through British funding. Indeed, ‘Local to Global’ states:

   ‘Internationally, we will seek to enhance cooperation at all levels. This includes the Justice and Home Affairs Committee on internal security that ensures operational cooperation on internal security within the European Union’.

7. The system that the UK has championed, supported and part-funded is a package based on diplomacy and reciprocity; it requires parity to function effectively. There is a real danger that by opting out the UK will be unable to make use of this package and, without the help it provides in identifying and extraditing serious criminals, there is a risk that the UK could potentially become what amounts to a safe haven for cross-border organised crime groups. We therefore have grave misgivings about plans to opt out of the valuable package of mutual assistance currently in place.

8. Our principle concerns arise in relation to the following policing and criminal justice measures:
   • The European Arrest Warrant
   • The European Supervision Order
   • The European Criminal Records Information System
   • Laws establishing the EU’s judicial and policing agencies Eurojust and Europol

The European Arrest Warrant

9. The EAW came into force on 1 January 2004 under the Extradition Act. Prior to the EAW, the UK police had to use a range of complicated bilateral agreements contained in
the 1957 European Convention on Extradition. Under this system it would take months or even years to extradite a foreign suspect. The EAW enables the police to cut across bilateral agreements resulting in a system which is simpler, more efficient, more effective and significantly cheaper. Under the EAW it takes on average approximately 47 days to extradite a foreign suspect. As Commander Allan Gibson, representing the Association of Chief Police Officers (ACPO), noted\(^{364}\) in March 2011 in evidence to the parliamentary Joint Committee on Human Rights:

“When you need to have someone arrested abroad, it is a simpler, faster and more certain process of getting a person before your courts. The police service benefits from that. It is much easier than what went before.”

10. When introducing the Extradition Bill the then Home Office Minister Bob Ainsworth stated:

“British victims of crime, where the suspect has fled overseas, currently have to wait up to a year for that person to be extradited back to the UK to face British justice – causing untold upset and frustration to victims and their families. And it can take anything up to six years to extradite someone back to an EU member state. The Extradition Bill will deliver swifter justice by removing the unnecessary delays and duplication that afflict our archaic and costly extradition laws – contested extradition cases cost the British taxpayer an average of £125,000.”

Since 2002, when Mr Ainsworth made this statement, movement across the EU has greatly increased, indicating that a return to the former system could result in far greater cost to the taxpayer. The UK itself has a high number of foreign criminals within its borders and the EAW is used regularly to extradite them. In 2011, for example, 93% of the individuals surrendered by the UK under the EAW were foreign fugitives hiding in UK. Without an efficient and effective system of extradition, Britain could potentially become a safe haven for these people.

11. There is no doubt that there are problems with the EAW, and its supporters are not blind to these, backing the measure in spite of its flaws. The principal difficulty is that the warrant does not include a test of proportionality. This means that countries can make use of British police resources to track down criminals who have committed even small crimes. Poland, in particular, has attracted criticism for using the EAW in a disproportionate manner and critics have pointed to the resources the police can be obliged to put into finding and extraditing low level criminals. However, as identified by the Metropolitan Police\(^{365}\), opting out of the EAW would be a false economy as every extradition (whether proportionate or not) would cost significantly more under the 1957 system – the Metropolitan Police estimates up to ten times the current amount. The amount of time that everyone involved in each extradition would spend on the case - including the police and the Crown Prosecution Service - would increase, resulting in a slower, more cumbersome and more expensive system. As a study by the Cambridge Centre for European Legal Studies\(^{366}\) identifies:


\(^{365}\) Commander Allan Gibson, Metropolitan Police in interview with the Police Foundation, 21 November 2012

‘The EAW was introduced for reasons of practical necessity: the existing system of extradition had become unacceptably cumbersome, expensive and uncertain for modern conditions.’

In addition, steps have been taken to deal with the problem of disproportionate use. In May 2012 the European Commission stated:

‘Rather than re-opening the successful EAW Framework Decision, the Commission is committed to improving the EAW system through other measures such as procedural rights legislation and guidelines to practitioners. To this end, in relation to minor offences the Commission has stressed that a proportionality test should be applied when an EAW is issued and Member States therefore have been urged by the Commission to take positive steps to ensure that practitioners use the recently-amended EAW handbook as the guideline for the manner in which a proportionality test should be applied.’ Efforts are also being made to provide training for European police, with police exchanges taking place between the UK and other European countries. In oral evidence to the Joint Committee on Human Rights, Detective Superintendent Murray Duffin, representing the Metropolitan Police Service, stated:

‘An awful lot of work has been carried out with the Home Office and the CPS and with ourselves, with various meetings and bilateral arrangements with the Poles to try to introduce some sort of proportionality test. Anecdotally, I would say that those types of requests are reducing.’

12. Despite its flaws, the case for the EAW seems clear. The EAW is viewed as time efficient, effective and simple and the Ministry of Justice has stated that the EAW plays a vital role in the UK’s fight against international and transnational criminality, enabling the UK to extradite over 1,000 fugitives to other EU member states between 2004 and 2009. A number of senior figures in policing and criminal justice have come out in support of the measure, recognising that the loss of the EAW would be a serious blow to European police co-operation and that withdrawing from the EAW would have serious implications for public safety. The recent Scott Baker Review of Britain’s extradition arrangements, requested by the Home Office, found that although the EAW had its flaws (which the review recognised the EU was attempting to remedy):

‘We have concluded that the European arrest warrant has improved the scheme of surrender between Member States of the European Union and that broadly speaking it operates satisfactorily.’

European Supervision Order (ESO)

13. The ESO establishes a system where a person can be released on bail, back to their own place of residence, while awaiting criminal proceedings in another Member State. It was set up following problems identified where suspects were waiting for their trial to begin for a considerable time in a foreign country, spending sometimes months or years pre-trial in prison abroad. The ESO is due to come into force in December 2012 and is one of the measures affected by the opt-out. Britain would therefore no longer be a party to this mutual agreement if the right to opt out under Protocol 36 were exercised.

14. It is widely recognised, even by those who support opting out, that the ESO could solve some of the identified problems in the EAW by allowing a British citizen to be supervised in Britain until a trial is ready to begin abroad. A paper for Open Europe, which supports the opt-out states:

‘The possibility of domestically-supervised bail procedures could help address some of the flaws in the practical operation of the EAW.’

The European Criminal Records Information System (ECRIS)

15. ECRIS is a relatively recent system, having only become operational in April 2012. The UK is currently trialling a pilot of the system, which enables member states to access information from the criminal records database of each individual state.

16. Prior to this system being in place a previous conviction obtained in another country would not be visible to the UK police. As a result, the criminal records of people who had lived in other European countries could not be checked effectively. Thus, for example, someone with a criminal record could move to the UK and take up a position at a school without previous offences showing up on a Criminal Records Bureau check. Furthermore, if a criminal went on to commit an offence in the UK, the UK courts (as they had no access to prior conviction data) treated the person as a first time, rather than repeat, offender. With an increasingly mobile population, this created a significant gap in the criminal records checking system. As Sir Hugh Orde, President of ACPO, has stated:

‘The ability to obtain and coordinate criminal information from across Europe is vital in dealing with modern criminality which increasingly crosses borders and jurisdictions.’

17. The UK was at the forefront of the creation of ECRIS and its supporting systems. The government invested in ECRIS itself and in the UK Central Authority for the Exchange of Criminal Records, as well as part funding a system in ACRO (the criminal records section of ACPO) to improve the electronic exchange of convictions across the EU. The UK has also, with funding assistance from the EU, begun an EU fingerprint exchange system. The technology Britain helped to establish is now in place; however the UK would lose access to the system if it chose to opt out.

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Eurojust and Europol

18. Eurojust is the EU’s judicial cooperation body. Its role is to coordinate national investigations and prosecutions. The number of cases that Eurojust has dealt with has been increasing steadily, from 202 cases referred in 2002 to 1,441 cases in 2011. The UK is a major participant in Eurojust, with the highest number of cases (205) referred in 2009-2010. In a report in 2004, the House of Lords EU Select Committee referred to Eurojust as meeting a ‘real and increasing need for assistance in facilitating the investigation and prosecution of complex cross-border criminal cases’.376

19. Europol is the EU’s law enforcement agency. Its role is to help prevent and combat international crime and it works with EU members to improve cooperation and tackle cross-border cases of human trafficking, smuggling and tax fraud. Britain is plays a leading role in the work of Europol. The agency is currently run by Rob Wainwright, who is British, and the UK Liaison Bureau has the largest proportion of officers of any country represented at Europol headquarters.

Opting in again

20. As stated above, the Home Secretary has suggested that the UK could opt out of all pre-Lisbon measures and then negotiate with the Commission and member states to opt back into selected individual measures. The Home Office has not yet set out which measures it would like to opt out of completely, and which it would want to opt back in to. In theory opting in again could be possible, as long as the European Commission agrees. However, there are risks involved with this approach.

21. There is firstly the danger that the Commission may refuse permission to opt in (although this is unlikely). As the process is one of diplomacy, there is also the possibility that the Commission might attach conditions to the opt-in, such as requiring the UK to join packages of measures. Further, other member states might not be willing to accept any amendments that the UK requests, or might make those amendments conditional upon the acceptance of other Treaty amendments (this could include economic measures). As the Centre for European Reform377 points out;

‘UK officials imagine that Britain’s size and importance mean that it can automatically opt back in to around 50 EU anti-crime measures, including the arrest warrant, once the block opt-out is triggered…this is wrongheaded. The European Commission is likely to attach tough conditions to an attempted partial re-entry, and Britain’s negotiating stock in Brussels is low due to its perceived unhelpfulness during the Eurozone crisis. Countries in the EU’s Schengen area of passport-free travel have previously blocked Britain from joining Frontex, the EU’s border agency, and the so-called VIS, a common database of visa records. Why should they now acquiesce to British cherry-picking in policing and justice?’

22. Given the importance of the EU measures outlined above, it seems almost foolhardy to risk being excluded. Therefore, if the option to opt-out and then opt back into certain measures were to be taken up, diplomatic assurances would need to be sought, prior to opting out, that an opt-in to certain measures would be acceptable.

The European Investigation Order (EIO)

23. This is a post-Lisbon measure and thus will not be caught by the opt-out. As the UK has already opted into this order, Britain will be bound to it even if it chooses to opt out of other measures. The EIO was designed to fit within the broader package of policing and crime measures and gives the police power to order police in other member states to gather and share evidence with them. It is a mutual recognition measure and will be significantly less effective without the EAW, the ESO, ECRIS, Europol and Eurojust.

Conclusion

24. We recognise there are problems with the current package of mutual assistance and mutual recognition measures, and in particular with the EAW. However we believe that, with proper guidance and training, issues such as disproportionality in the use of the EAW could be addressed. Indeed, there is anecdotal evidence that improvement in this area has already begun. In our view the current package of measures is an important component of the work of the police in tackling cross-border crime and we would therefore strongly favour the route of remaining within the current system and working to remedy any current problems. If the Government were instead to decide to opt out, we would strongly advise that negotiations be undertaken to obtain assurances in advance that the UK will be able to opt back in to those measures which are essential, including those that we have identified above.

14 December 2012
Police Service of Northern Ireland –Written evidence

At the outset, it is important to point out that the ACPO position regarding the ‘2014 Decision’ has been set out in a detailed draft paper entitled ‘ACPO Cabinet – Assessing the Impact of a UK Opt-out of EU Third Pillar Criminal Law and Police Measures under the Lisbon Treaty.’ (Dated 18th October).

Whilst we do not see the content of the ACPO Cabinet paper changing in detail from its current form, we remain conscious that it is a draft document and therefore have drawn out the relevant sections to include below rather than attach the paper in its totality.

Having considered this paper in detail, we fully concur with the findings and views expressed by Commander Gibson, MPS in terms of the impact envisaged on policing nationally. It is clear from the paper that key areas of Service Improvement Department business, i.e. The European Arrest Warrant (EAW), Europol, Eurojust, ECRIS (European Criminal Record Information System), Schengen (SISII), are considered as ‘vital’ to policing. (See point 3.2 below). This paper addresses most, if not all the questions posed in the House of Lords document.

3.2 Prioritising the TPMs

3.2.1 Each of the 109 TPMs that relate to law enforcement have been considered in depth and the assessment of relevance to UK policing for each of them is shown at Appendix B.

3.2.2 It is recommended that this assessment be used as a shorthand reference document by ACPO. From a law enforcement perspective, the assessment has categorised the 109 into five different categories as follows:

- TPMs that it is vital that we opt back into – there are 16 of these plus a further 23 that relate to the Schengen Information System (SIS)
- TPMs that we should opt back into - there are 16 of these
- TPMs that we need not opt back into but if we did they would have no practical effect on UK LE - there are 38 of these
- TPMs that are not in the interest of UK law enforcement to opt back into – there are 7 of these
- TPMs that have been replaced by post Lisbon measures or are likely to be before December 2014 - there are 9 of these.

3.2.3 The 16 TPMs identified as vital by the assessment are:

- 1996/610/JHA (Terrorism and related matters)
- 2002/475/JHA (Terrorism and related matters)
- 2002/996/JHA (Terrorism and related matters)
- 2005/671/JHA (Terrorism and related matters)
- 2008/615/JHA (Terrorism and related matters)
- 2008/616/JHA (Terrorism and related matters)
- 2008/919/JHA (Terrorism and related matters)
- 2008/675/JHA (Exchange of criminal records)
- 2009/315/JHA (Exchange of criminal records)
Police Service of Northern Ireland – Written evidence

- 2002/584/JHA (The European Arrest Warrant)
- 2002/465/JHA (Joint Investigation Teams)
- 2009/968/JHA (Eurojust/Europol)
- 2009/934/JHA (Eurojust/Europol)
- 2009/935/JHA (Eurojust/Europol)
- 2009/936/JHA (Eurojust/Europol)
- 2009/948/JHA (Eurojust/Europol).

3.2.4 The addition 23 TPMs that all relate to SIS that we consider vital as well. These are:

- 2000/586/JHA
- 2003/725/JHA
- 2004/849/EC
- 2004/919/EC
- 2005/211/JHA
- 2006/228/JHA
- 2006/229/JHA
- 2006/631/JHA
- 2007/171/EC
- 2007/533/JHA
- 2008/149/JHA
- 2008/173/EC
- 2008/328/EC
- 2008/334/JHA
- 2009/724/JHA
- Convention implementing the Schengen Agreement of 1985
- SCH/Com-ex (96) declaration 6 - Declaration on Extradition and MLA
- SCH/Com-ex (98) 26 def
- SCH/Com-ex (98)52
- SCH/Com-ex (99)11
- SCH/Com-ex (99)6
- SCH/Com-ex (99)7
- SCH/Com-ex (99)8.

The Third Pillar Measures (TPM) fall into three broad categories. Firstly, what can mostly appropriately be described as ‘best practice’ leaving the implementation of the practice to individual states. Secondly, TPMs, which create an obligation on each state to enact domestic laws to create certain offences and penalty types. Thirdly, and most importantly, are the TPMs which confer new powers on states that may only be fully exercisable as long as the state is party to structure and agreements forming part of the measure. e.g. EAWs, mutual assistance measures or Europol. It is this last group that is the most vital as if the UK leaves it we would lose the operational effects and legal powers that go with it.

Ref Question 6, 10 of the House of Lords document re EAWs.

This is dealt with in detail at Point 4.2 of the ACPO paper as set out below.

4.2 European Arrest Warrant

212
4.2.1 The assessment process has confirmed that EAW is the most important of all the TPMs. Unfortunately it is also the one that attracts the most opprobrium.

4.2.2 Most of the stakeholders consulted believe that opting out of this and relying on alternative arrangements would result in fewer extraditions, longer delays, higher costs, more offenders evading justice and increased risk to public safety. That said, extradition did exist before 2004 and so it could operate without it – as it does with non-EU states.

4.2.3 The EAW has been in operation for eight years and has now become a mainstream tool. In the last year prior to the introduction of the EAW (2003), the UK received a total of 114 extradition requests worldwide and surrendered 55 individuals; in the same year the UK made 87 extradition requests to other countries across the globe and 64 people were returned. In 2010/11 the UK received 5,382 EAW requests and made 221 EAW requests to other EU states. The UK surrendered 1,149 individuals (approximately 7% of which were UK nationals, the other 93% being fugitives to the UK). The UK had 93 people surrendered to it.

4.2.4 These trends in extradition reflect the increasing international patterns of crime and offending. Open borders across Europe, free movement of EU citizens, low cost air travel, cheap telecommunications, the internet and the expansion of criminal networks across national boundaries are all contributory factors to the growth in extradition requests. These are irreversible changes which need to be matched by increasing flexibility on the part of European law enforcement and criminal justice agencies.

4.2.5 Further evidence of these changes is to be found in data concerning arrests. Recent data gathered by the MPS in the first quarter of 2012 showed that of 61,939 people arrested in London, 8,089 were nationals from EU countries (13%) and 9,358 were foreign nationals from outside the EU (15%). The presence of fugitives from justice fleeing to the UK is a significant public safety issue. In 2011/12 the MPS received 50 EAWs for homicide, 20 for rape, and 90 for robbery. Each of these cases represents a person who is wanted for a serious crime who fled to the UK. There is strong evidence to show that foreign criminals who come to UK continue to offend when in the UK. There is a real risk that opting out of the EAW and relying on less effective extradition arrangements could have the effect of turning the UK into a ‘safe haven’ for Europe’s criminals.

4.2.6 The EAW is an efficient system, built upon mutual recognition of criminal justice systems between member states and an obligation to comply with a properly constructed warrant. Barriers which previously existed have been removed. The nationality of the person sought can no longer be a barrier to affecting an extradition request. Under the previous arrangements many European states, such as Germany, France and Poland, did not allow their nationals to be extradited to stand trial and required them to be tried in their home state. On this point, it should be noted that some non-EU states still have this rule.

4.2.7 Prior to the introduction of the EAW, extradition between European states where it did occur could, and often would, take many months in uncontested cases and many years in contested cases. EAW data from the Commission to the European Parliament show that across the EU it takes an average of 17 days to surrender a wanted person in cases with consent and 48 days in non-consensual cases.
**Pre-EAW Example**

On 4 November 1995 Rachid Ramda, an Algerian national, was arrested in the UK in connection with a terrorist attack on the Paris transport system. France sought extradition from the UK. The legal process was protracted and it was not until 2005 that his extradition was finally completed. Throughout this time he was detained in British prisons. He was convicted and sentenced in March 2006 to ten years imprisonment.

**Post-EAW Example**

Hussein Osman, a naturalised British citizen born in Ethiopia, was identified as a suspect for the failed bomb attack at Shepherd Bush Tube Station on 21 July 2005. The UK sought his extradition under the relatively new EAW arrangements. His extradition was completed in September 2005. On 9 July 2007 Hussain Osman was found guilty at Woolwich Crown Court of conspiracy to murder and sentenced to a minimum of 40 years imprisonment.

**Part 2 Example**

Contrast these with Abu Hamza. Fourteen years after his arrest on behalf of the USA (under legal conditions largely identical to the 1957 Treaty) he was finally extradited to the USA to face terrorism charges there.

4.2.8 These are not isolated examples – similar ones are legion. See Appendix C for further examples of non-terrorism cases.

4.2.9 The EAW is not a perfect system and ACPO’s position has been to support proposals for change in relation to a proportionality clause to prevent member states seeking the extradition of individuals in relatively trivial cases. On the question of a British nationals being detained for long periods in European prisons (e.g. the Andrew Symeou case, detained in Greece for 2 years in connection with a manslaughter allegation and ultimately acquitted), ACPO has supported proposals to affect change such as the introduction of the European Supervision Order, which itself is one of the TPMs covered by the 2014 decision. This TPM requires member states to create a mechanism by which their criminal justice systems can supervise each other’s suspects in their home countries whilst released on bail. Member states are required to implement this TPM by 1st December 2012. The UK is not on course to do so. ACPO’s position has been that it would like to see improvements to the EAW system but these can be best achieved by remaining part of it and lobbying for change. Overall the benefits of the EAW to the UK greatly exceed the problems that are experienced in a small number of cases.

4.2.10 The EAW is a cost-efficient system for a number of reasons. Firstly, it is a standardised system that is relatively simple and easy to operate. It has removed the previous complexity that arose from having to understand different bilateral arrangements. This has led to EAW work becoming mainstream, capable of being dealt with by non-specialist police officers and lawyers. Processes are quicker and move through the courts with less difficulty. This reduces the cost of having to detain suspects for extended periods in UK prisons at British taxpayers expense. In contrast, extradition to Part II countries under the Extradition Act
2003 continues to be complex, expensive and slow as was evident in the recent Abu Hamza extradition to the United States.

4.2.11 Added to all of this is the cost to the public purse. If we relied upon a 1957-type mechanism (see paragraph 4.2.15 post) then we would be committing ourselves to footing the legal bill for extradition processes that go on for years and cost hundreds of thousands of pounds. The public and the judiciary are frustrated that the extradition of terrorists is often delayed for years. A return to the 1957 process could make this long drawn out process the norm. That may not have been such a problem twenty or thirty years ago when criminals rarely crossed borders. Nowadays it is routine.

4.2.12 It is not just foreign criminals who would sit for years in UK jails. UK court cases would stall for many years as we waited to get our fugitives back, robbing their victims of the chance for justice to be served. To expect witnesses to wait many years before a suspect could be returned to the UK to face trial would be a gigantic step backwards.

4.2.13 Lastly, but by no means least there is the benefit to public safety in the UK. Where there are foreign criminals in the UK who are wanted abroad, we want to extradite them as soon as possible; a burglar in France is a burglar in England: the EAW allows us to do this. Without it, we would not only have them on our soil for longer but the UK is likely to be seen as a safe haven for EU criminals, much as Spain used to be for British fugitives.

4.2.14 The view therefore of LE is simple. The EAW works very effectively and increases the safety of the UK public. It is for this reason that UK LE strongly supports the EAW.

Alternatives to the EAW?

4.2.15 Prior to the implementation of the EAW in 2004, extradition across Europe was built upon the 1957 Council of Europe Extradition Convention and bilaterally negotiated arrangements between individual states. Following the Framework Decision that gave birth to the EAW (FD 2002//584/JHA) it was implemented in UK law through Part I of the Extradition Act 2003. That act would remain on the statute books. Some commentators have argued the UK could continue to deal with extradition requests from EU states (‘Part I countries’) on the same basis as before if the UK opted out.

4.2.16 The assessment team have concluded that it is not certain that the 1957 Convention and the Extradition Act 2003 can be relied upon to give a workable system. They observe that Article 31 of the EAW measure (2002//584/JHA) states the following:

“Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States [which includes the Extradition Treaty of 1957]”

4.2.17 The 1957 Treaty ultimately brought into force the Extradition Act 1989 – an act that was repealed by the 2003 Act. The reasons for these two Acts were that international treaties have no force in domestic law unless they are enacted domestically. For example the Human Rights Act came into force in 1998. It brought into UK law the European Convention on Human Rights that was signed by the UK in 1950. However until 2000
(when the 1998 Act came into being) it did not have legal force in the UK. In the same way, although the 1957 Treaty may still exist as a treaty, its presence in UK law was only brought in by the Extradition Act 1989. As soon as the Extradition Act 2003 repealed the 1989 Act, the 1957 Treaty ceased to have a presence in UK domestic law. It may well still exist as an entity, but may require a new act of Parliament to bring it back into domestic law.

4.2.18 Whether any system after a UK opt out of the EAW could work would also depend on how the EAW was incorporated into domestic law in the member states. Unlike the UK, some states explicitly refer to the EAW Framework Decision (2002/584/JHA) in their domestic legislation. In consequence, it is likely that those countries would not be able to send EAWs to the UK or execute UK EAWs. Solutions to this could be found, for example by treating them as ‘Part II’ countries under the Extradition Act 2003 like non-EAW countries. However, such a course of action is likely to have unintended consequences, i.e. those countries no longer being willing to extradite their nationals to stand trial in the UK (as was the case before the EAW).

4.2.19 The conclusion of the assessment team is that extradition to and from EU states could continue to work should the UK opt out and not back into the EAW TPM. However, it is judged that from a law enforcement perspective and public safety perspective this would create a fallback system that was substantially less effective and efficient than the current EAW system.

4.2.20 Finally the entire legal basis behind such a fallback position is at best questionable; any alternative system would be more complex, less effective, more expensive, slower and may require extensive treaty negotiations with every other EU state.

Correcting Erroneous Understandings

4.2.21 One of the arguments being put forward for the UK opting out of the EAW is that to do so would mean that in future EU states that wanted the UK to extradite a suspect to them would have to produce a prima facie case to our courts. This is simply untrue.

4.2.22 This requirement was abolished by the 1957 Council of Europe Convention on Extradition. Article 12 of the 1957 Treaty requires that when extradition is sought, the requesting state only provides:

“A statement of the offences for which extradition is requested, the time and place of their commission, their legal descriptions and a reference to the relevant legal provisions shall be set out as accurately as possible”

4.2.23 Any remnants of the requirement for a prima facie case to be shown were removed by section 9(4) of the Extradition Act 1989. Opting out of the EAW would therefore have no effect in this regard unless the UK also withdrew from the 1957 Convention.

4.2.24 Misunderstanding about what having to present a prima facie case means also exists. A prima facie request (i.e. those provided by Part II (non-EAW) evidence countries) does not require the case to be proven in a court in the UK. The term means that the requesting state provides evidence, which if believed, may lead to a conviction. It does not in itself test
the evidence. Such a condition has never existed because if it did, every request would be a trial in the UK.

We would wish to add the following comment to the above from a Northern Ireland perspective.

Since 2004, the Police Service of Northern Ireland (PSNI) has received around 265 European Arrest Warrant (EAWs) for action in Northern Ireland and transmitted around 50 EAW’s for action outside the UK Jurisdiction, around 30 of which have been transmitted to the Republic of Ireland.

In general terms, the EAW process has proven to be an effective mechanism for ensuring the administration of justice across EU jurisdiction. For PSNI, there are considerable cost implications in terms of arrests, case management at court and the transfer of subjects to London following an extradition ruling for hand over to the requesting county. That said any similar action required outside the current EAW arrangements to secure extradition would attract comparative costs.

Should the Government opt out of EAW arrangements then the UK would move from the status of a ‘Category 1’ country to become a ‘Category 2’ country and all requests to the UK will become ‘Part 2’ requests.

In practical terms, we envisage that for police services it will mean that extradition process time will increase as each case will be bound by existing treaty requirements as country to country requests and would lose the streamline effect of the European Framework - EAW process. Under any new arrangements we are assuming that the Home Office would remain as the lead agency on ‘Part 2’ requests whereas SOCA is the current lead on ‘Part 1’ EAW requests. We envisage the Home Office would pass case papers seeking the extradition of a subject from Northern Ireland to the Northern Ireland Courts & Tribunal Service (NICTS). Following review of the papers, an appropriate judge in Northern Ireland would decide if a warrant of arrest should be issued. This warrant would be passed to PSNI for subsequent action. During the extradition process the requested person would have an opportunity to challenge all evidence against them, so in theory, foreign officers/officials could be called to Belfast to give evidence in the hearing process, this may well prove to be an additional burden to PSNI to manage witnesses in such a process.

Requests out seeking extradition will be governed by existing treaty legislation on a country by country basis, as we understand it there are long existing treaties with all European countries. Requests for extradition from the UK post the Opt out would place us in the same position as that currently operated by Norway or Switzerland.

The process out will mean that evidence will be taken by way of deposition. A file of evidence will be forwarded with an extradition request to the Home Office and if the request is acceded to the Secretary of State will make a country to country request for extradition as permitted under existing treaty arrangements between the UK and the requested country.

As evidence may be challenged under this type of extradition process, it is possible that PSNI officers could be called to the requested country to give evidence in the extradition process; this would be an additional burden of cost above the current process.
Where circumstances dictate, the EAW process currently operated in Northern Ireland allows for the streamline issue of an EAW within a short period in order to have a person returned to this jurisdiction to stand trial or serve a sentence. There are excellent examples of this in practice between the UK and the Republic of Ireland, for example to secure the arrest of a person unlawfully at large who is considered to pose a risk of serious harm to the public or in child protection cases. The recent return of a male teacher from France following the alleged abduction of a 15 year old girl in England is a further example of the effective operation of the EAW process. Under ‘Category 2’ arrangements, I fear the flexibility to respond quickly to emerging circumstances would be lost by the UK.

We agree with the views of the Home Secretary that the current EAW process is in need of some reform. The disproportionate use of the EAW for trivial offences by some Member States is an issue, however in our experience the scale of this particular problem has reduced in recent years with the vast majority of warrants being received relating to more serious criminality.

In conclusion, extradition could continue to work between EU states in the absence of the EAW arrangements should an opt-out occur. In addition to what has been stated above, ACPO raise a further important issue at point 4.2.17 above, regarding the repeal of the Extradition Act 1989 and possible requirement a new act of parliament should an opt out of the EAW process occur.

The PSNI view is keeping with that of ACPO, that such an arrangement would create a system that was substantially less effective and efficient than the current EAW system and would not best serve public protection arrangements in the UK.

**Re Question 16 of House of Lords document re implications for the Republic of Ireland**

The PSNI is unique in a UK context as it is the only UK police service bordering another EU member state. On that basis alone, one must fully consider the potential impact of an opt out on operational policing practices and mutual cooperation developed over years with the Republic of Ireland, in particular EAWs, Mutual Assistance and counter-terrorism arrangements. Given our shared history, and the persistence of terrorist activity on both sides of the border, TPMs relating to ‘terrorism and related matters’ are considered vital and particularly relevant to Northern Ireland. See ‘Counter-Terrorism’ Section below.

We understand that at a recent cross-border meeting of senior police and government colleagues from both jurisdictions, there was concern raised by colleagues from the Republic of Ireland regarding the proposed opt-out and the potential impact on UK / ROI cooperation arrangements.

**EU Exchange of Criminal Records**

At point 4.7 of the ACPO paper below – the benefits are very clearly outlined. This is a powerful public protection tool and without it, PSNI would be relying on formal Mutual Legal Assistance arrangements to obtain similar information. Outside the Metropolitan Police, PSNI are one of the highest users of this Service, averaging around 700 requests per year in the last three years.
In financial terms there has been considerable investment by government in developing the ECRIS application.

4.7 The Exchange of Criminal Records

4.7.1 Two TPMs deal with the exchange and use of criminal records within criminal justice systems of member states – 2008/675/JHA and

4.7.2 2009/315/JHA. These measures seek to ensure that a conviction in one state is given the same weight in all. So for instance if a person from Poland is convicted of burglary in the UK and it is discovered that he has 12 convictions across the EU for burglary, the UK courts must treat these 12 convictions as they would for UK matters when it comes to bad character and sentencing.

4.7.3 In addition, they provide a mechanism by which these convictions can be quickly obtained. Since this came into force in the UK as a result of the Coroners and Justice Act 2009, progress has been swift. At the inception, the International Assistance Unit (IAU) of the MPS conducted three pilots into the effectiveness of this new measure.

4.7.4 The result of these pilots have been widely circulated in both the UK and the EU and generally show that in London, around 35% of foreign nationals have convictions abroad and around 8% are wanted in their home countries. These wanted suspects are not on EAWs simply because the state that wants them did not know that they were in England. It is solely by confirming their identification, through a criminal records request, that their offending history is established. It therefore allows the removal of dangerous criminals from the UK who were otherwise free to remain at large.

4.7.5 This has huge ramifications for policing in the UK in terms of bail, charging decisions, public safety, extradition, the trial, sentencing and deportation. The importance cannot be overstated. The MPS have championed this process for over two years now and the ACPO Criminal Records Office (ACRO) has made great progress.

4.7.6 Two years ago when these measures came into force, the results took around a week to obtain. Although not ideal this was a vast improvement over the many, many months it used to take. However, with more and more countries now coming on-line with this system, the results – while not yet instant – can certainly be obtained from some countries within a few hours. Easily quick enough to greatly assist while the suspect is under arrest for other matters.

4.7.7 Under the Framework Decision, member states that convict non-nationals must send information of the conviction to the home member state of the convicted person. This process is known as ‘notification’. All notified convictions of UK nationals are recorded on the Police National Computer (PNC).

4.7.8 In addition, member states must, upon request from another member state, provide up-to-date information on the convictions of one of its nationals. This process is known as ‘request’ and it is the means by which the UK obtains antecedent information about foreign
nations being investigated or prosecuted on these shores. Any offences that present a serious risk to the UK public will be recorded on the PNC.

4.7.9 The exchange of criminal antecedent information is a critical part of ensuring justice is done and that the public are protected from harmful people. Prior to this TPM, EU nationals were treated as if they were of good character by our courts absent information to the contrary. Such information is used in determining whether to grant court bail, for determining mode of trial, for bad character evidence during trial and for sentencing. Exchanging information in this way also stops criminals moving from one jurisdiction to another simply to prevent their pasts catching up with them. The information is also made available to multi-agency protective panels, charged with the responsibility of managing the risks to communities presented by sexual and dangerous offenders. The information is also used for child protection, firearms licensing and employment vetting. Lastly, the information is made available to the UK Border Agency to facilitate decision making as to whether a person should remain in the UK or be allowed to re-enter.

4.7.10 Given the very clear benefits to the UK, the assessment team could identify no reasons why it would be in the interests of the UK to opt out of this TPM and in fact it was deemed a vital measure to opt back into given the huge benefit to public protection.

4.7.11 Some case studies of the benefits of being part of the measure are given below:

**Romanian predatory rapist convicted using foreign convictions as bad character evidence**

A Romanian national ‘A’, was arrested in the UK on suspicion of raping a prostitute and a vulnerable female adult in London. A request for conviction data identified that he had a previous conviction for rape of a vulnerable adult in Romania.

Application to use the previous conviction as bad character evidence was made by the prosecuting counsel and was granted by the judge. ‘A’ was convicted of 4 counts of rape, 1 count of false imprisonment, 2 counts of assault by penetration and 1 count of actual bodily harm. An indeterminate prison sentence was imposed with a recommendation that he serve at least 11 years.

The prosecuting counsel was firmly of the view that ‘A’ would have been acquitted but for bad character evidence given the extreme vulnerability of the victims as witnesses.

**The Jasionis Brothers**

In 2010, two brothers were circulated on PNC as being wasted for a gang rape. They were eventually located and arrested. As part of the case, their fingerprints and DNA were sent to Lithuania so that their identities could be checked under the provisions of the relevant TPM. Prior to the trial, Lithuania confirmed that brother one had a conviction for murder. Brother two was wanted in Lithuania for another rape but not on an EAW as they did not know that he was in the UK. As a result of this, an urgent EAW was generated. The previous conviction for murder (due to the MO) was instrumental in convicting brother one of the gang rape. Brother two was acquitted but immediately arrested on the EAW. He was
swiftly extradited to Lithuania (within a matter of weeks) and has since been convicted and sentenced to rape in Lithuania, thus removing a dangerous offender from the UK. Although it was the EAW that removed him, it was another TPM that allowed the identification to take place in the first instance.

**UKBA deport EU nationals with serious offending history**

Since April 2010 the UK Central Authority for the Exchange of Criminal Records (UKCA-ECR) has been sharing serious foreign conviction information with UKBA of EU nationals subject to criminal proceedings in the UK for minor offences. The UKBA are deporting EU nationals who are identified as posing the highest risk to the UK and putting in place measures to refuse them re-entry.

**UK national ViSOR subjects identified following conviction information exchange**

Since 2006 the UKCA-ECR has received in excess of 500 notifications of UK nationals convicted in other EU states of sexual offences, many of which fulfil the requirements of sex offender registration under the Sexual Offences Act 2003. These persons are now being managed within the sex offender management system to protect the British public.

### Counter-Terrorism

This remains a vital area of business with particular resonance for the Police Service of Northern Ireland. Whilst terrorism is a global issue, there remains a severe threat posed by republican dissident groups in Northern Ireland. This was recently highlighted by the murder of David Black on his way to work at Maghaberry Prison and numerous attacks on security forces.

Point 4.8 below outlines the ACPO position on the subject of Counter-terrorism which is supported by PSNI colleagues.

#### 4.8 Counter-Terrorism


4.8.2 2008/615/JHA and 2008/616/JHA are known as the Prüm decisions and specifically deal with the fast track exchange of DNA, fingerprint and vehicle data with a view to combating terrorism and serious organised crime. It sits side by side with SIS.

4.8.3 The rest of these can be handled as one issue. Despite the best intentions of every western government, the abatement of European terrorism has unfortunately coincided with the rise of Islamist terrorism.

This is not likely to disappear any time soon and with countries in the Middle East and Africa suffering unrest, the threat continues to be very real and changing in the methods, bases of operations and entities involved.
Any failure by one state to co-operate fully with the EU and the rest of the world could hinder the joint response to such investigations. Measures that foster greater co-operation between EU states is vital – especially given the juxtaposition of some EU states (Turkey for instance) with countries of particular concern.

For these (brief) reasons, it is the view of LE that the seven TPMs that seek to foster greater co-operation between member states on CT matters must be maintained.

Joint Investigation Teams

Although not used extensively, PSNI has, and continues to utilise these legal arrangements to good affect in order to enhance cross border investigation of serious and organised crime. Point 4.9 of the ACPO paper addresses this issue and is in keeping with the PSNI position regarding the vital nature of this cooperation.

Joint Investigation Teams (JIT)

JITs are covered by Council Decision 2002/465/JHA. Historically these have not been extensively used by UK law enforcement. The reason for this seems to be nothing more than a lack of knowledge around their use. This is changing though as more and more police units discover the benefits of them.

JITs are legal agreements between two or more states whereby a cross border crime is investigated. They are designed to speed up the investigation and reduce bureaucracy and they are very successful at doing this.

What the JIT does is set up an agreement between the states whereby each country investigates the crime in their own country by using their own domestic powers without having to resort to letters of request. For example, consider a murder investigation JIT between England, Germany and France. If the SIO in England decides that he needs some banking evidence from France and a search to be conducted in Germany, he simply picks up the phone to his counterparts in those countries who have signed the JIT and they go and do it: no letters of requests, no unnecessary delays. The benefits for speedy investigations are immediately obvious to anyone who has had to deal with letters of requests. Decisions around prosecution can easily be made so that suspects can be indicted in the most suitable jurisdiction to ensure that court time is most effectively utilised and uses a single court process instead of many.

JITs can be used for just about any crime. Currently these enquiries are used mostly by murder teams and police units dealing with human smuggling although they can be used to great effect on lesser crimes such as internet frauds.

Operation Veerde

Operation Veerde was a JIT with the Czech Republic and Eurojust. It was an investigation into human trafficking, prostitution and rape of females brought to the UK by an OCN. 33 victims were located in the Czech Republic. A JIT was agreed so that the UK and Czech police could gather evidence using domestic laws quickly. 9 suspects were indicted in England on behalf of both states. All nine were convicted.
of trafficking offences and sent to prison.

**Operation Romabank**

Current ongoing operation with Poland. 485 victims have been located in Poland and the UK with 47 suspects located across Europe. As a result of the bilateral, although the cases could be prosecuted all over the EU, Poland have taken primacy and charged and prosecuted all 47 suspects saving a huge cost all over the EU.

**Operation Golf**

This is a long term JIT between the Metropolitan Police, the Romanian National Police and Europol. One part of the operation was to tackle a Romanian gang that was trafficking children into the UK and it has so far resulted in the arrest of 126 suspects for a wide range of offences. These offences have included human trafficking, benefit fraud, theft, money laundering and child neglect offences.

**Schengen SISII**

There are clear benefits to policing and public protection here. As outlined at point 4.3.5 of the ACPO paper, ‘…for the first time it will provide UK law enforcement agencies with real time access to information (via SISII alerts). The UK will also have the ability to place alerts on the system, extending the reach of UK law enforcement into Europe in a far more practical and immediate way that has ever been possible before.’

Key strategic benefits include:

- reduced criminality, particularly as a result of the ability to screen for wanted criminals at borders
- greater identity assurance,
- enhanced public and officer protection
- improved judicial and police cooperation across the Schengen area

There has been an enormous investment by government in preparing for Schengen, an investment which would be wasted if a decision is make to opt out of this measure.

**Europol / Eurojust**

We concur with the ACPO paper as set out at point 4.10/4.11/4.12 below. We would agree that these bodies are under utilised by UK Policing however this is changing in our experience and providing strong benefit to cross jurisdictional serious and organised crime investigations.

4.10  **Eurojust and Europol**

4.10.1 In total, there are five TPMs (2009/968/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/948/JHA) that are concerned with membership of Eurojust or Europol. Considerations of these TPMs are not straightforward, but fortunately we do not need to consider them in too much detail.
4.11 **Eurojust**

4.11.1 Membership of these organisations is a pre-requisite for certain other measures. One of these is the JIT. JITs were designed by Eurojust (and Europol) pursuant to Article 13 of the 2000 EU Convention on Mutual Legal Assistance; it is a measure that we consider it vital we opt back into. In theory, we do not have to be a member of Eurojust to form a JIT but Eurojust control the funding for JITs. One of the many benefits of the JIT system is that Eurojust can (and normally do) provide significant funds to run the JIT. This money includes equipment, travel, outside resources and the like.

4.11.2 As such, although membership of Eurojust is not necessary to use the JIT process, without it the process would move from being free to UK law enforcement to becoming expensive and unworkable.

4.11.3 For these reasons it is considered that we remain within Eurojust.

4.12 **Europol**

4.12.1 Europol performs many functions such as the exchange of intelligence between police, customs and security services. From 2013, they will also host the European Cybercrime Centre – EC3. This will lead on cybercrime co-operation and will be the first attempt at a joined up approach in this difficult area. The remit is to provide a response not only against criminal cybercrimes but also cyber-attacks by terrorists and foreign intelligence agencies.

4.12.2 In addition, Europol are integral parts of SIS (see para 5.3 post). This is a measure that the UK (and the rest of the EU) have invested considerable time and money in and to fully utilise it, we need to be a member of Europol.

4.12.3 Although other parts of Europol are underused by the UK (Europol analyst files for instance), these are growing and provide a strong benefit to international criminal investigations.

4.12.4 As a final point, both of these organisations are generally a force for good in terms of public safety and for combating crime. Crime gets more and more international with each passing year, making it harder and harder for countries to act in isolation. In the rest of the world, such matters are dealt with under a raft of bilateral and multilateral treaties that are more complicated than the EU agreements. Most of our international crime and transient criminals come from Europe and membership of these organisations makes it far easier to target them. Removing ourselves from these measures and putting ourselves in the position of having to re-negotiate 26 treaties on each and every topic, would be a massive step back for law enforcement that would benefit no one. The Heads of Europol and Eurojust are provided by the UK.

In conclusion and as a very useful reference on the ACPO position as included in the draft paper, I have included ‘Appendix B’ with this paper.

11 December 2012
Appendix B

TPMs that UK LE consider it vital to opt back into

1. 1996/610/JHA - Creation and maintenance of a Directory of specialized counter-terrorist competences. This measure was proposed by the UK and we started it. It creates what is termed the directory which is a central repository of specialist knowledge that each member state has in any given area of terrorism. The ratio for the directory is that if a member state needs assistance in a particular area of counter terrorism then they may seek the assistance of the member state with the requisite knowledge. Governance of the Directory rotates around the members states on a year by year basis.

2. 2002/465/JHA - Joint investigation teams (JITs). This provision is extremely useful for large scale multinational investigations in terms of exchanging evidence and using domestic powers to gather evidence as opposed to MLATs. The use of JITs is growing and it is unusual in that it actually works well and reduces red tape to almost zero. This is one of the measures (along with the EAW) that we would seek to retain above all others.

3. 2002/475/JHA - Combating terrorism. This Decision creates standardisation across the EU in a number of CT areas. The first is that it creates certain offences of terrorism in each and every EU state. This is important when states wish to apply emergency measures seeking the assistance of other states or where the EAW or EIO is used. It also sets up the concept of proscribing terrorist organisations. Again, a vital standard when it comes to dealing with groups existing in one jurisdiction while operating in another. The Decision then makes further agreements around sentencing, jurisdiction and the standing of victims. All of these areas should be standard across the entire EU to ensure the smooth application of other measures. Given the global nature of CT matters, it would be a mistake to remove ourselves from any function that assists in this area.

4. 2002/584/JHA - European arrest warrant and the surrender procedures between Member States. This is an extremely effective LE measure and to remove it would represent a huge step backwards. Further, if the UK sought to remove itself from the TPMs en masse to reclaim powers back from Brussels, the real effect would be that we would in all likelihood lose the special considerations that we have with the UK EAW now and so the act of leaving the TPMs would be to introduce more EU control on us, not less. See the main report for much more detail on the EAW

5. 2002/996/JHA - Establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism. This establishes a working group EU wide for the oversight of the way that CT matters are developed and to monitor expertise in various areas. Given the global nature of CT matters, it would be a mistake to remove ourselves from this group.

6. 2005/671/JHA - The exchange of information and cooperation concerning terrorist offences. This Decision concerns with further terrorism definitions, matters around jurisdiction, MLA requests and the use of JITs in CT matters. Given
the global nature of CT matters, it would be a mistake to remove ourselves from any function that assists in this area.

7. **2008/615/JHA - Stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.** Decision is to do with the exchange of information, most notably DNA data. Given the global nature of CT matters, it would be a mistake to remove ourselves from any function that assists in this area.

8. **2008/616/JHA - The implementation of Council Decision 2008/615/JHA on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.** This Decision set up the mechanisms by which Decision 2008/615/JHA would operate. Given the global nature of CT matters, it would be a mistake to remove ourselves from any function that assists in this area.

9. **2008/675/JHA - Taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.** Even though this it is already part of UK law it completely relies upon other states being able to pass this information to us outside of the MLA process. If we were no longer part of it, it may make the obtaining of conviction data very long winded taking the CJ system back many years and running the risk of serial offenders not being identified. See the main report for more details on this measure.

10. **2009/315/JHA - The organisation and content of the exchange of information extracted from the criminal record between Member States.** This is an extremely important provision. Without it we would rely on MLATs (EIos when they come in) to obtain criminal conviction records. See the main report for more detail on this subject.

11. **2009/919/JHA - Amending Framework Decision 2002/475/JHA on combating terrorism.** This Decision only amends small parts of 2002/475/JHA so see above for details on the Decision. Given the global nature of CT matters, it would be a mistake to remove ourselves from any function that assists in this area.

12. **2009/968/JHA - Adopting the rules on the confidentiality of Europol information.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and E3C. See the main report for more information.

13. **2009/934/JHA - Adopting the implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and E3C. See the main report for more information.

14. **2009/935/JHA - Determining the list of third countries with which Europol shall conclude agreements.** Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and E3C. See the main report for more information.
15. **2009/936/JHA** - Adopting the implementing rules for Europol analysis work files. Irrespective of this measure, membership of Europol is needed for a number of areas such as JITs, SIS and E3C. See the main report for more information.

16. **2009/948/JHA** - Prevention and settlement of conflicts of exercise of jurisdiction in criminal matters. This role is filled by Eurojust which the UK uses sparingly. That said, membership of Europol is needed for a number of areas such as JITs, SIS and E3C. See the main report for more information.

**The additional SIS TPMs that UK LE consider it vital to opt back into**

1. **2000/586/JHA** - Establishing a procedure for amending Articles 40(4) and (5), 41(7) and 65((2) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders. There is a large volume of ongoing work in this area that is being dealt with a multi-agency SIS2 unit within the Home Office (which includes police officer experts). Although the UK is not as signed up to this measure as the rest of mainland Europe are, membership of SIS2 is deemed vital to the national interest and so LE would seek to retain this measure.

2. **2003/725/JHA** - Amending the provisions of Article 40(1) and (7) of the Convention implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders. See **2000/586/JHA ante**.

3. **2004/849/EC** - On the signing, on behalf of the European Union, and on the provisional application of certain provisions of the Agreement between the European Union, the European Community and the Swiss Confederation concerning the Swiss Confederation's association with the implementation, application and development of the Schengen Acquis. See **2000/586/JHA ante**.

4. **2004/919/EC** - Tackling vehicle crime with cross-border implications. This is integral to SIS2 and is a growing problem across the EU from which the UK is by no means immune. It is important that we are a part of this measure.

5. **2005/211/JHA** - Concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism. See **2000/586/JHA ante**.

6. **2006/228/JHA** - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism. See **2000/586/JHA ante**.

7. **2006/229/JHA** - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism. See **2000/586/JHA ante**.
8. 2006/631/JHA - Fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism. See 2000/586/JHA ante.


11. 2008/149/JHA - The conclusion, on behalf of the European Union, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation’s association with the implementation, application and development of the Schengen Acquis. See 2000/586/JHA ante.


15. 2009/724/JHA - Laying down the date for the completion of migration from the Schengen Information System (SIS 1+) to the second generation Schengen Information System (SIS II). See 2000/586/JHA ante.


17. SCH/Com-ex (96) declaration 6 - Declaration on Extradition and MLA. See 1999/615/JHA, ante.

18. SCH/Com-ex (98) 26 def - Setting up a Standing Committee on the evaluation and implementation of Schengen. See 1999/615/JHA, ante.


20. SCH/Com-ex (99)11 - Agreement on cooperation in proceedings for road traffic offences. See 1999/615/JHA, ante.

21. SCH/Com-ex (99)6 - Schengen Acquis relating to telecommunications. See 1999/615/JHA, ante.
22. **SCH/Com-ex (99)7 - Rev 2 on liaison officers.** See 1999/615/JHA, ante.

23. **SCH/Com-ex (99)8 - Rev 2 on general principles governing the payment of informers.** See 1999/615/JHA, ante.

**TPMs that UK LE consider that we should opt back into**

1. **2000/375/JHA - Combat child pornography on the internet.** The order is merely a best practice document which the UK already exceeds. There are pluses and minuses in this TPM. On the plus side it requires member states to share information on CP matters quickly and for LE in each state to process requests for information as a matter of urgency. This does not adversely affect the UK as we do this anyway, but it is useful to have as it ensures that other states do the same with our requests. If we left this then the rest of the EU would be under no obligation to treat UK requests as urgent. They may do, but the point is that they are not obliged to and where resources are scarce, if any country is going to be put to the bottom of the pile it will be the countries where there are not mandatory obligations in force. The other side is the requirement to inform Eurojust of all CP matters which is a little cumbersome but in reality it is not done in every case anyway. Another plus is that it requires close coordination of states when it comes to the removal of CP material from internet. Again, a most useful provision given the international nature of on-line CP. Finally it makes requirements for the retention and interception of communications data for the prosecution of CP matters. This ensures a common standard that is continually updated as technology evolves. Although there are some minuses, on the whole this is a positive TPM and we should opt back into it.

2. **2000/641/JHA - Secretariat for the joint supervisory data-protection bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders.** This actual Decision has little effect on the UK either way. However, this measure forms a number of bodies which have far reaching powers into other TPMs - some of which we would seek to retain, most notable the SIS2 system, the EAW and the EIO which the UK are already committed to.

3. **2001/419/JHA - The transmission of samples of controlled substances.** Without it, case by case agreements would have to be in place to permit the transfer between labs and LE entities to avoid LE breaking various national laws around the import/export of controlled substances. This would create unnecessary additional bureaucracy.

4. **2002/187/JHA - Setting up Eurojust with a view to reinforcing the fight against serious crime.** The UK is a major user of Eurojust. Membership of Eurojust is necessary for JITs and the EIO (which the UK is committed to). Given that, the question of opting back in may be irrelevant as due to our membership of the EIO we have to be a member of Eurojust.
5. 2002/348/JHA - Concerning security in connection with football matches with an international dimension. This decision not only sets up SPOCs for football intelligence, it also mandates the exchange of information to other members. If the UK moved out of this measure then although we could choose to pass information to other EU states, there is no obligation on the other EU states to do the same for the UK. Although part of the Swedish Framework Decision, those charged with this area of work within the MPS are keen on it and to remove it would be a retrograde step.

6. 2003/170/JHA - Common use of liaison officers posted abroad by the law enforcement agencies of the Member States. This is concerned with LE officers being posted to other countries or to the EU. In the main, this role is taken up by SOCA (and then the NCA when it comes into being) as they are the closest that the UK has to a national police force. The system is heavily underused when compared to other countries. If the UK left this Decision, then there is nothing to stop us continuing to send LE officers to other states, although we would not be able to have any at the EU (Eurojust or Europol) which would have a knock on effect on our ability to operate in other areas. As such it should be retained.

7. 2005/222/JHA - Attacks against information systems. Cybercrime is a growing threat to the economic wellbeing of all states and also to critical infrastructures. The rapid exchange of information and intelligence should be made available outside of other criminal matters due to the time dependant nature of such matters.

8. 2005/681/JHA - Establishing the European Police College (CEPOL) and repealing Decision 2000/820/JHA. The college at Bramshill deals with the exchange training of EU senior police officers. The actual value to UK policing is a matter for ACPO but the exchange of learning between police officers across the EU (and the world as a whole) is intrinsically a good thing and it would make no sense to remove ourselves from it. In addition, a proposed post-Lisbon decision is likely to remove this from the TPM list before December 2014.

9. 2006/560/JHA - Amending Decision 2003/170/JHA on the common use of liaison officers posted abroad by the law enforcement agencies of the Member States. An update in reality of 2003/170/JHA that strengthens the role of Europol liaison officers. If we left this Decision, then we would not be able to post such officers. These posts are filled by SOCA/NCA but have an impact on the MPS more than any other force.

10. 2006/960/JHA - Simplifying the exchange of information and intelligence between law enforcement authorities of the Member States. The UK would still be able to pass information to other EU states and we do not use Europol to transmit intelligence or evidence as a rule. This may change though when the EIO comes in and so it would be wise to retain this measure.

11. 2007/412/JHA - Amending Decision 2002/348/JHA concerning security in connection with football matches with an international dimension. Only amends 2002/348/JHA ante which we wish to remain a part of anyway.
12. 2007/845/JHA - Concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or property related to, crime. The UK has met its obligations by enacting the Proceeds of Crime Act 2002. The information sharing network though is useful and there is no reason to cease being a member as further intelligence sharing would require state by state agreements.

13. 2008/617/JHA - The improvement of cooperation between the special intervention units of the Member States of the European Union in crisis situations. This allows for the deployment of rapid reaction forces to other countries. Where country A seeks the assistance of country B in a crisis, this sets up the legal framework for this to operate. It covers serious physical threats (terrorism, hostage taking etc) and not natural disasters. It would make little sense to remove this sensible provision - especially given the ongoing threat of organised crime, cybercrime, terrorism and civil unrest due to economic issues. It may never be used but it is designed to protect the citizens of the EU from the gravest threats and as such it would be unwise to remove it.

14. 2009/371/JHA - Establishing the European Police Office (Europol). Membership of Europol is required and demanded by a number of other measures - not least the EIO which the UK has already signed up to. As such, the UK is obliged to remain a member of Europol so we need to opt back in.

15. 2009/426/JHA - The strengthening of Eurojust and amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime. Eurojust is integral to the JIT process and will be at the centre of the EIO (which we have signed up to post-Lisbon) and so in all likelihood we cannot opt out of this measure anyway.

16. Council Act of 17 June 1998 - Convention on Driving Disqualifications. This was designed to ensure that disqualified drivers are shown disqualified in each member state. However, only the UK and Ireland have agreed it so it only acts as a bilateral. That said, there is no reason not to keep it as it would only have to be replicated in a bi-lateral with Ireland anyway which would be a waste of time and effort.

TPMs that have no impact whether we opt back in or not

1. 1996/698/JHA - Cooperation between customs authorities and business organizations in combating drug trafficking. Is merely a central database of drugs related matters. No evidence could be found of this being used by the MPS and loss or retention would have no impact either way on UK LE.

2. 1996/699/JHA - Exchange of information on the chemical profiling of drugs to combat illegal trafficking. Information can still be exchanged. Along with other measures, it is one of the Swedish Framework Decisions and could be replicated with ease if need be. That said, there is nothing prejudicial in the Decision so while there is no reason to re-join it, there is also no reason to leave it.

3. 1996/747/JHA - Creation and maintenance of a directory of specialized competences, skills and expertise in the fight against international
organized crime. This is merely a central database of drugs related matters. No
evidence could be found of this being used by the MPS and so the loss would not be
a significant one.

4. 1996/750/JHA - Approximation of the laws and practices of the Member
States of the European Union to combat drug addiction and to prevent
and combat illegal drug trafficking. The UK could maintain this position outside
of this measure if it wished to and met the criteria prior to its adoption anyway.

5. 1997/339/JHA - Cooperation on law and order and security. This function is
a duplication of the Interpol Green and Orange notices. Part of the Swedish
Framework Decision.

6. 1997/372/JHA - Refining of targeting criteria, selection methods, et. and
collection of customs and police information. The UK could maintain this
position outside of this measure if it wished to. Part of the Swedish Framework
Decision.

7. 1997/827/JHA - Establishing a mechanism for evaluating the application
and implementation at national level of international undertakings in the
fight against organized crime. The UK could maintain this position outside of
this measure if it wished to and it is a mechanism that sounds good but in reality has
little practical effect.

8. 1998/699/JHA - Money laundering, the identification, tracing, freezing,
seizing and confiscation of instrumentalities and proceeds from crime.
This TPM concerns the informal exchanging of information on financial crime and is
part of the Swedish Framework Decision. If the UK opted out there would be no
realistic difficulty in continuing to share information. That said, membership of this
TPM does not saddle the UK with any problematic measures and so while
membership is not necessary, there is no reason to actively seek the UK’s removal
from it.

9. 1998/700/JHA - Concerning the setting up of a European Image Archiving
System (FADO). This has been overtaken by technology. High speed internet
connections and the routine use of email by LE across the EU have reduced the need
for this measure. It is not clear whether it is used by the UK (it is possible that
UKBA may) but it is not used by UK police.

10. 2000/261/JHA - Improved exchange of information to combat counterfeit
tavel documents. It is likely that this could be maintained on a police to police
basis and a similar system exists within Interpol. Forms part of the Swedish
Framework Decision.

11. 2000/642/JHA - Arrangements between financial intelligence units of the
Member States in respect of exchanging information. It is likely that this
could be maintained on a police to police basis or via the Swedish Framework
Decision. After all, we share this kind of information with many other non-EU states
without any problem.
12. **2001/413/JHA - Combating fraud and counterfeiting of non-cash means of payment.** This Decision places a number of legal obligations on the members in terms of creating criminal offences and suitable penalties for a range of conducts and also to permit extradition for such matters (although the EAW provisions supersede these). Although it imposes legal obligations on the UK, these are already in force. It does not apply supra-jurisdictional powers that require membership of the TPM.

13. **2001/500/JHA - Money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime.** Given the international nature of nearly all financial crime now, the ability to identify, track and seize assets (where required) is vital to effectively investigate such crimes. It may be that this eventually falls under the EIO but this is not certain at this time. In addition there is a post Lisbon measure being discussed that would take this out of the TPM area (although the UK has not made a decision on that new measure). As a result of this Decision, the UK brought in the Proceeds of Crime Act 2002. As such the UK had more than fulfilled its obligations around it and is hardly likely to repeal it. As such this is largely an irrelevant measure for the UK now.

14. **2002/494/JHA - European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes.** Such contacts are police to police matters and could be maintained outside of this decision.

15. **2002/946/JHA - The strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.** This decision required that states create a large number of offences. As these are part of UK law now, if we left this measure it would have no impact on the UK as these offences would remain. There is an additional obligation in respect of refugees but this is largely redundant as the UK is a signatory to articles 31 and 33 of the 1951 Refugee Convention.

16. **2003/335/JHA - The investigation and prosecution of genocide, crimes against humanity and war crimes.** Although a serious matter, the jurisdiction for these crimes is a matter for the UK. Agreements to determine primacy are helpful but not vital.

17. **2003/568/JHA - Combating corruption in the private sector.** This decision required that states create a large number of offences. As these are part of UK law now (see for example the Bribery Act), if we left this measure it would have no impact on the UK as these offences would remain.

18. **2003/642/JHA - Concerning the application to Gibraltar of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States.** An odd one really. Although this does not directly affect the UK, the UK administers Gibraltar. If the UK opted out of this then we would not be obliged to deal with corruption there under EU law but the EU states that opted in would. However, as Gibraltar is governed by the UK, we would always treat corruption there as a criminal matter and as such this Decision (even at its inception) only really applied to the rest of the EU.
19. **2004/731/EC** - Concerning the conclusion of the Agreement between the European Union and Bosnia and Herzegovina on security procedures for the exchange of classified information Agreement between Bosnia and Herzegovina and the European Union on security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

20. **2004/843/CFSP** - Concerning the conclusion of the Agreement between the European Union and the Kingdom of Norway on security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

21. **2005/069/JHA** - Exchanging certain data with Interpol. Membership of this TPM is not necessary here as the UK is a member of Interpol in its own right.

22. **2005/212/JHA** - Confiscation of Crime-related Proceeds, Instrumentalities and Property. The UK has already fulfilled its obligations here by enacting the Proceeds of Crime Act 2002. It is inconceivable that the Act would be repealed if we left this measure and as such it is largely irrelevant now.

23. **2005/296/CFSP** - Concerning the conclusion of the Agreement between the European Union and the former Yugoslav Republic of Macedonia on the security procedures for the exchange of classified information Agreement between the former Yugoslav Republic of Macedonia and the European Union on the security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

24. **2005/387/JHA** - The information exchange, risk-assessment and control of new psychoactive substances. If the UK left this provision, we would still exchange intelligence with other countries (EU or otherwise) and so this is largely a pointless measure.

25. **2005/481/CFSP** - Concerning the conclusion of the Agreement between the European Union and Ukraine on the security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

26. **2005/511/JHA** - Protecting the Euro against counterfeiting, by designating Europol as the Central Office for combating Euro-counterfeiting. By not being part of this agreement will not affect the UK as the Euro is not our national currency. Arguably we would be better off out of this. Currently we have let Europol to deal with counterfeiting of the Euro. This is a little odd as we would not cede an investigation into counterfeiting the US Dollar to the US Secret Service. Leaving it though (if deemed desirable) is by no means a reason to leave the rest of the TPMs as it does not place that much of a burden on the UK but if opted out of, there would appear no obvious reason to opt back into it.

27. **2006/317/CFSP** - Concerning the conclusion of the Agreement between the European Union and the Republic of Croatia on security procedures
for the exchange of classified information. The UK does not use this. Exchange is done directly.

28. 2006/467/CFSP - Concerning the conclusion of the Agreement between the European Union and the Republic of Iceland on security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

29. 2006/783/JHA - The application of the principle of mutual recognitions to confiscation orders. The UK has met its obligations by enacting the Proceeds of Crime Act 2002. It is possible that this may fall under a post Lisbon measure pre-2014 anyway.

30. 2007/274/JHA - Concerning the conclusion of the Agreement between the European Union and the Government of the United States of America on the security of classified information. The UK does not use this. Exchange is done directly.

31. 2008/568/CFSP - Concerning the conclusion of the Agreement between the European Union and the Swiss Confederation on security procedures for the exchange of classified information. The UK does not use this. Exchange is done directly.

32. 2008/841/JHA - The fight against organised crime. Although this decision largely is a legislative one, it requires the proscription of matters (conspiracy) that has long been an offence in the UK anyway. There is nothing to be gained by opting back into it.

33. 2008/977/JHA - The protection of personal data processed in the framework of police and judicial cooperation in criminal matters. This sets up rules for the transfer of information about persons concerned in criminal investigations. All areas are met already under domestic legislation and the provisions here are also covered in other EU directives.

34. 2009/820/CFSP - Agreement on Extradition and MLA between the European Union and the United States of America. The US signed this treaty with the EU in 2003 and as a result the UK signed its treaty with the USA in December 2004. The EU treaty required each member state to negotiate a treaty with the USA and so the 2003 treaty led to the 2004. However, the 2004 one does not rely on the 2003 one as it stands alone. This decision merely confirms the exchange of such treaties making this a measure that does not affect the UK.

35. 2009/902/JHA - Setting up a European Crime Prevention Network (EUCPN) and repealing Decision 2001/427/JHA. This is in effect an EU crime prevention body. It brings together subject matter experts in the field and encourages ongoing good practice. Information from the ACPO lead confirms that this is not used by UK LE and is a measure that is not needed.

36. 2009/905/JHA - On accreditation of forensic service providers carrying out laboratory activities. This ensures that labs in member states conform to ISO
17025. The UK is one of the leaders in the forensic world and it is inconceivable that if we left this Decision that the UK would suddenly cast aside all their minimum standards. All police computer and phone forensic labs need to meet this by 2015 and so the UK is clearly committed to this in any case. As such this ruling has little effect on the UK and arguably the UK should be free to set its own standards in line with the rest of the world and not just the EU.

37. **2009/933/CFSP - The extension, on behalf of the European Union, of the territorial scope of the Agreement on Extradition and MLA between the European Union and the United States of America.** The UK has its own extradition treaty with the USA and does not rely upon the EU-US one. As such, this measure (which concerns the inclusion of Dutch overseas territories is an irrelevance).

38. **2003 Agreement on mutual legal assistance between the European Union and the United States of America.** The 2003 treaty was signed between the EU and the USA which required individual states to negotiate an MLA treaty with the USA. As such the UK signed its own treaty with the USA in December 2004 and so leaving this measure would be of little consequence.

**TPMs that UK LE does not wish to opt back into**

1. **1999/615/JHA - Defining 4-MTA as a new synthetic drug which is to be made subject to control measures and criminal penalties.** The UK can proscribe whatever drugs it wishes and is free to follow or ignore other states. Any suggestion that the UK leaving it would lead it us legalising it is nonsense. As with the other drugs prohibition measures, it is not in the interests of the UK to be beholden to by the EU as to what should be proscribed. Although this has not caused any harm to the UK so far, in the interests of transparency it would be better for the UK to rely on the Drug Advisory Board and the emergency proscription measures that Parliament currently has in respect of drugs rather than be dictated to by a supra-national organisation.

2. **2000/383/JHA - Increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro.** In the UK, the Euro is treated the same as any other currency that is counterfeited and does not consider it a special case. The UK already provides a greater penalty for counterfeiting that is prescribed in this Decision (and did before its inception) so it is a meaningless measure. The UK did not require a treaty to make counterfeiting the US Dollar a crime after all. That said there is no reason to leave or (or remain within it). Although the measure appears unnecessary it does seek to elevate the Euro to a higher status than other currencies. While the UK already exceeds it, this measure could be amended in the future to provide an even greater emphasis on Euro currency offences, elevating them above others. This is undesirable and so membership of this is not in the best interests of the UK.

3. **2002/188/JHA - Concerning control measures and criminal sanctions in respect of the new synthetic drug PMMA.** See 1999/615/JHA, ante.
4. **2003/847/JHA - Concerning control measures and criminal sanctions in respect of the new synthetic drugs 2C-I, 2C-T-2, 2C-T-7 and TMA-2.** See **1999/615/JHA, ante.**

5. **2004/757/JHA - Laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking.** UK legislation already exceeds the issues raised in this TPM which makes it largely irrelevant. However, we should not seek to opt back into it. It is not in the interests of UK policing to sign into a measure that is designed to determine the minimum penalties and offence types for drug trafficking. Opting out of this (and those like it) would be of benefit to the UK and permit Parliament to determine what is illegal in the UK and the sentence that should be imposed.

6. **2008/206/JHA - Defining 1-benzylpiperazine (BZP) as a new psychoactive substance which is to be made subject to control measures and criminal provisions.** See **1999/615/JHA, ante.**

7. **2010/348/EC - Concerning the conclusion of the Agreement between the Government of the Russian Federation and the European Union on the protection of classified information.** The UK does not use this. Exchange is done directly. In addition, the UK has its own rules on the exchange of information with Russia due to the large number of politically motivated requests that Russia sends out. Even though we do not use this, we would not want to be bound by it in any case, as it is in the interest of national security that the UK decide both the general and precise ways that information is shared with Russia.

**TPMs that have been replaced by post Lisbon measures or are likely to be before December 2014**

1. **1998/427/JHA - Good practice in mutual legal assistance in criminal matters.** This measure basically required the member states to provide a statement of intent on how MLA matters would be dealt with. It places no onerous obligations on the UK whatsoever and is a fairly irrelevant entity as the UK goes further in the 2003 Act. When the EIO comes into force at the end of 2014 (likely to be the same time as the TPMs move across) it will repeal all of the MLA TPMs. As the UK is signed up to the EIO, it makes these TPMs largely academic.

2. **2001/220/JHA - The standing of victims in criminal proceedings.** This Decision has been superseded by PE-CO S 37/12 and so no longer resides within the TPM. It is only included here because it was mentioned in older briefing papers.

3. **2003/577/JHA - Execution in the European Union of orders freezing property or evidence.** It is important to be able to quickly seize physical evidence and evidence held by CSPs and ISPs although the current rather ad hoc measures will be superseded once the EIO come into force, removing this measure from the TPM list. As such, the issue of opting in/out is not a live one.

4. **2004/68/JHA - Combating the sexual exploitation of children and child pornography.** This Decision has been replaced by the post Lisbon measure.
Directive 2011/92/EU. As such it is no longer a TPM and only included here for continuity as it was mentioned on previous briefing papers.

5. **2008/651/CFSP/JHA** - The signing, on behalf of the European Union, of an Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service. No longer relevant. Replaced by the post-Lisbon decision on the 29th September 2011. It is only included here for completeness as it featured on a previous briefing sheet.

6. **2008/978/JHA** - The European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters. Was never in force and will be replaced by the EIO.

7. **Council Act of 16 October 2001** - Establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member states of the European Union. This ultimately led to the Crime (International Co-Operation) Act 2003. However, when the EIO comes into force at the end of 2014 (likely to be the same time as the TPMs move across) it will repeal all of the MLA TPMs. As the UK is signed up to the EIO, it makes these TPMs largely academic.

8. **Council Act of 29 May 2000** - Convention on mutual assistance in criminal matters between the Member States of the European Union. When the EIO comes into force at the end of 2014 (likely to be the same time as the TPMs move across) it will repeal all of the MLA TPMs. As the UK is signed up to the EIO, it makes these TPMs largely academic.

9. **Agreement between the European Union and the United States of America on the processing of Passenger Name Records (PNR) data by air carriers to the United States Department of Homeland Security.** Without this provision, the UK would be free to continue to exchange with the US if it wished to do so. It would also be a waste of time and resources to re-sign a bilateral treaty when the one that exists works fine. Finally, the post-Lisbon decision OJ 2012/472/EU supersedes this and the UK has signed it. This new decision will soon come into play, removing this TPM from the list.
Scottish Government –Written evidence

I am grateful for the opportunity to submit written evidence to the sub-committees for their inquiry into the UK’s 2014 decision (Protocol 36). While we are not required to do so, I believe it would be helpful for me to set out the potential implications of the UK Government’s decision for justice matters that fall within the devolved competence of the Scottish Parliament.

Committee Members will be aware that, within the UK, Scotland has its own separate legal system and justice institutions. The Scottish Parliament and Scottish Ministers have devolved responsibilities for the vast majority of justice matters in Scotland. Scottish justice authorities engage directly with their counterparts in other EU countries in investigating and prosecuting crime.

Given the potential implications for the efficient operation of justice in Scotland, I wrote to UK Ministers in April 2012 and again in August 2012, emphasising the need for effective dialogue and consultation before any decision on the opt-out was taken. I was disappointed, therefore, that no prior notification was received by Scottish Ministers ahead of the Home Secretary’s statement on 15 October confirming the UK Government’s preferred position. Both the Home Secretary and the Secretary of State for Justice have written subsequently, acknowledging the need for dialogue at ministerial level between the UK and Scottish Governments and with operational organisations, such as the police and Crown Office, in Scotland. Our most immediate priority is to seek a clear understanding from UK Ministers of the timescales and arrangements for this dialogue ahead of any formal decision.

Scottish Ministers’ starting position on this matter has been and remains, that no decision to opt-out should be taken by the UK Government without a clear and compelling case, which would justify the potential disruption to existing cross-border co-operation and practical measures that assist authorities in tackling serious and organised crimes. The decision must be informed by the views and experiences of those agencies involved directly in applying these measures within each of the UK’s distinct justice systems. UK Ministers must also be able to demonstrate that any alternative arrangements would be more effective in combating cross-border crime.

This issue has been given added urgency by the Home Secretary’s announcement on 15 October of the UK Government’s preferred position.

I hope this written submission is of assistance to the Committee in its consideration of the UK Government’s handling of this important decision. I am copying this letter to the Scottish Parliament Justice Committee.

Kenny MacAskill MSP
Cabinet Secretary for Justice

18 December 2012
UK Government – Written evidence

We are grateful to you and your Committee for the letters of 1 November, 14 November, 29 November and 3 December concerning the 2014 decision. In particular, we welcome the work your Committee is undertaking which will be useful in informing the Government’s consideration of the 2014 decision. In the Committee’s letter of 3 December you asked whether officials would be able to attend an informal evidence session on 9 January 2013, and if we would provide oral evidence on this matter on 13 February 2013. Although at this stage of the process we do not feel that it is appropriate for officials to provide oral evidence, we can confirm that we are both content to provide oral evidence on this matter on the proposed date.

In your letter of 1 November, you ask whether the vote in Parliament will be binding or advisory. The Government is still considering the form that the votes will take, including via initial discussions with your clerks, and we are grateful for your comments at this stage.

You asked for an undertaking that the vote in the House will not take place until your Inquiry has reported. We are happy to give that undertaking; we would like any debate in the House on this matter to be informed by your work. We understand that you and Lord Hannay will be meeting James Brokenshire and Lord McNally to explore some of these issues in December, and we look forward to hearing your views in more detail.

Enclosed is the Government’s response to your Committee’s call for evidence. You pose a number of additional questions in your letter of 1 November; these are addressed below.

1. Our reading of the terms of Protocol 36 suggests that pre-Lisbon measures will only be removed from the list of measures subject to the 2014 decision once any post-Lisbon PCJ measure, which repeals and replaces or amends any of the original measures and to which the Government has decided to opt in (or not opt out) is formally adopted, having completed the whole EU legislative process. What is the Government’s view on this?

The Government’s key objective is to reach a shared understanding with the Commission and Council on the technical and legal aspects of the 2014 decision in order to provide legal certainty for all involved. Officials have been having technical and legal discussions with the Commission and Council Legal Service in order to progress this, including whether ‘adoption’ or ‘entry into force’ is the date at which the underlying measures cease to be within the scope of the 2014 decision. To date there is no firm agreement on this point.

Whilst the date of ‘entry into force’ is clear on the face of the measure, that is not always the case: the default position if no date is given is 20 days after publication in the Official Journal. The date of ‘adoption’ can also be complicated. For non co-decision measures adoption takes place when the Council adopts the act. For co-decided dossiers there is a practice of writing the relevant date (shown in the Official Journal) as the date on which joint signature of Council and European Parliament Presidents takes place. While this is neater presentationally, it cannot be relied on as having any legal significance. The actual date of adoption for legal purposes varies depending on the stage:

• If first reading deal: the date when Council approves the European Parliament position [Article 294(4) TFEU]
• If first phase of a second reading deal: the date when the European Parliament adopts the Council position [Article 294(7)(a) TFEU]
• If second phase of a second reading deal: the date when the Council approves the European Parliament’s second reading amendments [Article 294(8)(a) TFEU]
• If Conciliation/third reading deal: the date when the last of either the Council or the European Parliament votes to adopt [Article 294(13) TFEU]

The Government will update Parliament when this issue has been agreed.

2. How does the Government’s consideration of the opt-out decision, including the consideration of each PCJ measure by Home Office and Ministry of Justice officials relate to the Review of the Balance of Competences, which was announced by the Foreign Secretary last July?

The 2014 opt-out is a separate decision that is provided for under the EU Treaties and one which we are obliged to make; the Balance of Competence review is a commitment in the Coalition Programme for Government. The review aims to deepen public understanding of the nature of our EU membership and provide a constructive and serious contribution to the wider European debate about modernising, reforming and improving the EU. As such, the review must be considered separately from the 2014 decision.

3. In this respect what methodology have the same officials used to analyse each PCJ measure and have they consulted UK police and law enforcement authorities and the wider stakeholder community as part of this process? When do they expect to conclude their analysis of all the measures subject to the 2014 decision?

Analysis of these measures seeks to establish which are in the national interest. As part of this, the Government is looking at how a measure contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be detrimental impact on such cooperation if pursued by other mechanisms. The Government will also consider the impact the measure has on civil liberties and rights.

The Government has held discussions with a number of interested parties, including the EU Institutions, other Member States, the Devolved Administrations and Gibraltar, Parliament and operational partners to inform its analysis. This analysis will be an ongoing process but the Government is committed to providing Parliament with as much information as possible as soon as is practical.

You will also have noted that the joint letter of 22 November from the European Scrutiny, Justice Select and Home Affairs Committees requests that we provide Explanatory Memoranda on the measures subject to the 2014 decision. We will be providing Explanatory Memoranda; however, we have suggested that this is done in a slightly different manner from that suggested in that letter. We have proposed that we provide Explanatory Memoranda on the following areas:

• Schengen measures
• Measures for which the Justice Secretary is responsible
• Measures for which the Home Secretary is responsible (1) – EU agencies, mutual legal assistance, drugs, proceeds of crime
• Measures for which the Home Secretary is responsible (2) – extradition, crime (including cyber and organised crime), fraud and counterfeiting, databases and automated information exchange, and all others
• Measures for which the Chancellor of the Exchequer, Foreign Secretary and Transport Secretary have responsibility.

We trust that this additional information will be useful. We hope to be in a position to provide you with the first of these by early January and to have provided all necessary Explanatory Memoranda by the middle of February, ahead of our appearance at your Inquiry. We regret that this is later than the deadline set for the submission of evidence to your inquiry but as I am sure you understand, we need to consider carefully the information we provide at this time. We do, however, wish to provide you with as much information as possible to allow you to exercise fully your role in this important issue.

4. *Has the Government considered producing impact assessments on the consequences of either opting out, or not opting out?*

Our analysis of the measures and their impact is still ongoing. At his appearance before the European Scrutiny Committee on 28 November, the Parliamentary Under-Secretary for Security, James Brokenshire, gave an undertaking that the Government will provide an Impact Assessment on the final package of measures that the Government wishes to rejoin, should the Government decide to exercise the opt-out.

5. *As PCJ measures have generally been implemented into UK law by way of primary legislation does the Government anticipate that this body of implementing legislation would be repealed if the opt-out is exercised? If so then how significant does it believe this task would be? Furthermore, what UK measures may be required to replace this legislation if it was repealed?*

The question of whether or not we would repeal implementing legislation would need to be considered on a case by case basis. For example, changes to primary legislation may be necessary if we were to opt out and not rejoin measures such as the European Arrest Warrant. Clearly, the legislation required to replace any repealed legislation would depend on the measures put in place, if any, to replace such EU measures. Consequently, at this stage it is impossible to give a definitive answer. However, should the UK opt out it should not be necessary to repeal legislation that has implemented the majority of minimum standards measures. In many such cases our domestic legislation predates the European legislation and would not repeal our domestic legislation. For example Council Decision 2000/375/JHA to combat child pornography on the internet has been implemented through a variety of measures. The UK legislation relating to illegal images of children is Section 1 of the Protection of Children Act 1978. The reporting point for the public for illegal images is the Internet Watch Foundation, which was set up by the internet industry in 1996. Police in the UK have consistently tackled illegal images and the creators of them.

6. *When does the Government expect to be in a position to advise Parliament what PCJ measures it would like to opt back in to if the opt-out decision is exercised? Has the Government already commenced discussions with the Commission about this process?*

We have opened discussions with the Commission and Member States on the 2014 decision. These discussions are at an early stage and it is not yet clear what approach our EU partners will take. In addition, we are keen to hear Parliament's view, discuss this issue with interested parties and continue to gather evidence before taking a decision. As such, it is similarly not possible at this stage to state when the Government will be able to advise Parliament which measures it will seek to rejoin.
The 2014 Opt-Out Decision

1. Should the Government exercise its block opt-out?

The Home Secretary announced on 15 October that the Government’s current thinking is to opt out of the measures included in the 2014 decision, and to consider which measures it is in our national interest to apply to rejoin.

The Treaty only allows for the UK to opt out of these measures en masse; we cannot simply opt out of those measures by which we no longer wish to be bound. The Government’s current thinking is based on the evidence currently before us, which indicates that these measures vary greatly in operational utility and that a number are effectively defunct. It is also the case that the vast majority of these Third Pillar measures were not drafted with the jurisdiction of the Court of Justice of the European Union (ECJ) in mind; as the EU Justice Commissioner Viviane Reding has made clear, the old ‘third pillar’ often led to outcomes at the ‘lowest common denominator’. This was mostly in order to secure unanimity. Much of the drafting is not of a high standard and may be open to expansive interpretation by the ECJ.

At this stage our analysis is not complete, and of course it cannot be until we have had more detailed discussions with the European Commission and the Council, and can take their views into account. Although we have considered the individual merits of each measure, we cannot do this in isolation and as such are continuing to work with law enforcement and criminal justice partners. There are around 130 measures to consider and the decision must be made with regard to all of them, not just one or two.

We recognise that there are a number of other interested groups and organisations and we are, of course, interested to hear their views on this issue. We also very much welcome this Inquiry and intend to look closely at its conclusions when making our final decision on whether to opt out, which, as per the Government’s commitment on the matter, will also be put to a vote in both Houses.

2. What are the likely financial consequences of exercising the opt-out?

Article 10(4) of Protocol 36 to the Treaties provides that ‘The Council, acting by a qualified majority on a proposal from the Commission, may also propose that the Council could adopt a Decision determining that the UK shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts’. It is important to note that the UK would participate in this Decision and would therefore have a voice in these discussions. As James Brokenshire said on 26 October in response to a Parliamentary Question\(^{380}\), ‘until we hold discussions with the EU institutions and other Member States it is impossible to say with any certainty whether the UK will be held liable for any costs. However, the Government considers this to be a high threshold to meet’.

At his appearance before the European Scrutiny Committee on 28 November, James Brokenshire gave an undertaking that the Government will provide an Impact Assessment on the final package of measures that the Government wishes to rejoin, should the Government decide to exercise the opt-out.

3. What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

The Government has been working hard to make it clear to other Member States and EU partners that this is a one-off decision granted by the Treaty of Lisbon and as such can be considered separate from other areas of EU cooperation. We have been clear that this decision is not about the UK disengaging from Europe and that the Government remains committed to playing a leading role in the EU. We continue to engage with Member States and the EU institutions to make these points clear and ensure that our wider relations with our EU partners are not affected.

Following the Home Secretary’s announcement on 15 October, the Home and Justice Secretaries wrote to all Member States’ Interior and Justice Ministers to outline the Government’s current thinking and to invite their views. Ministers from across Government have also spoken to ministers from a number of Member States and will continue to engage constructively with our EU partners on this issue. We have also spoken to Home Affairs Commissioner Malmström and Justice Commissioner Reding, as well as engaging with MEPs, following the Home Secretary’s announcement.

As per the Coalition agreement the Government will continue to approach Justice and Home Affairs on a case by case basis. Where there is a case for cooperation at the EU level – not just in the field of justice and home affairs – the Government will support it. The UK will continue to play an active part in developing EU legislation in the Justice and Home Affairs area where it adds value for our citizens. For example, we have opted in to a range of measures since the Lisbon Treaty, including Directives on human trafficking, child sexual exploitation and on rights and support for victims of crime, amongst others.

The UK’s current participation in PCJ measures

4. Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures?

\(^{380}\) http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm121029/text/121029w0003.htm#12102942000603
As was made clear in the Home Secretary's announcement of 15 October, we are currently undertaking work to identify measures it would be in the national interest for us to consider applying to rejoin if the Government does exercise the opt-out. Parliament's view on this is of course important and we welcome this Inquiry, which will be useful in informing the Government's position. We will also be listening very carefully to the views and experiences of law enforcement and other criminal justice and operational agencies and other interested parties, who know first-hand how the measures are working in practice. The final list will also be informed by the outcome of the discussions that we will have with the European Commission and the Council.

We know that the European Criminal Records Information System (ECRIS) allows our police and prosecutors to obtain information regarding the previous convictions of an EU national being prosecuted in the UK. When judges know about the defendant's previous criminality, it can result in longer prison sentences. Information on previous convictions can also be used by prosecutors to resist bail applications, thus improving the security of UK citizens. By ensuring that the courts take account of convictions in EU Member States, as well as those in UK courts, this information sharing creates more equal treatment between EU nationals and UK nationals. The Government wants to ensure that fairness is at the heart of our criminal justice system. Nonetheless, we will need to fully consider the impact of ECJ jurisdiction on this instrument before coming to a final view.

On the other hand, we also know that some of the measures are now effectively defunct. For example, the Agreement on Cooperation in Proceedings for Road Traffic Offences (SCH/Com-ex (99) 11 rev 2 - number 119 on the list) provides for Member States to provide contact details of drivers associated with a licence plate on request, and service overseas of penalty notices. It also provides for Member States to subsequently be able to transfer enforcement of any fine to the authorities where the offender resides. This does not appear to be in force, nor is it likely that it will ever be, given it has been largely superseded by measures on the mutual recognition of financial penalties.

5. In her 15 October statement the Home Secretary stated that “… some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

As set out above, our analysis of these measures has not yet been completed. However, in addition to SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences), at this stage it is clear that Joint Action 96/747/JHA (number 6 on the list), which concerns the creation and maintenance of a directory in order to facilitate law enforcement cooperation between Member States in the fight against international organised crime, is now defunct, as online thematic expert platforms have emerged in recent years and have now superseded the directory, which closed on 16 February 2012. In addition, in our view the declaration on extradition (number 112 on the list) has been superseded by the European Arrest Warrant.

Other measures have been amended or repealed and replaced by new legislation, which will enter into force before 2014. The UK has opted in to measures which have already entered in to force, or are likely to enter into force before 2014, which replace the following measures:
1. Agreement between the European Union and the United States of America on the processing of Passenger Name Records (PNR) data by air carriers to the United States Department of Homeland Security

2. Agreement between the European Union and Australia on the processing and transfer of European Union-sourced passenger name record (PNR) data by air carriers to the Australian Customs Service

3. SCH/Com-ex (98) 26 def setting up a Standing Committee on the evaluation and implementation of Schengen


6. Council Act of 16 October 2001 establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member states of the European Union


11. Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters


We also expect the Commission to bring forward proposals which will repeal and replace or amend some further measures on the list. At present we expect measures on Europol, Eurojust, CEPOL, information exchange on psychoactive substances, minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking, and counterfeiting of the Euro. We will approach our participation in those new measures on a case by case basis.
6. How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?

The extent to which the UK has made use of the measures subject to the 2014 decision varies widely. Some measures have been used a great deal; whereas others, such as the Agreement on Cooperation in Proceedings for Road Traffic Offences (SCH/III (96)25rev18), have not been used at all and are effectively defunct.

Further detailed information on the use of some individual measures is provided below:

**European Arrest Warrant** (Council Framework Decision 2002/584/JHA)

The number of people extradited from the UK between 2009 and 2011 is as follows:

- 2009 – 628
- 2010 – 1068
- 2011 – 999

The number of surrenders to the UK between 2009 and 2011 is as follows:

- 2009 – 80
- 2010 – 116
- 2011 - 99

**Schengen Convention - Article 40**

Since 2008, the UK has made 154 requests for authority to continue surveillance into foreign jurisdictions under article 40 of the Schengen Convention and has received five such requests from other Member States.

The figures do not represent the number of occasions that UK law enforcement actually conducted surveillance on foreign soil because such requests for continued surveillance are often facilitated by the receiving country, eliminating the need for UK law enforcement to travel. Of the five requests the UK has received from other Member States, all were conducted by UK authorities rather than the requesting Member State.

**Mutual Legal Assistance** (Council Act of 29 May 2000 establishing the Convention on mutual assistance in criminal matters between the Member States of the European Union and Council Act of 16 October 2001 establishing the Protocol to the Convention on mutual assistance in criminal matters between the Member States of the European Union)

In 2009, the Home Office accepted 1,999 Mutual legal Assistance (MLA) requests for evidence, of which 1,539 (77%) were from EU Member States. In 2010 this figure was 2,119, of which 1,620 (76%) were from EU Member States; in 2011 the Home Office accepted 2,728 MLA requests for evidence, of which 2,084 (76%) were from EU Member States. In terms of service of process (service of court documents, e.g. a summons), the Home Office received 726 requests in 2011, of which 626 (86%) were from EU Member States. It is not possible to say how many of these requests were made pursuant to the 2000 Convention on mutual assistance in criminal matters between the Member States of the European Union and its Protocol.
Freezing Orders (Council Framework Decision 2003/577/JHA)

To date we have received 6 incoming requests pursuant to the Freezing Orders Framework Decision. We have not made any outgoing requests pursuant to this measure.


Requests from UK Law Enforcement to Europol are sent on the SIENA (Secure Information Exchange Network Application) secure system. The total number of SIENA messages sent and received therefore provides a broad indication of levels of UK information exchange with, and therefore requests to, Europol. However, it is important to note that this is only indicative as there is great disparity in the volume and types of information exchanged in this way; an individual SIENA message may contain a single piece of information or a request for a simple check or, at the other end of the scale, may contain multiple attachments with, for example, intelligence logs, papers on often complex investigations and significant amounts of data.

The total numbers of SIENA information exchanges by the UK Liaison Bureau since 2009 are as follows:

- 2009 - 4,234
- 2010 - 13,215
- 2011 - 16,875

More widely UK consultation with Europol is on a daily basis in that Europol data systems including SIENA are consulted by UK liaison bureau officials who are based at Europol in The Hague. UK liaison officers come from various UK law enforcement agencies such as the Serious Organised Crime Agency, the Metropolitan Police Service, Her Majesty’s Revenue and Customs, the UK Border Agency and the Scottish Crime and Drugs Enforcement Agency, and they have daily interaction with liaison officers from other Member States.

Joint Investigation Teams (JITs) (Council Framework Decision 2002/465/JHA)

During 2011 and 2012 the UK was involved in approximately 21 JITs with a number of EU Member States, some of which also had analytical support from Europol.


1441 cases were registered by the Eurojust College in 2011. Of these:

- 71 were opened by the UK National desk; and
- other Member States collectively sought UK assistance in 197 cases.

204 cases across all Member States involved co-ordination meetings in 2011. Of these:

- 19 were opened by the UK; and
- the UK was involved with 39 cases opened by other Member States.

The UK made 7,872 notifications (convictions and updates) from August to October 2012. It received 2,070 notifications in the same period. In August to October 2012 the UK made 5,492 outgoing requests and received 1,165 incoming requests. Replies to circa 30% of outgoing requests have convictions.

Prisoner Transfers (Council Framework Decision 2008/909/JHA)

To date no prisoners have been transferred from England and Wales to other Member States under the prisoner transfer agreement, which entered into force on 5 December 2011. However, 157 prisoners have been identified for potential transfer at present and a small number of requests for transfer to other Member States have been made for which decisions are awaited. EU nationals account for approximately 36% (3,950) of the current prison population of foreign nationality although they may not all be eligible for transfer. To date only a small number of Member States have implemented the agreement; we expect the remaining Member States to implement it by 2014. Once all Member States have implemented the agreement we expect to see the number of prisoners transferred to steadily increase.

7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

The UK has a strong record on implementation of EU legislation. We take our international obligations seriously and we have implemented the vast majority of the measures subject to the 2014 decision. Of those which have yet to be implemented or fully implemented, it makes sense to consider implementation alongside the UK’s participation in the measure, as part of our consideration of the 2014 decision.

The following measures have yet to be implemented in full:


- Council Decision 2005/211/JHA of 24 February 2005 concerning the introduction of some new functions for the Schengen Information System, including in the fight against terrorism

- Council Decision 2006/228/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism

- Council Decision 2006/229/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism
• Council Decision 2006/631/JHA of 9 March 2006 fixing the date of application of certain provisions of Decision 2005/211/JHA concerning the introduction of some new functions for the Schengen Information System, including the fight against terrorism

• Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognitions to confiscation orders

• Council Decision 2008/615/JHA of 23 June 2008 on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

• Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Council Decision 2008/615/JHA on stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime


• Council Framework Decision 2009/905/JHA of 30 November 2009 on accreditation of forensic service providers carrying out laboratory activities

• Council Framework decision 2009/829/JHA on the application between Member States of The European Union of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention (known as the European Supervision Order), which is due to be implemented by 1 December 2012

• Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions

• Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings


• Agreement on Cooperation in Proceedings for Road Traffic Offences and the Enforcement of Financial Penalties Imposed in Respect Thereof (SCH/III (96)25rev18), which is now effectively defunct.

8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?
It is important to remember that the ‘third pillar’ legislation which is subject to the 2014 decision was agreed by the Council under unanimity. This means that it was often made to the ‘lowest common denominator’ in order to secure unanimity. It was also not negotiated with ECJ jurisdiction in mind so much of the drafting is somewhat ambiguous. Therefore, the practical effect of the ECJ gaining full jurisdiction in this area after the transitional period is that the ECJ may interpret these measures expansively and beyond the scope originally intended. This concern is compounded by the fact that the ECJ has previously ruled in the area of Justice and Home Affairs in unexpected and unhelpful ways from a UK perspective. For example, in 2008 in the Metock case, the Court made a ruling which extends free movement rights to illegal migrants if they are married to an EEA national who is exercising free movement rights. Since the Metock judgment we have seen a steady increase in sham marriages involving EEA nationals.

There is not much ECJ case law that has caused the UK complications regarding the operation of PCJ measures because the ECJ does not currently have jurisdiction over the interpretation of these PCJ measures in the UK. However, other Member States’ national courts could make preliminary references to the ECJ on questions concerning the validity or interpretation of PCJ instruments if that Member State has made a declaration accepting the jurisdiction of the Court. 17 Member States (Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovenia, Spain, Sweden) have decided to elect to accept ECJ jurisdiction to give preliminary rulings on pre-Lisbon police and criminal justice measures.

An example of an ECJ case that interpreted a pre-Lisbon PCJ measure is an Italian preliminary reference called Pupino which looked at the interpretation of the Framework Decision on standing of victims in criminal proceedings. This case established that a national court is required to take into consideration all the rules of national law and to interpret them, so far as possible, in the light of the wording and purpose of the Framework Decision.

9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

As set out above, we are concerned that the measures subject to the 2014 decision were drafted without ECJ jurisdiction in mind and could result in uncertainty, and potentially in an expansive interpretation by the Court. We must ensure that we carefully consider whether it is in the national interest for the UK to be subject to Commission enforcement powers and ECJ jurisdiction on these measures.

Where the Government thinks that participation in a measure benefits the UK, we will of course want to ensure that all Member States implement and abide by the legislation, in order to ensure its effectiveness. However, in practice we do not consider that accepting the Commission’s enforcement powers over the measures subject to the 2014 decision would assist this; all other Member States will be subject to the Commission’s enforcement powers and ECJ jurisdiction over these measures regardless of whether we exercise our opt-out.

The potential consequences of exercising the opt-out
10. The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

The UK Government sees extradition as a vital tool in the fight against international crime. The European Arrest Warrant (EAW) has had some success in streamlining the extradition process within the EU and has been used in a number of high-profile cases. For example, Hussain Osman was brought back from Italy under the EAW to stand trial for his part in the 21 July attempted bombings.

However, the Government has concerns about the disproportionate use of the EAW for trivial offences and for actions that are not considered to be crimes in the UK. There are also issues around the lengthy pre-trial detention of people, not just British citizens, overseas. There have been a number of cases where British nationals have been extradited abroad to face lengthy pre-trial detention in foreign prisons; the case of Andrew Symeou, who was extradited to Greece in 2009 to face trial for the manslaughter of another British national, is an example of this. He was later acquitted at his trial in Greece in 2011.

The UK’s operation of the EAW was one of the areas considered by the independent review of the UK’s extradition arrangements, chaired by Sir Scott Baker. The panel found that the EAW operates satisfactorily, although a number of improvements could be made to the system. They made a number of recommendations to improve the UK’s operation of the EAW, including:

- Enhanced dialogue and co-operation between the UK and EU Member States to address the issue of proportionality.

- Any future amendment to the EAW Framework Decision should include a proportionality test to be applied in the issuing Member State.

- The issue of time spent in pre-trial detention was considered carefully by the panel, who suggested several possible solutions including greater use of instruments such as the European Supervision Order (ESO), or amending the EAW to include a system of postponed surrender.

The Home Secretary responded to the recommendations of the review on 16 October, saying that ‘Government will work with the European Commission, and with other Member States, to consider what changes can be made to improve the EAW’s operation’.

We will engage with our operational partners on this, who know first-hand how this measure works in practice. We will also be engaging with groups such as JUSTICE and Fair Trials International, who have valuable experience in this area and who have raised concerns about the EAW’s operation.

If we were to opt out and not rejoin the EAW, we believe our extradition relations with other European countries would be governed by the 1957 European Convention on Extradition (ECE).
11. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

As the Home Secretary’s Statement to the House on 15 October made clear, if the Government does exercise the opt-out, we will seek to rejoin measures where it is in the national interest to do so. In a letter to the European Scrutiny Committee of 7 November 2012, the Home Secretary also clarified that as ‘part of this the Government may consider how a measure contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be a detrimental impact on such cooperation if pursued by other mechanisms. The impact of a measure on civil rights and liberties is also a consideration’.

Consequently, through our active engagement with operational partners we will better understand the operational implications of not participating in individual measures and that will inform our views on what measures we would seek to rejoin (should we exercise the opt-out). Equally, the Government will be working with other Member States to consider where practical cooperation between our respective law enforcement and prosecution agencies is underpinned by any of the measures subject to the opt-out.

Nonetheless, the Government will have to weigh up the value of the cooperation underpinned by a measure against the human rights and civil liberties consequences of remaining bound by any individual measure. For example, whilst the EAW has had some success in streamlining extradition between Member States, the press, public and a number of Parliamentarians have all raised civil liberties concerns about its use.

The Government has demonstrated its firm commitment to strengthening its response to cross-border crime by creating the new National Crime Agency (NCA) which will be established in 2013, subject to passage of the legislation. A new Border Policing Command will feature as a key element of the NCA. Establishing the NCA is one element of the Government’s strategic response to the cross-border crime threat posed to the UK by organised crime as set out in “Local to Global: Reducing the Risk from Organised Crime”, which reflects the fact that while the impact of organised crime is often felt in local communities and by businesses within the UK, the scope of the threat is global in nature. It therefore requires an international response with the UK working closely with international partners.

It is too early to outline any possible financial implications for police forces, prosecution authorities and law enforcement agencies.

12. Which, if any, PCJ measures should the Government seek to opt back in to?

The Home Secretary made clear that, if we do exercise the opt-out, we will seek to rejoin measures where it is in the national interest to do so. As we said in our letter of 7 November 2012 to the European Scrutiny Committee, this may include how a measure contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be a detrimental impact on such cooperation if pursued by other mechanisms. The impact of a measure on civil rights and liberties is also a consideration. Before coming to a final view on this, the Government is interested to hear the views of Parliament, including the outcome of this Inquiry.
13. How straightforward would it be for the Government to opt back in to specific PCJ measures on a case-by-case basis? What would be the approach of the Commission and the other Member States to the United Kingdom in this respect?

The UK would be exercising a Treaty right if we choose to opt out and seek to rejoin certain measures. The EU institutions and its Member States are all bound to respect the obligations and choices that flow from the Treaties. The Treaty also establishes the process for the Commission and Council to consider the UK’s applications to re-participate.

The process for rejoining measures if we do exercise the opt-out is as follows:

Schengen measures
The UK submits a formal request to the Presidency to rejoin certain measures. The Council acts by unanimity of the Schengen States, plus the UK, to agree a Council Decision confirming UK participation in those elements of Schengen. The Schengen States are all of the EU Member States, with the exception of the Republic of Ireland.

Non-Schengen measures
The UK submits a formal request to the Council and the Commission to rejoin certain measures. Then either:

1. The Commission confirms UK participation through the adoption of a Commission Decision; or
2. The Commission confirms that conditions will need to be met for the UK to participate via a Commission Decision. If the UK then accepts those conditions then it notifies the Presidency, and the Commission then confirms that the UK has joined by the adoption of another Commission Decision; or
3. If we cannot get agreement with the Commission on whether the conditions have been met we would then refer the matter to the Council which would then decide on our request by way of a Council Decision.

14. What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

If the Government does decide to exercise the opt-out, cooperation with other Member States could take a number of forms. The Home Secretary said in her statement of 15 October that ‘we will consider not just opt-ins and opt-outs but the other opportunities and options that are available’.

Firstly, the Government could apply to rejoin measures within the scope of the 2014 decision.

Secondly, the Government believes that in some cases it would be possible to rely on pre-existing Council of Europe Conventions or bilateral treaties. For example, if the European Investigation Order has not yet become operational and the Government did not opt back in to the Mutual Legal Assistance Convention and its Protocol, we believe that most forms of cooperation would continue on the basis of the 1957 Council of Europe Convention and its Protocols. Indeed, as not all Member States have ratified the EU’s Mutual Legal Assistance
Convention and its Protocol the impact on our MLA relations with those States would be largely negligible.

Thirdly, in some cases it may be possible to negotiate bilateral treaties with each Member State or with the EU that would effectively replace the instruments in question.

Fourthly, in some cases there may simply be no need for any such agreement to be in place in order for there to be cooperation.

15. Is Article 276 TFEU, which states that the Court of Justice has no jurisdiction to review the validity or proportionality of operations regarding the maintenance of law and order and the safeguarding of internal security, relevant to the decision on the opt-out?

Article 276 is clear that ECJ jurisdiction is limited. It cannot review the validity or proportionality of operations carried out by the police or other law-enforcement services nor can it review the exercise of responsibilities regarding the maintenance of law and order and the safeguarding of internal security. This limit on ECJ jurisdiction would, in our view, apply to the interpretation of former 3rd pillar measures as it would apply to measures adopted post-Lisbon. We will take this limit on jurisdiction into account when deciding whether to exercise the opt-out, and if we do opt-out, in deciding which former 3rd pillar measures we should opt back into.

16. If the opt-out is exercised, would there be any implications for the Republic of Ireland considering that the two countries work very closely on police, security and immigration matters, as well as participating in a Common Travel Area?

The Government values the close working relationship between the UK and the Republic of Ireland on police, security and immigration matters and recognises its particular importance in the context of the Common Travel Area. Both the Home and Justice Secretaries have met with Irish Ministers to discuss the 2014 decision and we welcome their views on this matter, including on which measures underpin practical cooperation between us. The Government is confident that effective cooperation with the Republic of Ireland will continue in the future.
Summary of the main points of this submission:

i. The UK should opt-out of all 135 EU ‘police and criminal justice’ measures.

ii. We should not then opt back into any of them at a later date.

iii. We have categorized the measures into two categories and 11 sub-categories. Measures in Category 1 do not require EU legislation to be effective and there is no case for an opt-in. Measures in Category 2 should be replaced with an adequate system of international cooperation on bilateral and/or multilateral basis.

iv. The EU legislation on police and criminal justice has mainly failed to achieve any legitimate purposes, but instead has placed our own legal system into a situation of a constitutional crisis, with sovereignty, rule of law, and our most fundamental liberties all in jeopardy.

v. The European Arrest Warrant stands out as the greatest problem. Its benefits to the UK are almost entirely illusory, and it is a major threat to liberty of UK citizens, with grossly inadequate safeguards to the rights of the accused. EAW should be replaced with a fair system of extradition based on assessment of prima facie evidence against the accused.

vi. On the whole, the Council of Europe conventions and other non-EU mechanisms of international cooperation provide an adequate legal framework for extradition, mutual legal assistance, and other forms of cooperation in combating crime.

vii. The significance of subjection to the jurisdiction of European Court of Justice must not be underestimated. ECJ is a ‘political’ court of very poor judicial quality, and it should be expected to use its new powers to actively promote the EU-integrationist constitutional agenda, rather then uphold the rule of law or do justice in individual cases.

viii. The opt-out is therefore a step in the right direction, towards re-establishing democratic control over our system of criminal justice, in accordance with our own constitutional and legal tradition.

ix. However, further reform will be required. The opt-out in itself will not cover post-Lisbon ‘police and criminal justice’ measures such as European Investigation Order, or other EU’s ‘Justice and Home Affairs’ in the fields of immigration and asylum and civil law. The government will need to take further action to re-establish democratic control over these areas, protecting UK’s constitution and national interest.

Introduction

1. This is the submission made on behalf of the UK Independence Party to the House of Lords Select Committee on the European Union in response to its Call for Evidence on the UK’s 2014 Opt-out Decision (Protocol 36).

2. This submission is made by Gerard Batten MEP on behalf of UKIP. Mr. Batten is the UKIP spokesman on Home Affairs, and MEP for London since 2004; he has sat on the European Parliament’s Civil Liberties, Justice and Home Affairs Committee since 2009. He has taken a great deal of interest in the European Arrest Warrant and other EU ‘police and criminal justice’ measures adapted in the UK. Over the past eight years, he made numerous parliamentary speeches and written questions on the
matter, and was involved in public campaigns over controversial EAW cases, especially those of his constituents Andrew Symeou and Miguel-Angel Meizoso-Gonzalez. He made a detailed written submission for the recent extradition review by Sir Scott Baker’s panel. By the leave of the Supreme Court, he was a Public Interest Intervener in the landmark EAW case of Assange v Swedish Prosecution Authority (2012). He is the author of Freedom, Security & Justice? Or the creation of a European Union Police State (2012).

3. As a preliminary comment, with the greatest respect to the Select Committee, we note that this is not the first detailed inquiry focusing on the European Arrest Warrant. Before coming to power, both government parties recognized that the threat posed by it to the civil liberties called for an urgent reform. Still, no action has been taken; and instead, we have only seen an excessive number of reviews on that subject. That includes the review by the Joint Committee on Human Rights, the review by the independent panel appointed by the Home Secretary and chaired by Sir Scott-Baker, the review by the Home Affairs Select Committee, and in the statement of 15th October, she has effectively commissioned another four reviews by four separate parliamentary committees. With respect, this is an entirely inadequate approach to a situation posing an immediate and grave threat to civil liberties, where urgent action has been promised. We would invite the Select Committee to make it clear in its report that the government should take an urgent action to protect the constitutional liberties, as the both government parties have pledged, and in the circumstances, seven detailed reviews of this subject are quite sufficient and it is not really necessary to commission the eighth and ninth reviews, in whatever form. It is time to act.

4. The Call for Evidence invites responses to 16 specific questions; most of them are answered below. References in square brackets are to the number of each legislative act of the EU on the Home Secretary’s list.

Q. 1. Should the Government exercise its block opt-out?

5. Yes. The UK should exercise its right to a ‘block opt-out’ from the EU’s pre-Lisbon police and criminal justice (PCJ) measures. Moreover, the opt-out should be seen as the first step towards a much more comprehensive range of reforms aimed at restoring national sovereignty over criminal justice and policing as well as developing international cooperation in that field on a fair, efficient, and constitutionally coherent basis.

6. There is an obvious public interest in international cooperation in combating crime, and the UK’s participation in PCJ measures was originally motivated by hopes that the EU legislation would help to facilitate that. In reality, the EU measures have been very ineffective in this respect. Indeed, practice has shown that the EU pursues quite different goals in this area, namely establishing its own systems of criminal justice and law enforcement which would gradually absorb or replace national systems. Those emerging EU-wide systems have proven to be fundamentally incompatible with the British legal system. The inevitable result is a mounting constitutional crisis, where we see most fundamental common law liberties being superseded and ousted by EU innovations, and the very rule of law in this country called into question.

7. While the opt-out is often portrayed as an ‘extreme’ anti-EU step, the reality is very different. The right to this opt-out was expressly reserved in the Lisbon Treaty, and it
8. As for the UK’s national interest and especially the interest in preservation of the rule of law in this country and the constitutional liberties of its citizens, the opt-out will be a step in the right direction. However, its effect will be limited by the following factors:

- The ‘opt-out’ may be rendered totally ineffective by subsequent ‘opt-ins’ into a number of individual measures, such as the European Arrest Warrant. Indeed, the government has been careful to leave this option permanently open for itself and its successors.

- Even without subsequent ‘opt ins’, the majority of pre-Lisbon PCJ measures has been transposed into national legislation. Unless the opt-out is accompanied by a corresponding comprehensive reform of domestic legislation, it will be of little effect.

- In any event, the ‘opt-out’ will not extend to any of post-Lisbon measures, most notably European Investigation Order (EIO). The EIO has been credibly criticized as a major threat to civil liberties, and it is deplorable that the government chose to ‘opt in’ without ensuring those liberties are safeguarded. This is now a major problem, which will not be solved by the block opt-out from pre-Lisbon measures.

- ‘Police and Criminal Justice’ measures represent only a segment of the EU legislation on ‘Justice and Home Affairs’, which forms the true basis of the EU’s emerging legal system and disables reforms urgently required at the national level in such vital areas as immigration and asylum. The PCJ opt-out will not affect the larger ‘Justice and Home Affairs’ bloc, which is another area where an urgent ‘repatriation of powers’ is required, yet the government has not even begun solving that larger problem.

9. Even if the opt-out is carried out in the most ‘radical’ version, i.e. with no subsequent opt-ins whatsoever, the effect of it will be limited to a literal ‘repatriation of powers’ and will not necessarily mean a substantive legal reform. Most notable effects will be two:

10. Firstly, the Parliament and the Crown will untie their hands for amending or reforming the domestic law on criminal justice and law enforcement. Constitutionally, this would be a very positive development, as the legislative decision-making will be subjected to proper democratic controls. To make the reform effective in practical terms, the Parliament will then need to make full use of its newly regained legislative powers to restore a fair and efficient system of criminal justice at the national level. Likewise, the Crown will need to be active in restoring and improving the network of international cooperation in this area, whose development has been effectively blocked by the EU unsuccessful experiment of developing a pan-European coercion-based system.

11. Secondly, the opt-out would allow the UK to stay outside the jurisdiction of the European Court of Justice in this area. In this respect, it does not ‘repatriate powers’, but merely prevents a further ‘transfer of powers’ to the EU. The position in this respect is often misunderstood. Doing nothing would not preserve the status quo, but result in the subjection of ECJ jurisdiction, with dramatic changes to the law. The legal effects will be detailed in response to Question 8 below. By way of example, and in summary only:
• the entire body of ECJ case-law in this area will become binding in all UK courts;
• one of the consequences of that is a dramatic change to the British rules of statutory interpretation: the courts will have to interpret every Act of Parliament in a way best promoting the goals of the corresponding EU legislation (see the ECJ ruling in Criminal Proceedings against Pupino (2005));
• that, in turn, will politicize the judicial decision-making, as the courts will have to pay due regard to the political declarations in preambles to EU legislation as to its goals.
• In a large number of criminal proceedings, each party will have a right to apply for the case to be referred to the ECJ to resolve a dispute on interpretation of EU law. That may delay the proceedings for years. If UK court refuses to refer the case to ECJ, the refusal could be appealed.

12. The EU integration in this area has now reached a point where its legal framework leaves hardly any scope for half-way solutions which were often adopted by the UK before. In this respect, the block opt-out is now the only way to maintain the status quo. However, it is submitted that a much more far-reaching reform is necessary. The real choice is between subjecting this country to the EU-wide uniform system based on coercion or, alternatively, restoring UK sovereignty in this area and developing a flexible and efficient network of international cooperation.

Q. 2. What are the likely financial consequences of exercising the opt-out?

13. While it has been reported that the European Commission has threatened the UK with “direct financial consequences” of the block opt-out, that threat does not seem realistic. The opt-out is fully consistent with the UK’s international obligations; its possibility has been negotiated and agreed by every EU member-state in the course of Lisbon treaty negotiations. Consequently, the EU would have no legal grounds for imposing any financial penalties.

Q. 3. What are the wider implications for the United Kingdom’s relations with the European Union if the Government were to exercise the opt-out?

14. While it has been suggested (or even taken for granted) that the opt-out may be detrimental to our relations with Europe, it is submitted that the opposite is true. As a rule, international relations are not improved by supranational systems based on coercion. Historical examples of the contrary include Austro-Hungary, Yugoslavia, or the Soviet Union, to name a few. Good international relations, as we understand them, consist in voluntary and mutually beneficial cooperation. That does not require any supranational structures enforcing their own law.

15. In this particular case, it is likely that the block opt out would benefit our relations with Europe at several levels:

• It would clarify the constitutional position and prevent future ‘demarcation disputes’ over constitutional competences between the EU and UK. The responsibility and control over our system of criminal law would be reserved to the UK national government and Parliament, leaving no scope for disputes.
with Brussels over these matters. These are half-way solutions, with ambiguous power-sharing models, that put strain on relations.

- It would eliminate mutual grievances arising out of practical injustices caused by such ill-designed measures as European Arrest Warrant, where the standards of one legal system are being imposed on another by coercion. For example, Poland is often blamed for ‘disproportionate’ use of the EAWs for minor crimes; what is overlooked is that the Polish law leaves the authorities with no discretion and obliges them to issue an EAW where it is necessary to arrest the suspect. As a result, Poland as a country is being blamed for injustices really caused by the flaws of the EAW system itself. Similar situations arise in relation to countries whose law allows lengthy pre-trial detention or whose standards of fair trial and/or treatment of prisoners are lower than ours. Again, the cases of injustice arising from such difference of standards cause strain on our international relations, while in fact, they merely illustrate the flaws of the EAW system. These causes of international hostility need to be removed, and this is another reason favouring the opt-out.

- In the past, where the UK raised legitimate concerns over the effect of PCJ measures on civil liberties, that caused irritation in some other EU member-states as frustrating integration. It was felt that without the UK, European states with similar legal systems could reach agreements faster and easier. This is another strain on our foreign relations in Europe, which needs to be removed.

- Above all, in the medium term the opt out would lead to a restoration of a much fairer, more efficient and flexible system of international cooperation on this area, based on voluntary bilateral and multilateral cooperation between sovereign states. The EU system of criminal justice has failed, and it is necessary both for this country and its foreign partners to find an alternative way forward. At present, clinging to the EU project in this area only hampers genuine development of international cooperation.

Q. 4. Which of the pre-Lisbon PCJ measures benefit the United Kingdom the most? What are the benefits? What disadvantages result from the United Kingdom’s participation in any of the measures? - [Questions 4 and 5 are answered together]

Q. 5. In her 15 October statement the Home Secretary stated that “… some of the pre-Lisbon measures are useful, some less so; and some are now, in fact, entirely defunct”. Which category do you believe each measure falls within?

16. With respect, questions 4 and 5 are formulated in a biased and misleading way (to an extent, mirroring the Home Secretary’s approach). It is assumed without question that EU measures, as a rule, “benefit the UK”, albeit some of them more so than others; and that those measures should only be divided into more or less “useful” ones on one hand and “defunct” ones on the other. It is true that a lot of EU measures are useless. But it is also true, and more worrying, that a lot of others pose a serious threat to our civil liberties and the rule of law in this country. With respect, any review of the EU’s PCJ measures should focus, first and foremost, on those threats.
17. At present, the European Arrest Warrant stands out as the single most significant PCJ measure, dwarfing the other 134. People in the UK are arrested on EAWs every day, and then transported to a foreign prison on the force of a piece of paper, whether or not there is any *prima facie* case against them. No other PCJ measure is used at a nearly similar scope or with nearly as dramatic consequences to the lives of their victims. The EAW will be considered in detail in response to Question 10, but it is appropriate to stress at this stage that the Protocol 36 opt-out/opt-in decision is, first and foremost, the decision about the future of EAW regime in this country. Without exaggeration, if the government opts back into the EAW, the entire ‘block opt out’ of other measures will be only of marginal significance, and its positive effect will be largely negated.

18. Taking a wider look at the 135 legislative acts on the list, those fall into two large categories, and then a number of sub-categories, as listed in the Appendix.

19. **Category 1: measures of little or no legal significance in the present constitutional framework.** This category includes not only measures which are literally ‘defunct’, but all the arrangements which would operate (or not) just as well without any EU legislation, be that simply at the administrative level (for example, exchange of various liaisons, designation of specialized agencies for cooperation with foreign counterparts, Joint Investigation Teams, etc.), on the basis of national legislation, or on the basis of bilateral/multilateral co-operation. At present, indeed, a lot of EU legislation has no practical effect except affixing the EU trademark to various aspects of voluntary international cooperation. We would identify the following sub-categories:

   **I(A).** **EU legislation superseded/replaced by subsequent pre- or post-Lisbon measures.**

   **I(B).** **EU legislation duplicating national legislation.** In some cases, the EU ‘harmonisation’ legislation has been fully transposed into national legislation and thus served its purpose; in others, it duplicated pre-existing UK legislation from the outset.

   **I(C).** **Mutual legal assistance (MLA) instruments.** By definition, MLA can and should be facilitated by bilateral/multilateral agreements and not by supranational legislation. In practice, the EU legislation on MLA duplicates Council of Europe Convention and the domestic law and practice.

   **I(D) Other measures where EU legislation is plainly unnecessary.** This includes ‘defunct’ measures as well as those where national legislation, bilateral/multilateral agreements, and administrative measures would have exactly the same effect.

20. It should be noted that the very existence of the measures in subcategories I(B), I(C) and I(D) is inconsistent with the EU’s own constitutional principle of subsidiarity, i.e. that the Union shall only intervene where sufficient measures cannot be taken at the national level.

21. While the EU legislation in this category has, in itself, no legal effect in the present constitutional framework, it would be wrong to assume that none of it should be a cause for concern. Thus, many measures transposed into national legislation in Subcategory I(B) have their origin in the EU coercive ‘harmonisation’, and many of
22. Nor is it correct to assume that the effect of an ‘opt-in’ into these measures would be purely symbolic. These measures have no effect in the present constitutional framework; yet the extension of the ECJ jurisdiction would bring many of them to legal life of their own. Even a generally worded declaration to the effect that all member-states must work tirelessly to combat fraud may expose all national anti-fraud law to the dictate of Luxemburg.

23. At the same time, this legislation will remain of no practical utility. The opt-in would mean a naked transfer of power to Brussels and Luxemburg, and there is really no case for opting into any of the measures in this category.

24. **Category 2: Measures of substantial legal significance**, which may be roughly divided into the following sub-categories:

**Sub-category 2(A). ‘Mutual Recognition’ Instruments.**

25. The principle of ‘mutual recognition’ requires that a judicial or prosecutorial decision taken in one EU member-state should be enforced automatically in any other EU member-state. The European Arrest Warrant is the most infamous of the EU ‘mutual recognition’ instruments. Others extend the same principle beyond arrest warrants to criminal sentences, fines and penalties, probation, bail (European Supervision Order), confiscation orders, freezing of assets, etc.

26. The European Arrest Warrant, having received the highest circulation of all these instruments, has highlighted the fundamental flaw of mutual recognition. Such a system cannot work between nations whose legal systems and standards of justice are so different. Trials *in absentia*, widespread in many EU member-states and abhorrent to our own legal tradition, are only one example of this. Council Framework Decision 2009/299/JHA [92] was adapted in order to mitigate that problem and introduce safeguards to the rights of defendants tried in absentia, but as a number of EAW cases demonstrate, the safeguards remain grossly inadequate.

27. Mutual recognition effectively means that **every ex-communist prosecutor or judge in an East European state run by a local mafia is given an equal standing to the judges in the Old Bailey.** That is why the EAW has caused so many horrible and tragic cases of injustice. The potential for similar injustice is inherent in all other ‘mutual recognition’ instruments; many of them are a threat to liberty almost as much as the EAW, while others pose a similar threat to property rights. It is from this angle, not from a viewpoint of their real or illusory utility, that those measures should be assessed.

28. Out of the 10 ‘mutual recognition’ measures, four (European Confiscation Order [68], European Probation Order [88], European Evidence Warrant [91] and European Supervision Order [97]) have not been implemented in the UK in spite of our initial opt-in. That was mainly due to entirely justified concerns over the threat to civil liberties posed by these measures, and it is unfortunate that the other measures in this sub-category have been implemented in spite of those concerns. If the block opt-out does not take place, the UK will have to implement all outstanding ‘mutual recognition’ measures, as the lack of implementation will expose us to an enforcement action by the European Commission.
29. Not all ‘mutual recognition’ instruments are pre-Lisbon, and the block opt-out will not eliminate the threat posed to civil liberties by the post-Lisbon European Investigation Order (EIO), which the present government has chosen to opt into. EIO will supersede the European Evidence Warrant [91] and European Freezing Order [48], so the EIO opt-in renders the block opt-out ineffective in relation to these two instruments. Unless the block opt-out is followed by the UK’s withdrawal from the EIO, it will remain a half-measure.

Sub-category 2(B). Eurojust and subordinate institutions.

30. The actual and potential significance of Eurojust is not fully visible to a superficial observer. Eurojust brings together the so-called ‘College’ of 27 experienced lawyers (mostly prosecutors, but also some judges and police officers), one from each member-state. Each National Member is accompanied by a relatively small team of Deputies, Assistants, and Seconded National Experts. At least one of them for each member-state is legally obliged to be ‘on call’ 24 hours a day, 7 days a week.

31. In practice, most of Eurojust work at present consists in answering queries from member-states on cases involving a complex international dimension, or forwarding such queries to colleagues in another member-state who are able to assist. In this respect, Eurojust is of some utility: according to its 2011 annual report, it has answered 71 requests from UK, and sent 197 requests to the UK, during that year. Nevertheless, with all due respect to experience and expertise of Eurojust members, there are many respected international law firms offering similar advice on a private contractual basis. Eurojust may be said to be simply the most expensive of them, with the annual budget of 33,000,000 Euros. 11.5 per cent of that budget (3,795,000 Euros) comes from UK contributions to the EU.381

32. Yet the greatest concern, again, comes from the threats which the rising powers of Eurojust pose to the civil liberties and constitutional integrity of our legal system. In due course, Eurojust is destined to mutate into the European Public Prosecutor’s Office, or at least, its closest subsidiary. Accordingly, the questions of UK’s participation in the ‘pre-Lisbon measure’ (Eurojust) and the future ‘post-Lisbon measure’ (European Public Prosecutor) cannot be separated from each other; indeed, it is really one and the same question. In our opinion, the obvious answer is that we should opt out of both.

33. Given that the government has already decided to opt-out of the European Public Prosecutor (EPP) scheme, continued participation in Eurojust makes no sense, except as a backdoor entrance into the EPP scheme. On the basis of the EU legislation already in force, Eurojust represents an unprecedented concentration of judicial, prosecutorial, and police power in Europe. Each National Member has the legal powers to order arrests, searches, seizures, interrogations, surveillance, freezing or monitoring of bank accounts, confiscations, electronic tagging, etc. in his own country – on an EU instrument such as a European Arrest Warrant, or even without such an instrument (Articles 9c and 9d of the Eurojust Decision; however these powers are subject to national law). In this respect, Eurojust may serve as a back door for a de facto mutual recognition even where a member-state chooses not to implement such controversial instruments as European confiscation orders or freezing of assets. Further, each member has access to his country’s databases of criminal record, registers of arrested

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381 Cooperation not Control. The case for Britain retaining democratic control over EU crime and policing policy. By Dominic Raab, Open Europe, 2012; p.p. 17-18
person, investigation register, DNA registers and “other registers of his Member State where he deems this information necessary for him to be able to fulfil his tasks.” (Article 9(3)).

34. The amount of the collective power of the College is something unheard of in the UK legal system. At this level, there is no mutual independence, no separation of powers, no checks and balances between judges, prosecutors and the police. In the future, all those vast powers will, no doubt, be placed at the disposal of the European Public Prosecutor.

35. Furthermore, Eurojust situated in the Hague is merely a tip of the iceberg. Eurojust also has a network of ‘National Coordination Systems’ in each EU member state, led by the ‘National Correspondent for Eurojust’. Each NCS also includes a National Correspondent for terrorism matters and a National Correspondent for European Judicial Network. In addition, the National Coordination Systems link the Eurojust with all sorts of other EU police and judicial networks by incorporating their respective members or ‘contact points’.

36. All these networks are effectively part of the Eurojust system. They consist of judges, prosecutors, and law enforcement officers who are actually working and exercising power in their respective member-states. This obviously gives rise to potential conflicts of interest, especially bearing in mind that someone’s membership in one of Eurojust’s networks is not necessarily a matter of public record, or at least, not widely known. Rather secretive institutions such as the European Judicial Network clearly pose at least a potential threat to the independence of judiciary. Given the English tradition of political independence of prosecutors and police, the same applies to nearly all other Eurojust networks.

37. Accordingly, just like the opt-out from European Public Prosecutor scheme makes it imperative to opt out of Eurojust Decision as well, the Eurojust opt-out must also be accompanied by the opt-out of all measures in Sub-Category 2(B). A subsequent opt-in into any of them would deprive the UK of the substantive benefits of opting out of the EPP and Eurojust, and re-open the door to the constitutional threat posed by those institutions.

Sub-category 2(C). Europol and subordinate institutions.

38. Like Eurojust, Europol has its own web of ‘networks’ of ‘contact points’ within national authorities, operating under Europol’s supervision. Measures which form the basis of those networks and their link with Europol are also included in this category, along with the (rather numerous) EU legislation regulating the powers and functions of Europol itself.

39. While sometimes referred to as ‘EU police force’, in fact Europol is a criminal intelligence agency, modeling itself on US FBI or UK National Criminal Intelligence Service. At the same time, there are well-founded concerns that it has every potential to develop into some kind of political secret police.

40. Europol employs over 700 staff, who enjoy immunity from prosecution or civil lawsuits in relation to everything they do or say as Europol officers, with just one technical exception382. The names of Europol staff are kept secret, with the exception of its Director and his three Deputies. In 2006, I wrote to the then Director of Europol,

382 if a Europol officer takes part in a Joint Investigative Team between member-states, his actions as a member of JIT are not covered
Max-Peter Ratzel, requesting the names of brief CVs of other Europol employees, but Mr. Ratzel declined to provide them.

41. Since its foundation as the Europol Drugs Unit in 1992, Europol’s remit has been steadily widening; since 2010, it has power to investigate any organised crime, terrorism, and a further list of 24 very broadly defined categories of illegal activity. Like the EAW list of offences, some of those strike an English reader as manifestly inadequate definitions of criminal offences, for example ‘racism and xenophobia’, ‘computer crime’ or ‘corruption’.

42. There are no reliable safeguards to ensure that Europol does not gather intelligence on lawful political or other activities under such ill-defined headings. Given Europol’s secretiveness and lack of accountability, one would not be surprised if ‘racism’ was extended to include opposition to uncontrolled immigration, ‘xenophobia’ – opposition to the EU; or ‘computer crime’ – such web-sites as Wikileaks. It is worth noting that the 2010 EU legislation explicitly authorised Europol to investigate such activities outside its ‘organised crime’ remit, i.e. without any evidence of organised crime involvement.

43. An EU Council document dated 16 April 2010 instructs Europol to build a database on ‘the processes of radicalisation in the EU’ in order to ‘generate lists of those involved in radicalising/recruiting or transmitting radicalising messages and to take appropriate steps’. Well-founded concerns have been voiced that this project is effectively aimed at political persecution, and amounts to spying on political activists whom Europol arbitrarily deems to be too ‘radical’.

44. In substance, the work of Europol is organised around so-called Analysis Work Files. Each AWF is a massive project with a big database and a team of officers working on it full-time. Some of them (such as DOLPHIN – ‘Non-Islamist extremist terrorist organisations threatening the EU’) might cause obvious civil liberties concerns (although there is no hard evidence of any specific impropriety in Europol’s work on those files at the moment).

45. The priorities for Europol’s work are set by the political leadership of the EU in documents called Council Conclusions. Up to a dozen of such ‘conclusions’ are issued monthly at the meetings of EU ‘Justice and Home Affairs’ ministers.

46. There is a Europol National Unit in each member-state. In the UK, Europol officers work within the international department of the Serious Organised Crime Agency (SOCA). Each national unit seconds a liaison officer to the central Europol in Hague.

47. At least one Europol officer was involved in the infamous killing of Jean Charles de Menezes following the 7th July 2005 terrorist attacks in London. In connection with that, I wrote to Europol, the Home Office, Metropolitan Police and SOCA, expressing concern over the immunity enjoyed by Europol officers. All my correspondents defended the present position. However, Brian Minihane, the then head of Europol National Unit UK, confirmed to me that a Europol officer was involved in the incident, although his role was limited to ‘facilitation of enquiries with other member-states’ and he was ‘desk bound’.

48. It is submitted that the civil liberties risks associated with Europol are too great for any serious consideration of an opt in, and this approach should be extended to all measures in this sub-category.

Sub-category 2(D). Schengen measures.

49. *Police and criminal justice* measures under the Schengen Agreement are obviously supplementary to its principal part – effective abolition of borders between the parties. The logic of it is understandable: where the state borders are effectively abolished, it becomes almost impossible to combat crime without some form of enhanced cooperation between police authorities.

50. Yet, this rationale obviously does not apply to the UK. Fortunately we have not joined the main plank of Schengen Agreement and have no plans to do so. In this situation, our participation in Schengen policing measures has hardly any rational basis; especially bearing in mind that our joining a significant part of the Schengen system has not been subject to any public scrutiny – indeed, most of the people in the UK would assume we are entirely out of it. In practice, the government has simply taken us into it by stealth, without the country’s knowledge or consent.

51. Schengen measures provide for even closer integration of police and judicial authorities than other *police and criminal justice* measures of the EU; accordingly, they are often even more dangerous to civil liberties and the rule of law. The essential problem is, however, typical of many EU measures in this sphere: it fails to draw clear lines of separation of power, or to introduce any checks and balances, between the police powers, prosecutorial powers, and judicial powers.

52. Thus, an alert placed on the SIS database should be treated as a European Arrest Warrant. So, within the Schengen Zone, people are being extradited simply on the basis of a hit in a database. Because the UK is due to join SIS-II in 2013, but not the Schengen Zone, it is not clear whether the same will happen in the UK. However, the Scott Baker Report states that the number of EAWs received in the UK is expected to rise sharply after we join SIS.

53. Again, to someone belonging to an English legal tradition, it seems self-evident that an operational police database cannot be trusted in the same way as a judicial decision, and mixing these two is, by definition, a major threat to liberty. Especially so where the data is put into the database by foreign police forces of far lower quality and integrity than our own.

54. The matter is not limited to the database; what comes with it is SIRENE, a little known but powerful organisation created to manage SIS, which has by now developed into virtually a second Europol. SIRENE has a central office and national bureaux, i.e. a number of officers attached to a respective national authority - the equivalents of UK’s Serious Organised Crime Agency. One Czech SIRENE officer jokingly told my researcher that his organisation is “top secret”. In reality, he added, about 30 per cent of the staff at the International Department of Czech Republic’s Criminal Police Investigation Service are SIRENE officers, the others working for the Interpol or Europol. However, SIRENE bureau does about 60 per cent of all work. He believed the situation was similar in analogous agencies in other EU member-states.

55. Unlike other EU police organisations, **SIRENE has actual executive powers in some countries.** For example, SIRENE officers can escort prisoners who are being surrendered under a European Arrest Warrant. In some other member-states, SIRENE officers help to organize ‘execution’ of EAWs without being directly involved.
56. The UK is expected to join the SIS/SIRENE system in 2013; however, there is already a German SIRENE officer working in UK’s Serious Organised Crime Agency, **Jan-Per Ruehmann**, apparently in an advisory role.

57. It would be absurdly futile to opt out of other PCJ measures of the EU, and then to opt in the enhanced integration measures under the Schengen acquis. It is submitted that the opt out of this sub-category is also imperative.

**Sub-category 2(E). Databases.**

58. The sub-category includes several EU-wide police and criminal intelligence databases. Obviously, sharing confidential personal data is a very sensitive issue in terms of civil liberties, and even where some limited rights of invading people’s privacy may be given to the British police, sharing this with the police of some other 26 states is a different matter. Some degree of data sharing is justified, but the UK authorities must always retain the control, and it is obviously too risky to transfer the ultimate control to the EU, as an opt in would do.

59. Of particular concern is the **Prum Database** [79] and [80], which would combine national databases of fingerprints, DNA, and vehicle registration data. The UK police holds the biggest DNA database in the world, and our current law authorizes retention of DNA data of innocent people not charged with any crime. Other EU states have much more limited DNA databases. The UK has quietly declined to implement the decision in spite of the opt-in, due to the concerns over the cost of implementation, the lack of reciprocity, and the threat to civil liberties. It is submitted that we should continue to stay out of this measures, and to opt-out of other common databases of the EU (e.g. databases of ID documents [18], criminal records [93] and [94] and Customs Information System [100]).

60. In addition, the example of SIS and SIRENE demonstrates that the EU databases tend to grow large organizations to manage them, which in time develop into powerful agencies of their own right.

**Sub-category 2(F). Cooperation agreements between EU and third countries** (Bosnia, Norway, Macedonia, Ukraine, Croatia, Iceland, United States, Switzerland, and Russia).

61. The agreements concern “exchange of classified information” and, in the case of the US, also extradition and mutual legal assistance.

62. Opt-out or opt-in in relation to these agreements would have no immediate effect on the UK, as the cooperation takes place directly between the EU and the ‘third country’. Yet the very existence of some of these agreements highlights the dangers of our overall involvement in the EU’s ‘police and criminal justice’ system. It is manifestly counter-productive to exchange classified information on combating crime with countries with such level of corruption as in Russia and Ukraine, where it is sometimes impossible to distinguish between the law enforcement agencies and the organized crime. And in terms of civil liberties, if we are rightly anxious about sharing sensitive information with some of the EU member-states, what should we say about sharing people’s sensitive personal information with Moscow?

**Sub-category 2(G). Other measures of substantial legal significance.**

63. **European Police College (CEPOL)** [67]. The purpose of CEPOL is to train senior police officers from across Europe to operate in the framework of the emerging EU legal system. Following the block opt-out, there is no utility in such training for UK
senior police officers, and their time would be best spent on something else. Further, there are concerns that the leadership of CEPOl may be misusing the organisation for indoctrination and advancing their own Euro-federalist political agenda. The current director of CEPOl is Ferenc Banfi, an ex-communist who made a brilliant career as a police officer in communist Hungary. As Ted Jeory revealed in Sunday Express (29 August 2010), Mr. Banfi advocates a drastic centralisation of policing in the EU. The Sunday Express quotes him as saying: “I am 100 per cent sure it is just a question of time when Europol will have executive powers in the future. It may be five years or 10, but it will happen”. Mr. Banfi was reportedly discussing that idea with the director of Europol, Rob Wainwright. Since the UK (hopefully) is not going to participate in such a centralisation, the continuing participation in CEPOl would also be unnecessary and wasteful.

64. **Special Intervention Units [81]**: the EU legislation provides for setting up ‘special intervention units’ in each member-state and assistance they may provide at the request of another member-state in case of a vaguely defined ‘crisis’. The assistance may take the form of sharing expertise, equipment, or “**carrying out actions on the territory of that Member State, using weapons if so required**”. The civil liberties risks are obvious, especially if the jurisdiction over interpretation of that legislation is transferred to the ECJ. **On the face of it, the legislation seems to permit, for example, for a government to request an intervention of a foreign police to control civil unrest**. Needless to say, the UK should under no circumstances become involved in this kind of cooperation, either as the intervener or as a victim of such an intervention, and there should be no question of an opt-in.

65. **Framework Decision on Racism and Xenophobia [86]** requires all member-states to criminalize “certain forms and expressions of racism and xenophobia”, without properly defining the legal meaning of either; most notably the offences include ‘inciting hatred’ and ‘publicly condoning, denying or grossly trivialising crimes of genocide, crimes against humanity and war crimes’. However, member-states are permitted to limit the offences to “**conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting**”. Therefore, the current UK legislation is compliant with this Framework Decision.

66. Criminalisation of mere opinion, however deplorable it may be, is entirely alien to our legal tradition, primarily because political and moral categories such as ‘racism’, ‘xenophobia’ or ‘hatred’ are incapable of a precise legal definition. It would be only too easy to extend these definitions to cover entirely legitimate political opinions, e. g. construe concerns over mass uncontrolled immigration as ‘racism’ or ‘xenophobia’. Therefore, it remains controversial whether such a criminalization is appropriate at all; but at any rate, it would be grossly irresponsible to remove control over interpretation of these laws from UK courts, and entrust it to the politicized European Court of Justice.

Q. 6. **How much has the United Kingdom relied upon PCJ measures, such as the European Arrest Warrant, to date? Likewise, to what extent have other Member States relied upon the application of these instruments in the United Kingdom?**

67. According to the report of the Joint Committee on Human Rights, the EAW figures are as follows (more detailed data is also available):
<table>
<thead>
<tr>
<th>Years</th>
<th>EAWs received by UK</th>
<th>EAWs issued by UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006–7</td>
<td>3515</td>
<td>146</td>
</tr>
<tr>
<td>2007–8</td>
<td>2483</td>
<td>182</td>
</tr>
<tr>
<td>2008–9</td>
<td>3526</td>
<td>257</td>
</tr>
<tr>
<td>2009–10</td>
<td>4100</td>
<td>203</td>
</tr>
<tr>
<td>TOTAL 2006-10</td>
<td>13,624</td>
<td>788</td>
</tr>
</tbody>
</table>

68. The disparity is obvious, and the ratio is likely to rise many times if the UK continues to participate in the EAW and joins the Schengen Information System in 2013: the number of EAWs received in this country is expected to rise dramatically as we will recognize SIS alerts, but the number of UK’s own EAWs will remain unaffected.

69. Further, the figures do not reveal the full extent of the disparity. UK prosecutors only ever issue European Arrest warrants when they are ‘trial-ready’ i.e. have all the evidence against the suspect ready to be presented to the court. Therefore, in practically all cases, we could have just as well secured extradition of suspects to the UK through normal extradition proceedings, even if we were required to present a prima facie case against them in a foreign court. The benefits of EAW, compared to traditional extradition, are thus illusory for the UK; in practice, they are limited to saving the costs of translation of the file.

70. By contrast, many of the foreign EAWs received in this country are notoriously issued for investigation rather than for the trial, without the requesting foreign authority having a prima facie case against the accused, and even before the decision to charge them or not. Undoubtedly, the re-introduction of prima facie case requirement would have reduced the number of requests dramatically and restored the balance, both in terms of numbers and in terms of protection to the rights of the accused.

71. Thus, in 2003 – just before the introduction of the EAW – the overall number of extradition requests received by the UK was 114, and the number of requests issued 87 (Scott Baker Report, p. 461).

72. Further, the dramatic growth in the numbers of EAW since it was introduced clearly does not correlate with any comparable growth of crime rates, and suggests that the instrument is being increasingly abused where requesting states have little or no evidence against the accused. A re-introduction of prima facie case requirement would deter unmerited requests without any significant detriment to our own interest in securing extradition of genuine fugitives.
Q. 7. Has the UK failed to implement any of the measures and thus laid itself open to infringement proceedings by the Commission if the Court of Justice had jurisdiction?

73. At present, the UK is in breach of the EU legislation in not implementing at least seven pre-Lisbon measures, including four ‘mutual recognition’ instruments:
   - European Confiscation Order [68]
   - European Probation Order [88]
   - European Evidence Warrant [91]
   - European Supervision Order [97]
   - Prum database [79] and [80]
   - Framework Decision 2009/948/JHA [107], empowering Eurojust to resolve conflicts of jurisdiction in criminal cases.

74. There are obvious good reasons why the government has quietly declined to implement these measures, and why they should not be implemented in the future. Most importantly, implementation of these measures would have raised very serious concerns over civil liberties.

75. For instance, European Supervision Order (the EU version of bail) issued by a foreign prosecutor, court, or any other designated authority, would oblige the UK courts and police to enforce on the citizens such measures as curfew, electronic tagging, living at a certain address, regular reporting to the police, limitations on entering certain places or obligation to avoid contacts with certain people. The same measures could be enforced on the force of European Probation Orders. In addition, European Probation Order may require enforcement of mandatory therapeutic treatment or any ‘instructions relating to behaviour, residence, education and training, leisure activities, or containing limitations on or modalities of carrying out a professional activity’.

76. Similar concerns apply to the Prum database (see above); and to the ‘conflicts of jurisdiction’ Framework Decision. If the power to resolve such conflicts of jurisdiction is transferred from UK prosecutors and courts to Eurojust, this may lead to situations where Eurojust may order us to terminate prosecution in a given case, and instead extradite the suspect to another member-state, even if the UK court is, legally, the most appropriate forum.

Q. 8. What would be the practical effect of the Court of Justice having jurisdiction to interpret the measures? Have past Court of Justice judgments caused any complications regarding the operation of PCJ measures in the United Kingdom, in terms of their interaction with the common law or otherwise?

77. Even putting aside the obvious concerns over sovereignty, frankly, there is very little to be said in praise of the European Court of Justice. It is a heavily politicized court of very poor judicial quality, which makes even the European Court of Human Rights shine by comparison.

78. While formally the ECJ consists of judges from all member-states, in reality the judgements are effectively made by one person, the Advocate General, who delivers
his own legal opinion on the case before the full court starts its deliberations. Nearly all ECJ judgements substantively repeat the opinion of the Advocate-General.

79. ECJ's natural tendency is to turn any case into a major constitutional judgement transferring power from member-states to the EU. It was ECJ who, as early as in 1964, claimed the EEC's "sovereignty" over member-states in so many words, in the case of Costa v ENEL. It was ECJ who, as early as in 1986, held the EEC Treaty to be a 'basic constitutional charter' in the case of Partie Ecologiste 'Les Verts' v. Parliament (1986). It was only twenty years later that the EU dared to utter the word 'Constitution' aloud; and from that it was forced to retreat. Yet, in the ECJ jurisprudence, the EU constitution had been there from the outset.

80. The ECJ judicial activism is not limited to constitutional issues. This September, the Advocate General has given the Opinion in the Bulgarian case of Belov. The ongoing case concerns the practice of a Bulgarian electricity company to fix electricity meters much higher than usual in some areas, to prevent widespread fraud by tampering with electricity meters. The Advocate General found that the practice amounted to 'indirect discrimination' against the large Roma populations of those areas.

81. In the field of criminal justice, perhaps the most significant ECJ judgement was the one in Criminal Proceedings against Pupino (2005), which had a disastrous effect on the operation of the European Arrest Warrant. In that case, the ECJ arbitrarily elevated the constitutional status of Framework Decisions, turning them from a kind of international agreements into effective legislation.

82. Article 34(2)(b) of the EU Treaty provides:

\[
\text{Framework decisions shall be binding upon the Member States as to the result to be achieved but shall leave to the national authorities the choice of form and methods. They shall not entail direct effect.}
\]

83. Thus a Framework Decision per se is not a source of law. Like an international treaty, it merely imposes an international obligation on the UK government to modify the domestic law to achieve certain results. The government discharges this obligation by enacting a statute (e.g. Part 1 of the Extradition Act 2003), and it is the statute, not the Framework Decision, that the courts in this country have to apply.

84. However, the ECJ held in Criminal Proceedings against Pupino:

\[
\text{When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues and thus comply with Article 34(2) (b) EU.}
\]

85. The reasoning of this ruling (blueprinted by the Advocate General and then rubber-stamped by the Court) was demonstrably poor in legal terms, and displayed political motivation. In summary, the following reasons were given:

- The Framework Decisions on Police and Judicial Cooperation are binding, because to rule otherwise would make it more "difficult" for the Union to "organise… relations between the Member States and between their peoples" in the spirit of "solidarity".
- The principles of 'loyalty to the Union' and 'loyal cooperation' between the member-states
• The transfer of sovereignty from the member-states to the Union by force of the EU Treaty.

86. By a characteristic oversight, the House of Lords then failed to appreciate the significance of UK’s opt-out of the ECJ jurisdiction in police and criminal justice matters, and held that Pupino was binding in UK courts, which have to interpret the Extradition Act 2003 in conformity with the Framework Decision (Dabas v High Court of Justice in Madrid [2007] UKHL 6). It was only recently that, in the case of Assange v Swedish Prosecution Authority, the Supreme Court recognized its earlier error and acknowledged that Pupino was not binding in the UK. This confusion illustrates that, even putting aside the substance, the sheer complexity of the EU law may put our legal system in total jeopardy, with tragic results to innocent British citizens.

87. Indeed, the judgements in Pupino and Dabas had profoundly disastrous effect. The reason was the ambiguity of such phrases as ‘result to be achieved’, ‘wording and purpose of the framework decision’, and ‘result which it pursues’. Every Framework Decision starts from a lengthy preamble, setting out its purely political ‘purposes’ and ‘results to be achieved’, such as the ‘common area of freedom, security and justice’ or ‘ever closer union’. In light of the ECJ’s binding case-law, our own legislation had to be interpreted by our own courts with reference to political slogans of the EU. Needless to say, this contributed much to the systemic injustice of EAW cases.

88. Thus, in the case of Andrew Symeou, it was on the basis of Dabas judgement that the High Court held it had no jurisdiction to look into the actions of Greek police in an EAW case. The judges added:

The absence of even an investigation before extradition into what has been shown by the defendant here may seem uncomfortable; the consequences of the Framework Decision may be a matter for legitimate debate and concern. But we have no doubt but that the common area for judicial decisions in criminal matters means that the judicial systems of the countries of the European Union must be regarded as capable of providing sufficient minimum safeguards for a fair trial in a civilised country, including provisions for the exclusion of evidence obtained by coercion.

89. One would expect to see a reference here at least to a provision of the Extradition Act which provided a basis for this monstrous ruling; instead, we find a reference to the purely political objective of the “common area for judicial decisions”.

90. In another case of my constituent, Juzgado de Istruccion Cinco de Palma de Mallorca, Spain (Judicial Authority) v Miguel Angel Meizoso Gonzalez384, a Spanish magistrate requested a surrender of Dr. Meizoso to answer an unsubstantiated private complaint against him at a very early stage of her preliminary inquiry into the case. It was not in dispute that he had not been charged and that there was no substantive evidence against him. Dr. Meizoso resisted the EAW on the grounds that it was not issued for prosecution and that he was not ‘an accused person’. The District Judge applied Pupino and Dabas and held that to accept Dr. Meizoso’s contention would be incompatible with the purposes of the Framework Decision.

91. In Atkinson v Supreme Court of Cyprus [2009] EWHC 1579 (Admin), the defendants had stood trial for manslaughter in Cyprus, were acquitted, and subsequently returned to the UK. The prosecution appealed the acquittal to the Supreme Court of Cyprus,
which heard the case in absentia, substituted a guilty verdict, and issued EAWs. The defendants relied on S. 20 of the Extradition Act 2003, which provides that an EAW for a conviction in absentia can only be executed if the convict “deliberately absented himself from his trial” or if he would be entitled to a retrial, neither of which applied to them. Collins J applied Dabas and held that the statute should be construed to avoid ‘a barrier to surrender which was not authorised by the Framework Decision’ and in a way ‘which ensures that the necessary co-operation and so speedy surrender takes place’.

Accordingly, Collins J construed ‘trial’ in S. 20(3) as meaning a continuing process which included the subsequent prosecution appeal, and held the defendants had deliberately absented themselves from that part of their ‘trial’. In effect, the Court read down the entire S. 20 of the 2003 Act, which was undoubtedly intended by Parliament to serve as an important safeguard against convictions in absentia.

92. These are merely examples, few of the many, showing how the application of ECJ case-law politicised the decisions of our own courts in EAW cases. As a result, even the insufficient safeguards provided for in the Extradition Act 2003 were not applied. The law itself is poor and has insufficient protection to the rights of the accused; and even that law was largely substituted by political objectives. In effect, our courts would now answer legal questions on the basis of tailoring their decisions to bring us closer to the EU’s political objectives. So the ECJ influence is not just that it changes our law to the worse; it undermines the rule of law itself, and substitutes the rule of EU ideology.

93. After the enormous harm Pupino had done to the lives of innocent EAW victims, the Supreme Court fortunately held in the case of Assange that Pupino should have never been applied in the UK at all! This confusion is symptomatic. Quite apart from the poor substance of Luxemburg jurisprudence, the sheer complexity of EU law is perplexing even to our top judges. As demonstrated above, in such a sensitive area of law as police and criminal justice, the results may be truly catastrophic.

94. If we opt-in back into any PCJ measures, Pupino and the rest of deeply deficient ECJ case-law will become binding on our courts again. Indeed, unless urgent action is taken to reverse this government’s opt-in to European Investigation Order, Pupino will be binding in all EIO cases. It is not difficult to foresee that the results will be as disastrous as with the EAW.

95. (The misapplication of Pupino by UK courts was the primary subject of the author’s intervention in the case of Assange, so I would be bold enough to claim some expertise in this area, and hope that the Select Committee may benefit from this detailed submission. The lead judgement of Lord Phillips praised our intervention as “interesting” and “well reasoned” but concluded it did not bear on the ultimate issue in Mr. Assange’s case – see para 9 of the judgement).

Q.9. If the opt-out was not exercised what would be the benefits, and drawbacks, once the United Kingdom becomes subject to the Commission’s enforcement powers and the jurisdiction of the Court of Justice?

96. As the answers to questions 1, 7 and 8 above demonstrate, it is extremely mistaken to expect any benefits. The Commission would be able to take action against the UK for any alleged failure to implement the EU legislation in this area. The politicized ECJ case-law of very poor legal quality will become binding on all our courts.
97. In addition, criminal proceedings in UK courts will be frustrated by endless references to Luxembourg, delaying the proceedings for years. Many lawyers say that, in the end, Luxembourg's answers to such references are not only unhelpful, but actually complicate matters further. This is partly because the ECJ often does not keep its judgement within the limits of the question referred by the national court, but seeks to intrude into the national court's area of competence. For example, rather then simply resolving the 'EU law' question, ECJ would seek to re-write the national court's findings of fact.

98. The EU legislation we have categorized above as Category 1 currently has no legal effect. If the block opt-out is not excercised, or is weakened by subsequent opt-ins, all that legislation will spring to life. The ECJ will have the final say on many purely national legal questions, simply because they fall within some broadly framed declaration in one of the legislative acts of the EU: see the answer to questions 4-5 above.

Q.10. The European Arrest Warrant has been the subject of both praise and criticism. What are the advantages and disadvantages of participation in that measure? Would there be any consequences for extradition proceedings in the United Kingdom if it were to cease participating in this measure?

99. There are two arguments usually advanced in ‘praise’ of the EAW, and both are factually incorrect.

100. Firstly, it is said that EAW allows the UK to secure extradition of criminals who would otherwise be safe abroad. Several cases of notorious terrorists or pedophiles extradited to the UK are normally cited in support of this proposition. In fact, there can be no doubt that all these criminals would have been extradited to the UK without EAW, on traditional extradition requests, just as well. This is because UK prosecutors only ever issue an EAW or an extradition requests when they are trial-ready. There would be no practical difficulty in presenting the *prima facie* case to a foreign court before extradition, since exactly the same evidence would have to be presented to UK court, and satisfy more stringent legal and procedural requirements, immediately after the extradition. In reality, the only benefit of replacing outgoing extradition requests with EAWs consists in saving the costs of translation. This is a very cheap price for sacrificing the sacred and ancient constitutional liberties such as *habeas corpus*.

101. Secondly, it is said that EAW has brought simplicity and speed into extradition proceedings in UK courts. We would answer by quoting the High Court judgement of Lord Justice Smith and Mr. Justice Irwin in the case of *Regina (Hilali) v Governor of Whitemoor Prison and another* [2007] EWHC 939 (Admin), para 33:

> We accept without hesitation or reserve all that Mr Perry urged upon us about the need for simplicity and expedition in dealing with the execution of EAWs. We would say, in parenthesis, that anyone who is familiar with the jurisprudence which has developed under Part 1 of the Act would be bound to observe that it has not succeeded in providing a simple and speedy process. [emphasis added]

102. On the basis of my experience of involvement in several EAW cases of constituents, I can confirm this is absolutely correct.
103. Indeed, while the substantive requirement to provide prima facie evidence against the suspect has been removed, the judicial procedure remained essentially the same. The EAW has to be considered by City of Westminster Magistrates Court, whose decision may then be appealed to the High Court. There are all sorts of further legal moves which may delay the process, from an application to the European Court of Human Rights to an asylum claim (the Extradition Act affords all asylum-seekers an absolute immunity from EAW proceedings, so long as they remain asylum-seekers).

104. As before, there is only a handful of extradition judges, and the EAW has dramatically increased their case-load. The only difference is that they now have no power to look into the substance of the case. These are still the same courts, the same judges, the same number of hearings in each case, and approximately the same amount of time that is required. It is just that meaningful hearings are replaced with meaningless ones, where desperate victims seek to cling to hopeless legal technicalities. Indeed, the traditional extradition proceedings are lengthy and complex, but at least they lead to a just result. The EAW proceedings are also lengthy and complex, but in the end the defendant is doomed to lose. Is this really an improvement?

105. While the lengthy procedure creates some illusory safeguards, the substance of the EAW legislation is that the suspect must be surrendered to the requesting authorities on the force of a piece of paper, so long as the form is completed correctly.

106. This is all there is fairly to say about ‘advantages’ of the EAW. As for the ‘disadvantages’, the list of its innocent victims is already long, and growing. The author was one of the first to raise the alarm over the case of my constituent Andrew Symeou, which was then largely ignored, and has now become notorious. Mr. Symeou, a 20-year-old student, was surrendered to Greece in spite of proving in English court that the Greek police had fabricated the evidence against him by mistreatment of witnesses. He then spent almost a year in horrible prison conditions in Greece, which were themselves tantamount to torture, only to be acquitted by the Greek court on the same grounds he advanced from the outset: that the evidence was fabricated and the police had extracted false testimonies by mistreating witnesses.

107. It was on a similar ‘no questions asked’ basis that the court ordered the surrender of my constituent Dr. Meizoso to Spain for a fraud he certainly did not yet commit, but allegedly wanted to commit in the future. In fact, as Dr. Meizoso credibly contended, the EAW was procured by corrupt elements in a local government to gain an advantage in a property dispute. After the surrender was ordered, we helped Dr. Meizoso to delay it for another year by claiming asylum in Britain: the Extradition Act grants all asylum-seekers the special privilege of immunity from extradition until the asylum claim is determined. In the meantime, his Spanish lawyers eventually managed to secure a withdrawal of the EAW. Yet, this was a very narrow, almost miraculous, escape, Dr. Meizoso’s life was put into considerable jeopardy for a number of years, and the huge potential for injustice in similar cases is obvious.

108. Other notorious cases include those of Edmond Arapi (whose surrender was ordered in spite of solid alibi and the fact that he was convicted in absentia); Garry Mann (who was surrendered and served two years in a Portuguese prison after being convicted at a manifestly unfair trial); Deborah Dark (whose acquittal was secretly reversed in absentia by the French court, so she was repeatedly arrested on an EAW issued 17 years after the acquittal); Patrick Connor (extradited to Spain where a guilty plea was extorted from him by unlawful pressure), etc. We only know about these people because their families, friends and supporters managed to wage energetic
and articulate campaigns on their behalf. No doubt, many others were less fortunate than that. Unknown and helpless, they silently disappeared into foreign jails – because our courts have abandoned their duty to protect the weak against injustice and tyranny.

109. The fact that Part 1 of the Extradition Act 2003 requires an urgent and radical reform is now recognized by everyone who has looked into this subject. Even the European Commission has acknowledged that the EAW in its present form is a threat to liberty. The only exception was the ‘independent panel’ chaired by Sir Scott Baker, commissioned by the Home Secretary to examine the issue, which came up with an enthusiastic endorsement of status quo. It was only a year later that the evidence submitted to the panel was finally published, revealing that the real picture was not nearly as rosy as the one drawn by Sir Scott in his report. It was simply a whitewash, which shamelessly ignored adverse evidence and included direct lies on the key points. For example, the report falsely asserts that ‘No evidence was presented to us to suggest that European arrest warrants are being issued in cases where there is insufficient evidence.’ As we now know from the published evidence, a great many of submissions (including my own) included evidence of a lot of such cases.

110. Lord Justice Thomas is Britain’s most senior extradition judge. In oral testimony to the Scott-Baker inquiry he stated: "Looking at the 27 (countries of the EU) - I've said this to many people - this system becomes unworkable in the end. It becomes unworkable unless you bring up the standards...politically this is a huge problem." He added, "One of the problems with the way in which a lot of European criminal justice legislation has emerged is that it presupposes a kind of mutual confidence and common standards that actually don't exist." Lord Justice Thomas' testimony was not published when the inquiry first reported.

111. It is now a matter of urgency to pass a new, fair Extradition Act which would include all the necessary safeguards of liberty, most importantly:

- **The prima facie case requirement.** The requesting state must prove, by admissible evidence, that there is a case for the suspect to answer.

- **Dual criminality.** The allegation against the suspect must amount to an offence under UK law.

- **Home Secretary’s discretion to refuse extradition** if it appears to be unfair, oppressive, unreasonable, or not in the national interest – for example, if the suspect may be denied a fair trial in the requesting country. (As explained above, the ‘human rights bar’ to extradition has proven to be a purely illusory substitute to that traditional safeguard).

- **The right to** be freed by a writ of **habeas corpus** if the suspect can show that the extradition request is unlawful.

112. There may be other safeguards as well, but these four should be enshrined as immutable principles of any extradition, subject to no exceptions whatsoever.

113. It will, of course, be necessary to bring the government’s international obligations in line with its constitutional duties to UK citizens. That does require an opt out of the European Arrest Warrant, and the 2014 block opt-out is a good opportunity to do so quite painlessly.
Q.11. What would the implications be for United Kingdom police forces, prosecution authorities and law enforcement agencies – operationally, practically and financially – if the Government chose to exercise its opt-out? Would there be any consequences for other Member States in their efforts to combat cross-border crime?

114. By definition, any change of legal framework causes some inconvenience to law enforcement authorities. However, this inconvenience can be minimized. As explained below (question 14), the non-EU framework of international cooperation in criminal matters is well developed. Not only is it constitutionally safer in preserving our sovereignty and the rule of law; it is also fairer to all parties concerned, more efficient, more flexible, simpler and cheaper.

Q. 12. Which, if any, PCJ measures should the Government seek to opt back in to?

115. None.

Q. 14. What form could cooperation with other Member States take if the United Kingdom opts-out of the PCJ measures? Would it be practical, or desirable, to rely upon alternative international agreements including Council of Europe Conventions?

116. In this respect, measures in Category 1 present no problem at all. Most of them concern cooperation which can be easily arranged simply at administrative level; where national legislation or a simple international agreement (e.g. a memorandum of understanding) are necessary, we foresee no difficulty in securing that or using the existing legal framework.

117. The European Arrest Warrant should be replaced with extradition on the basis of bilateral or multilateral international treaties. The Council of Europe Convention on Extradition would be the obvious choice, although one flaw in our participation in the Convention needs to be fixed.

118. The Convention does not include a mandatory requirement of presenting a prima facie case against the accused. However, the signatories can reserve the right to require prima facie case to be presented, and six participants (Andorra, Denmark, Iceland, Israel, Malta and Norway) have made such a reservation. Unfortunately, at the time UK joined the Convention in 1990, we did not make a similar reservation, and extradition without a prima facie case remains possible. This needs to be urgently renegotiated. In the meantime, under the Convention (unlike in EAW cases) the Home Secretary can veto any extradition request that does not satisfy the prima facie case requirement.

119. Other ‘mutual recognition’ instruments, including the post-Lisbon European Investigation Order, can be adequately replaced by restoring the system of mutual legal assistance (MLA). Again, while there is an excessive network of international treaties, the natural substitute is the Council of Europe Convention on Mutual Legal Assistance. Not only would it adequately replace the ‘mutual recognition’ system, but also would allow us to retain the benefits of data-sharing, with adequate data protection safeguards, on a case-by-case basis after opting out of EU databases.
120. As the experience shows, data-sharing and other forms of international cooperation in this area are best organized on the case-by-case administrative basis. Undoubtedly, one of the most successful examples of international cooperation in combating crime is the Interpol (notwithstanding all its imperfections). Interpol began as, and largely remains, merely an informal club of senior police officers, and it is submitted that this form of cooperation has proven to be the most flexible and efficient.

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13 December 2012