



The Leader of the House of Lords

The Lord Grenfell
House of Lords
London
SW1A 0PW

29 April 2008

Dear Julian

Area of Freedom, Security and Justice: UK opt-ins

Thank you for your letter of 23 April, in which you asked for me to set out the Government's thinking on what Parliamentary control there should be of JHA opt-in decisions.

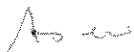
Our overriding priority is to ensure that, under the Lisbon Treaty, the UK can continue to benefit from valuable JHA co-operation. Our concern with a system of Parliamentary control of individual opt-in decisions is that it would impede our ability to participate fully and effectively in this area. This is not least because the timetable for opting in to a JHA measure is very tight. Following the publication of a proposal, we have just three months to provide an Explanatory Memorandum, complete an impact assessment, and reach cross-Whitehall agreement on whether or not to opt-in. It would therefore be extremely difficult, in the time available, to also go through the Parliamentary scrutiny process and obtain Parliamentary approval of any decision to opt-in. (It would also mean significantly more sitting time for parliamentarians, including during recess). As a consequence, we might often miss the deadline for opting in, which could lead to us being marginalised in important JHA co-operation.

A further complicating factor is the fact that opt-in decisions are often made on the basis of confidential information on other Member States' positions, or on private undertakings from the Commission, which we are not able to reveal. It would therefore be difficult for us to explain our reasoning and negotiating tactics to Parliament (and therefore publicly).

We are very keen, however, to discuss what might be done to enhance Parliament's involvement over general JHA scrutiny and JHA opt-in policy in a way that does not hinder the UK's ability to opt in to individual measures or negatively affect the UK's negotiating ability. We value the analysis carried out by Committees, and find the Committees' views on the substance of JHA proposals, when they are close to their final form, particularly helpful. We would also welcome greater Parliamentary input into the strategic direction of JHA policy under the Lisbon Treaty: a thematic approach, linked to Presidency work programmes or to areas of JHA policy (such as legal migration, or police co-operation) can be more effective than piecemeal examination of opt-in decisions, as measures often form part of packages, which need to be considered together.

Officials at the Home Office and the Ministry of Justice, along with colleagues from FCO, would be more than happy to meet with the Clerks to your committee to discuss these questions further, prior to your meeting on Tuesday, if that would be helpful.

I am copying this letter to Lord Goodlad and Michael Connarty, given their interest in this subject.



Catherine Ashton