

The Proposed Opt-Out of EU Criminal Justice Measures

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JUSTICE

What is the opt out?

- Lisbon Treaty
- Protocol 36 Treaty on the Functioning of the EU
- UK special position in article 10
- Decision by June 2014



The decision

- To opt-out or not to opt-out – that is the question
- ...And then whether to opt back in again
- ...To some measures
- ...And if we opt-out, what to do instead?



What is affected?

- Approximately 130 criminal justice measures including:
- European arrest warrant
- Eurojust
- Europol
- Transfer of prisoners
- Eurobail
- Payment of fines
- Use of previous convictions
- Harmonised criminal law on terrorism, drug trafficking, human trafficking etc



What do the experts think?



So why opt out?

- Measures adopted without anticipation of ordinary EU procedure:
- Enforcement powers of the EU Commission
- Review by the Court of Justice of the European Union
- Possibility that UK law will be adversely affected by decisions of the Court which were never intended

"That has to be done before the end of the year, and the opt out is there.

We'll be exercising that opt out."

David Cameron, Prime Minister



Justice secretary evidence to HL inquiry

- “We are in a position where our justice system is very different, a common law based system very different to many of the systems operating elsewhere in Europe. If we believe in the principles that underpin our own justice system, we have to be careful before we pass over sovereignty over parts of it in a way that could, in ways that might well prove to be unexpected, impinge on some of the principles of it.”
- “They were measures that sought the lowest common denominator in order to achieve agreement by unanimity. They are not always necessarily the most perfect legal instruments. If they are passed over to the jurisdiction of the European Court—which has a remit to encourage and support European integration—then I would expect in a number of cases the jurisprudence to evolve in a way that goes beyond the detail of the original measures. I do not want us to be in a position where we are being taken step by step by step into a European justice system that may, as time goes by, look quite different to what we have been used to in this country, without being absolutely certain we are doing the right thing.”

Justice secretary evidence to HL inquiry

“As Lord Chancellor, I take my role very seriously about the need to protect and defend the independence of the judiciary. You will not find me criticising a judge for an individual decision. The courts are there to take decisions independently of the Executive; sometimes I may find them infuriating. I may sometimes disagree if I am directly involved in it and regret a judgment. If a judge takes a daft decision—and everyone in every walk of life sometimes takes daft decisions—you will not find me attacking them and criticising them. My view is that if I do not like the decision the court takes I should change the law as a legislator, I should not attack the court. However, in the case of the international courts we do not have that same flexibility. Therefore, we have to be very careful about the degree to which we hand over to international courts the ability to evolve the law of this land without the people of this country actually being able to take a decision in their own right about what that law should look like.”

Home secretary evidence to HL inquiry

- “There are other examples in the European arena where we are undertaking some very serious work with other Member States on the basis not of coming together to put a European measure together, but just of working together practically to achieve the ends that we want.”
- “We have looked at all of the measures, and on that basis, looking across those measures, felt that it was right to indicate that our current thinking was to opt out and then to opt back into those measures.”



And what would we do instead?

- Go back to former measures from the Council of Europe – mutual legal assistance conventions?
- Arrange bi-lateral treaties with each member state?
- Arrange one bi-lateral package with the EU?



What if we like some of them?

- Negotiating to opt back in:
- With the Council
- With the Commission
- With both
- (with the member states)
- Before or after December 2014?

"It's going to damage Britain...All these elements of collaboration between security forces and police co-operation have been built up in order to combat crime and catch criminals ... everyone has said this will result in the UK being sidelined."

EU Commissioner, Vivianne Reding



What happens in the meantime?

- We can be certain that the criminals will not stop crossing borders whilst the politicians argue...



Opting out - you decide

- **Present the case for opting out or staying in – in human rights terms**
- Why is this in the national interest for the UK?
- What measures are/could be particularly useful or problematic?
- Opting out – to everything? Which ones would you keep? What would you suggest we do instead?
- How important is our relationship with other member states?
- Why is the opposite argument wrong?



The European arrest warrant



- Used in too many trivial cases – wardrobe doors, chickens, wheelbarrows, mobile phones, shoplifting (also murder, terrorism, child kidnapping, rape)
- Cases happened a long time ago (can refuse on ground of passage of time)
- Can't look at prima facie evidence (couldn't under previous system; never get all the info)
- Difficult for requested person to show there are problems with the requesting state (arrange for dual representation)
- Trial process and prison conditions dubious in other member states (ground for refusal)
- Cost to the UK in dealing with requests is very high (adversarial system; removal of criminals)
- UK issued 205 requests/received 99 back
- UK received 6,760 requests; arrested 1163; returned 999

