



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

The UK's 2014 Opt-out Decision (Protocol 36)

The House of Lords EU Committee, chaired by Lord Boswell of Aynho, is launching an inquiry into the United Kingdom's 2014 opt-out decision and its potential implications for the United Kingdom. We invite you to contribute evidence to this inquiry. Written evidence is sought by **Friday 14 December 2012**. The inquiry will be conducted jointly by the Justice, Institutions and Consumer Protection Sub-Committee, chaired by Lord Bowness, and the Home Affairs, Health and Education Sub-Committee, chaired by Lord Hannay of Chiswick, which have been considering the matter since the beginning of this year.

Background

Protocol 36 of the Treaty of Lisbon enables the Government to decide, by 31 May 2014, whether or not the UK should continue to be bound by the approximately 130 police and criminal justice (PCJ) measures, which were adopted by unanimity in the Council of Ministers before the Lisbon Treaty entered into force, or if it should exercise its right to opt-out of them all. If the UK does not opt-out then these measures will become subject to the Court of Justice's jurisdiction and the enforcement powers of the European Commission for the first time. A list of the PCJ measures caught by the opt-out decision is available [here](#).

In a statement to Parliament on 15 October 2012, the Home Secretary stated that "the Government are clear that we do not need to remain bound by all the pre-Lisbon measures" and that the Government's current thinking is that the United Kingdom would 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 rejoin.¹ The Government has undertaken to facilitate a debate and vote in each House before a decision is made.

Particular questions raised to which we invite you to respond are as follows (there is no need for individual submissions to deal with all of the issues)

The 2014 opt-out decision

1. Should the Government exercise its block opt-out?
2. What are the likely financial consequences of exercising 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 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?

¹ Oral Ministerial Statement regarding European Justice and Home Affairs Powers by the Home Secretary, Commons Hansard, 15 October 2012, cols. 34-45; repeated in the House of Lords by the Deputy Leader of the House, Lords Hansard, cols. 1302-1310.

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?
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?
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 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?
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?
12. Which, if any, PCJ measures should the Government seek to opt back in to?
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?
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?
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?
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 November 2012

Notes on submitting written evidence

Written submissions should be provided to the Committee as a Microsoft Word document and sent by e-mail to mcgratha@parliament.uk. Please do not submit PDFs (if you do not have access to Microsoft Word you may submit in another editable electronic form). If you do not have access to a computer you may submit a paper copy to Amanda McGrath, Committee Office, House of Lords, London SW1A 0PW, fax 020 7219 6715. The deadline for written evidence is 14 December 2012.

Short, concise submissions, of no more than six pages, are preferred. A longer submission should include a one-page summary. Paragraphs should be numbered. Submissions should be dated, with a note of the author's name, and of whether the author is acting on an individual or corporate basis. All submissions will be acknowledged promptly.

Personal contact details supplied to the Committee will be removed from submissions before publication but will be retained by the Committee staff for specific purposes relating to the Committee's work, such as seeking additional information.

Submissions become the property of the Committee which will decide whether to accept them as evidence. Evidence may be published by the Committee at any stage. It will normally appear on the Committee's website and will be deposited in the Parliamentary Archives. Once you have received acknowledgement that your submission has been accepted as evidence, you may publicise or publish it yourself, but in doing so you must indicate that it was prepared for the Committee. If you publish your evidence separately, you should be aware that you will be legally responsible for its content.

You should be careful not to comment on individual cases currently before a court of law, or matters in respect of which court proceedings are imminent. If you anticipate such issues arising, you should discuss with the Clerk of the Committee how this might affect your submission.

Certain individuals and organisations may be invited to appear in person before the Committee to give oral evidence. Oral evidence is usually given in public at Westminster and broadcast in audio and online. Persons invited to give oral evidence will be notified separately of the procedure to be followed and the topics likely to be discussed.

Substantive communications to the Committee about the inquiry should be addressed through the Clerk or the Chairman of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

This is a public call for evidence. Please bring it to the attention of other groups and individuals who may not have received a copy direct.

You may follow the progress of the inquiry at www.parliament.uk/hleu.