



HOUSE OF LORDS

European Union Committee

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5th Report of Session 2013–14

**Follow-up report on  
EU police and  
criminal justice  
measures: The  
UK's 2014 opt-out  
decision**

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Ordered to be printed 24 October 2013 and published 31 October 2013

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Published by the Authority of the House of Lords

*London* : The Stationery Office Limited  
£13.50

HL Paper 69

### *The European Union Committee*

The Committee considers EU documents in advance of decisions being taken on them in Brussels, in order to influence the Government's position and to hold them to account.

The Government are required to deposit EU documents in Parliament, and to produce within two weeks an Explanatory Memorandum setting out the implications for the UK. The Committee examines these documents, and 'holds under scrutiny' any about which it has concerns, entering into correspondence with the relevant Minister until satisfied. Letters must be answered within two weeks. Under the 'scrutiny reserve resolution', the Government may not agree in the EU Council of Ministers to any proposal still held under scrutiny; reasons must be given for any breach.

The Committee also conducts inquiries and makes reports. The Government are required to respond in writing to a report's recommendations within two months of publication. If the report is for debate, then there is a debate in the House of Lords, which a Minister attends and responds to.

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Justice, Institutions and Consumer Protection (Sub-Committee E)  
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The current staff of Sub-Committee F are Chris Atkinson (Clerk), Paul Dowling (Policy Analyst) and Alice Ryder (Committee Assistant). The current staff of Sub-Committee E are Michael Thomas (Legal Adviser), Arnold Ridout (Deputy Legal Adviser), Tim Mitchell (Assistant Legal Adviser), Elisa Rubio (Clerk) and Amanda McGrath (Committee Assistant).

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Evidence is published online at <http://www.parliament.uk/hleuf> and available for inspection at the Parliamentary Archives (020 7219 5314)

References in footnotes to the Report are as follows:

Q refers to a question in oral evidence.

Witness names without a question reference refer to written evidence.

## SUMMARY

The Government had to decide, no later than 31 May 2014, whether the UK should continue to be bound by approximately 130 EU police and criminal justice measures which were adopted before the Treaty of Lisbon entered into force and, by so doing, to accept the jurisdiction of the Court of Justice of the European Union over them with effect from 1 December 2014, or whether the UK should opt out of them all. The UK negotiated this right during the Treaty of Lisbon negotiations, and it is enshrined in Article 10 of Protocol 36 to the EU Treaties.

In the event that the Government chose to opt out, the Treaty provides the option of seeking to rejoin measures. The Government triggered the block opt-out in July 2013, following the agreement of both Houses of Parliament, and identified 35 measures which they consider it in the national interest to seek to rejoin. The House of Lords endorsed this list on 23 July 2013.

This follow-up report supplements our original inquiry. We are persuaded by the evidence received, and the findings of our initial inquiry, that it is in the UK's national interest to rejoin the 35 measures set out by the Government. We also considered the 95 measures which the Government do not intend to rejoin. We have concluded that the Government should seek to rejoin the following measures:

- implementing measures related to Europol's continued operation;
- the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law;
- the European Judicial Network;
- the European Probation Order; and
- the Convention on Driving Disqualifications.

We are concerned that the Government have given insufficient consideration to the possible substantive and reputational damage of not seeking to rejoin these measures.

We are disappointed that the Government have not responded to our views on accepting the jurisdiction of the Court of Justice of the European Union. Furthermore, the Lord Chancellor and Secretary of State for Justice could not reassure us that the devolved Administrations and the Republic of Ireland were content with the Government's choice of measures to seek to rejoin. It is essential that any concerns they have be addressed.

The quality and timeliness of information provided by the Government regarding this decision have left much to be desired, both during our previous inquiry and in the lead-up to this House's decision about whether to endorse the exercise of the opt-out.

The Government will begin negotiations with the European Commission and Council to seek to rejoin certain measures in November 2013. We recommend that the Government provide Parliament with regular reports on the progress of the negotiations after they commence in early November 2013, show flexibility regarding any issues of coherence raised by the Commission, and proceed expeditiously with the negotiating process to ensure no gap in the application of important measures, including the European Arrest Warrant. They must provide good quality, timely information to inform Parliament's second vote on this matter.

We make this report to the House for debate, together with our original report on the UK's block opt-out decision which has not yet been debated.



# Follow-up report on EU police and criminal justice measures: The UK's 2014 opt-out decision

## CHAPTER 1: INTRODUCTION

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### The UK's 2014 block opt-out decision

1. The Government had to decide, no later than 31 May 2014, whether the UK should continue to be bound by approximately 130 EU police and criminal justice measures which were adopted before the Treaty of Lisbon entered into force and, by so doing, to accept the jurisdiction of the Court of Justice of the European Union over them with effect from 1 December 2014, or whether the UK should opt out of them all. The UK negotiated this right during the Treaty of Lisbon negotiations, and it is enshrined in Article 10 of Protocol 36 to the Treaty on European Union. In the event that the Government chose to opt out, the Treaty also provides the option of seeking to rejoin measures.<sup>1</sup> No other Member State has this block opt-out option (although Denmark has its own Protocol to the Treaties, which governs its relationship with the EU in this area).<sup>2</sup> Both Houses of Parliament endorsed the Government's decision to opt out in July 2013. The Government have identified 35 measures which they consider it in the national interest to seek to rejoin.

### Original inquiry and its main recommendations

2. In a statement to Parliament on 15 October 2012 the Home Secretary, the Rt. Hon. Theresa May MP, said that “the Government are clear that we do not need to remain bound by all the pre-Lisbon measures”. She presented the Government's “current thinking”: that the UK should opt-out of all the pre-Lisbon measures and negotiate to opt back in to individual measures that they considered it in the national interest to rejoin. The Government undertook to consult relevant Parliamentary committees about the substantive issues and arrangements for votes regarding them, prior to holding votes in the House of Commons and House of Lords on the “overall package” of measures to rejoin, agreed through negotiation with the European Commission.<sup>3</sup>
3. This Committee's Justice, Institutions and Consumer Protection Sub-Committee and its Home Affairs, Health and Education Sub-Committee conducted a joint inquiry into the UK's 2014 opt-out decision. The inquiry began in November 2012 and our report was published on 23 April 2013. We concluded that the Government had not made a convincing case for exercising the opt-out and that to do so would have significant negative

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<sup>1</sup> Protocol 36, Treaty on European Union.

<sup>2</sup> Protocol 22, Treaty on European Union.

<sup>3</sup> HC Deb, 15 October 2012, cols 34–45.

repercussions for the UK's internal security.<sup>4</sup> The report's conclusions were endorsed by the Law Society of England and Wales (LSEW), the Bar Council, the Faculty of Advocates and the Scottish Government. The Government also praised it as a "high quality, substantial and thought-provoking report" which had informed their deliberations on this matter but they did not accept our conclusion that the block opt-out should not be triggered.<sup>5</sup>

4. **We do not intend to repeat or rehearse the content of our original report in this follow-up report, which is being prepared at the Government and the House's request, but we will make reference to the relevant conclusions and recommendations where appropriate. We see no justification to resile from our original analysis.**

### Subsequent developments

5. In a further statement to Parliament on 9 July 2013, the Government provided more information about their approach to the opt-out decision. The Home Secretary told the House of Commons that:

"For reasons of principle, policy and pragmatism, I believe that it is in the national interest to exercise the United Kingdom's opt-out, and rejoin a much smaller set of measures that help us to cooperate with our European neighbours in the fight against serious and organised crime. I also believe that Her Majesty's Government must strike the right balance between supporting law enforcement and protecting our traditional liberties. What I have outlined today will achieve both of those goals".<sup>6</sup>

6. On the day the statement was made, the Government published Command Paper 8671 which set out a list of 35 measures that the Government would seek to rejoin after the opt-out was exercised (this list is reproduced as Annex 4). The Command Paper included five Explanatory Memorandums (EMs) analysing the 130 measures covered by the opt-out.<sup>7</sup> The EMs had originally been promised by mid-February 2013.<sup>8</sup> **We restate our disappointment that important information about the measures covered by the opt-out was not provided in a timely manner to Parliament and was only made available a few days before both Houses were asked to take decisions on the Government's proposed course of action.**
7. The votes on whether or not to trigger the opt-out took place in the House of Commons on 15 July 2013 and in the House of Lords on 23 July 2013. The House of Commons agreed the following government motion:

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<sup>4</sup> *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report of Session 2012-13, HL Paper 159).

<sup>5</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 18 July 2013. Contained in the volume of correspondence, which is available online.

<sup>6</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>7</sup> HM Government: Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union, 9 July 2013 (Cm 8671): <http://www.official-documents.gov.uk/document/cm86/8671/8671.pdf>.

<sup>8</sup> These Explanatory Memorandums were originally requested from the Government in a joint letter, dated 22 November 2012, from the Chairs of the European Scrutiny Committee, the Home Affairs Committee and the Justice Committee in the House of Commons. A copy of the joint letter is available here: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmeuleg/798/798.pdf>.



“That this House believes that the UK should opt out of all EU police and criminal justice measures adopted before December 2009 and seek to rejoin measures where it is in the national interest to do so and invites the European Scrutiny Committee, the Home Affairs Select Committee and the Justice Select Committee to submit relevant reports before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States, prior to the Government’s formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the TFEU”.<sup>9</sup>

The House of Lords agreed the following, different government motion:

“That this House considers that the United Kingdom should opt out of all European Union police and criminal justice measures adopted before December 2009 and should seek to rejoin measures where it is in the national interest to do so; endorses the Government’s proposals in Cm 8671; and invites the European Union Committee to report to the House on the matter before the end of October, before the Government opens formal discussions with the Commission, Council and other Member States prior to the Government’s formal application to rejoin measures in accordance with Article 10(5) of Protocol 36 to the Treaty on the functioning of the European Union”.<sup>10</sup>

8. The Prime Minister wrote to the EU Council Presidency on 24 July 2013 to give formal notification of the Government’s intention to exercise the block opt-out.<sup>11</sup> The Government said that they believed that this notification was a necessary first step in order to achieve the best possible outcome in the forthcoming negotiations with the European Commission and the Council.<sup>12</sup>
9. A second round of votes in both Houses, on the final list of measures which the UK will formally seek to rejoin when (or after) the opt-out takes effect on 1 December 2014, will take place at a time as yet unknown. This final list will reflect the outcome of the negotiations which the Government intend to begin formally in November 2013.<sup>13</sup>

### Follow-up inquiry

10. The absence of an indicative list of measures that the Government would seek to rejoin prevented us from analysing the measures in depth during our original inquiry, although we identified those we considered to be the most important for the UK.<sup>14</sup> As a result, we have responded positively to the Government’s request to reopen our inquiry now that the list has been

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<sup>9</sup> HC Deb, 15 July 2013, cols 770-862. The reference to receiving committee reports before the end of October was inserted after the Government accepted an amendment from committee chairs and others during the debate. The original motion also included a reference to noting the 35 measures. This was also removed after requisite amendments were moved to do so.

<sup>10</sup> HL Deb, 23 July 2013, cols 1232-1286. The original wording of this motion followed the text agreed by the House of Commons by making no reference to the 35 measures. This was amended in the days before the vote so that the motion endorsed the 35 measures.

<sup>11</sup> Council Document No. 12750/13, 26 July 2013. Available here: <http://register.consilium.europa.eu/pdf/en/13/st12/st12750.en13.pdf>.

<sup>12</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 26 July 2013. Contained in the volume of correspondence, which is available online.

<sup>13</sup> *Ibid.*

<sup>14</sup> *Op Cit. The UK’s opt-out decision.*

published. The debate has moved on and we have reflected these developments in our follow-up inquiry. As with the original inquiry, this Committee's Justice, Institutions and Consumer Protection Sub-Committee and Home Affairs, Health and Education Sub-Committee worked jointly to examine the Government's approach to the opt-out decision and this report reflects a joint view.

11. We have examined all of the new material that has been provided to us since the publication of our original opt-out report on 23 April 2013. This includes the Government's overdue response to that report,<sup>15</sup> the Home Secretary's statement on 9 July 2013,<sup>16</sup> correspondence from the Home Secretary and the Lord Chancellor and Secretary of State for Justice to the Committee,<sup>17</sup> the written evidence received to our follow-up inquiry, and the oral evidence we received from the Home Secretary and the Lord Chancellor and Secretary of State for Justice on 9 October 2013.<sup>18</sup> In this follow-up report, we have focused on those measures which we consider the Government should seek to rejoin following their decision to exercise the opt-out and on matters relating to the negotiations which are about to be undertaken.
12. In Chapter 2, we analyse the content of the July 2013 Command Paper and the Government's response to our original report. In Chapter 3, we consider whether the 35 measures that the Government would like to rejoin are in the UK's national interest. Chapter 4 examines whether any of the remaining 95 measures should be added to that list. Chapter 5 considers the Government's approach to reform of the implementation of the European Arrest Warrant. Chapter 6 examines matters of coherence, potential gaps that may arise as a result of the exercise of the opt-out and the possible need for transitional measures. In Chapter 7, we assess the Government's engagement with Parliament and other stakeholders regarding the block opt-out decision.
13. The members of the Sub-Committees who conducted this joint inquiry are listed in Appendix 1, along with a list of their declared interests. We are most grateful to all those who gave us written and oral evidence—they are listed in Appendix 2. The call for evidence that we issued is reproduced in Appendix 3. A list of the 35 police and criminal justice measures that the Government will seek to rejoin is provided in Appendix 4. A list of the remaining 95 police and criminal justice measures is set out in Appendix 5. A glossary of terms and acronyms is contained in Appendix 6. The evidence we received is available online, as is the correspondence between the Committee and the Government.<sup>19</sup>
14. We hope that this report, alongside our original report, will inform the House about this complex and important matter. **We make this report to the House for debate, together with our original report on the UK's block opt-out decision which has not yet been debated.**

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<sup>15</sup> Home Office and Ministry of Justice: *Government response to the House of Lords European Union Committee report 'EU police and criminal justice measures: The UK's 2014 opt-out decision*, July 2013, which is available online at: <http://www.parliament.uk/documents/lords-committees/eu-sub-committee/Protocol36OptOut/p36followup/p36govtresponse.pdf>.

<sup>16</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>17</sup> All correspondence between the Committee and the Government is available online.

<sup>18</sup> QQ 1-17.

<sup>19</sup> See: <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/inquiries/parliament-2010/protocol-36-follow-up/>.

## CHAPTER 2: THE GOVERNMENT'S APPROACH

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### Government's assessment of the measures

15. The EMs in section 3 of Command Paper 8671, *Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union*, 9 July 2013, provided objective descriptions of the measures and observations on their effects. The Government's analysis considered whether each measure was necessary for the UK to achieve the objectives it pursues, whether each measure required implementation in the UK through legislation or administrative means, and the economic costs of non-participation in the measure (they judged such costs to be negligible for the majority of measures). None of the measures were assessed as harmful to UK interests or as having any negative impact on fundamental rights. This included their assessment of the European Arrest Warrant (EAW), about which the Government had raised specific concerns during initial deliberations on its merits.<sup>20</sup>
16. According to the EMs, the majority of the 130 measures did not require changes to UK primary or secondary legislation in order to implement them. Implementation was achieved, in many instances, by administrative changes. Despite the Government's earlier assertion that "a number" of the police and criminal justice measures were "effectively defunct",<sup>21</sup> the EMs only categorised two measures as such, with one further measure considered to be essentially defunct.<sup>22</sup>
17. David Ford MLA, the Minister of Justice in the Northern Ireland Executive, observed that the EMs were helpful but "often short on detail". He suggested that it would have been preferable for the EMs to have been clearer about the rationale behind each decision to rejoin and not.<sup>23</sup> Justice Across Borders took the view that the Command Paper had adopted too narrow an approach to each measure and suggested that the Government seemed to have taken their position based on answers to the question "can we get away with not being a party to this measure?".<sup>24</sup> Helen Malcolm QC said that the Command Paper lacked clarity regarding the source of the evidence it was relying upon to support some comments made regarding particular measures. For example, paragraph 233 of the Command Paper contains the following comment on the European Judicial Network: "practical experience has shown that the contacts are not always the right people to speak to; often the contact points have a coordinating role. We judge that practitioners will know the names and numbers of people they need to speak to regularly". Helen Malcolm observed: "it is not clear what

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<sup>20</sup> Government submission to the original inquiry.

<sup>21</sup> *Ibid.*

<sup>22</sup> These are: Joint Action 96/747/JHA concerning the creation and maintenance of a directory of specialised competences, skills and expertise in the fight against international organised crime, in order to facilitate law enforcement cooperation between the Member States of the European Union; Council Decision 2000/261/JHA of 27 March 2000 on the improved exchange of information to combat counterfeit travel documents; and (essentially defunct) SCH/Com-ex (99) 11 rev 2 (agreement on cooperation in proceedings for road traffic offences).

<sup>23</sup> Letter from David Ford MLA to Lord Boswell of Aynho dated 18 September 2013. Contained in the volume of evidence, which is available online.

<sup>24</sup> Justice Across Borders.

the reference to ‘practical experience’ means; nor whose experience has been tapped; nor on what basis it is ‘judged’”.<sup>25</sup>

18. The Lord Chancellor and Secretary of State for Justice, when asked about the evidence underpinning the Government’s selection of measures they considered it to be in the national interest to seek to rejoin, said:

“You made the point about evidence. This is about standing up for what this country represents. It is about saying, in my view, that we have a strong, independent justice system that is on a par with anything that exists anywhere in the world and that we should nurture it, support it and continue to value it. I do not like the idea of us losing the ability to shape it in the future in the way in which we have shaped over hundreds of years. That is indeed a philosophical position. I do not think it is one that can be based on evidence one way or the other; it is just a point of principle and a belief that this is sacrosanct and we need to protect it. The evidence element comes in when you look at a particular cross-border law enforcement measure and ask whether the evidence actually suggests that this is something that we need to be part of in the interests of our citizens, and that is what the Home Secretary has made the central part of her decision-making”.<sup>26</sup>

19. **In our view, this lack of analytical rigour and clarity regarding evidence drawn upon is regrettable. Despite the length of its gestation, the Command Paper showed signs of having been hastily put together. We are disappointed that the Command Paper presented both the 35 measures which the Government intend to rejoin and the 95 they do not intend to rejoin in an unhelpful manner. We regret that the grounds on which the Government made their selection of measures to seek to rejoin were not set out persuasively in the EMs.**

### Jurisdiction of the Court of Justice of the European Union

20. Under the Treaty on the Functioning of the European Union, the Court of Justice of the European Union (CJEU) will, from 1 December 2014, have the same jurisdiction in relation to all Area of Freedom, Security and Justice measures, covering all aspects of justice and home affairs, as it does for any other measure. This includes its power to give preliminary rulings regarding the interpretation of EU law in cases referred to it by national courts and tribunals. Furthermore, the European Commission will be able to initiate infringement proceedings against Member States for not implementing particular police and criminal justice measures or for doing so incorrectly.
21. The Home Secretary stated on 9 July 2013 that the Government had decided it was best to exercise the opt-out and “to decide on a case-by-case basis if we are willing to allow the European Court of Justice to exercise jurisdiction over [particular EU police and criminal justice measures] in future”.<sup>27</sup> Despite the earlier concerns that were raised by the Government about the potentially negative impact of extending the jurisdiction of the CJEU over the

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<sup>25</sup> Helen Malcolm QC.

<sup>26</sup> Q 2.

<sup>27</sup> HC Deb, 9 July 2013, cols 177–193.

measures, this issue was not assessed in the EMs.<sup>28</sup> We considered this matter in Chapter 4 of our original report and concluded that the CJEU had an important role to play, alongside domestic courts, in safeguarding fundamental rights and upholding the rule of law.<sup>29</sup> The Government continue to express concern regarding the role of the CJEU and stress that the uncertainty surrounding what they consider to be its propensity to deliver “unexpected” judgments justified careful consideration about deciding which measures to rejoin.<sup>30</sup> They did, however, acknowledge our point that any court is capable of making an unexpected judgment.<sup>31</sup> In a letter of 18 July 2013, the Government elaborated:

“We wish to be clear that the jurisdiction of the Court by itself is not a bar to the UK either opting in to new Title V proposals, or rejoining pre-Lisbon measures. However, it does inform our consideration. On some occasions we will conclude that the benefits the measure brings will outweigh the risks attached to Court of Justice jurisdiction, and in others we will not”.<sup>32</sup>

22. The Lord Chancellor and Secretary of State for Justice, in his evidence on 9 October 2013, maintained that the Government’s position was a principled one, and the Home Secretary said that “a balanced judgment has had to be made in relation to the measures that we wish to opt back in to, balancing the potential impact of the European Court of Justice against the practical benefit that comes from co-operation over those measures”. Despite clear evidence in our report to the contrary, the Government continue to insist that a large number of the pre-Lisbon police and criminal justice measures were not drafted with the jurisdiction of the CJEU in mind.<sup>33</sup> The Government’s view was not shared by many witnesses to our original inquiry and, furthermore, CJEU jurisdiction was welcomed by many as being helpful to ensure the consistent application and interpretation of police and criminal justice measures.<sup>34</sup> We note that, by 2010, 19 Member States had accepted the jurisdiction of the CJEU. Furthermore, the Government have opted in to 49 measures post-Lisbon despite bringing with them the jurisdiction of the CJEU. We consider that the Government are overstating the case when they cite poor drafting of measures as a reason for not joining them given the rigorous process of negotiation to which they were subject, the evidence received to our original inquiry regarding the advantages brought by CJEU jurisdiction and European Commission enforcement powers in ensuring the consistent application and interpretation of such measures, and the fact that the UK government supported them at the time of their adoption.
23. **The Government have not dealt satisfactorily with our report’s conclusions about CJEU jurisdiction. Their general approach is moreover not consistent with their decisions to opt in to many post-Lisbon police and criminal justice measures.** We are pleased that they

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<sup>28</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671).*

<sup>29</sup> Paragraph 71 of our original opt-out report.

<sup>30</sup> Government submission to the original inquiry; *Op. Cit. Government Response.*

<sup>31</sup> *Op. Cit. Government response.*

<sup>32</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 18 July 2013. Contained in the volume of correspondence, which is available online.

<sup>33</sup> Paragraphs 91 to 95 of our original opt-out report; Q 4.

<sup>34</sup> *Ibid.*

do concede our point that the CJEU’s jurisdiction may lead to a more consistent interpretation and application of pre-Lisbon police and criminal justice measures across the EU.<sup>35</sup>

### Minimum standards in criminal law

24. Several of the measures under consideration require Member States to prohibit certain types of conduct and to have minimum penalties for offences in their national systems of criminal law. Subject matter include tackling fraud, corruption, illegal drugs, child pornography, terrorism, illegal migration, crimes against humanity, cyber attacks and organised crime.
25. In her statement of 9 July 2013, the Home Secretary said that “even before their adoption, the UK has already met or exceeded the vast majority of these standards—and will continue to do so whether or not we are bound by them”.<sup>36</sup> It appears that the Government regard participation in such measures to be unnecessary, in the sense that the UK could continue to act in such a way as to fulfil the requirements of each measure even if it did not formally participate in it.
26. We considered these measures in Chapter 7 of our original report and the suggestion that they could be “building blocks” of a pan-European justice system.<sup>37</sup> Although the Government have acknowledged that the CJEU may well adopt a “sensible” approach to interpreting substantive criminal law EU measures they also considered it “inevitable that this will eventually lead to a harmonisation of criminal law across the EU”. The Lord Chancellor and Secretary of State for Justice referred to this as the “Europeanisation of [legal] decision-making”. The Government argue that such matters should be the concern of individual Member States, rather than an EU matter, and they believed this view is shared by the British people.<sup>38</sup> The UK retains an opt-in right when it comes to future EU justice and home affairs proposals and so could refuse to become party to measures should it disagree with them; indeed it has already done so in some cases. Furthermore, any Member State has recourse to the emergency brake provision of the Treaty of Lisbon should it consider that draft legislation proposed under Articles 82(2) and 83 (Judicial Cooperation in Criminal Matters) “would affect fundamental aspects of its criminal justice system”.<sup>39</sup>
27. Europol argued that the minimum standards measures were important in terms of “levelling the playing field for practitioners and eliminating arbitrary differences between jurisdictions, which establish vulnerabilities capable of being exploited by criminals”. It expressed concern that the UK’s withdrawal from these measures would remove legal certainty and create a perception among law enforcement practitioners and criminals that the UK is outside the zone of cooperation regarding the areas covered by these measures. Furthermore, Europol argued, it posed a risk in the long term to “the UK’s ability to influence and participate in law enforcement cooperation” as the UK would be “diminished by its position as an observer rather than a partner

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<sup>35</sup> Paragraph 96 of our original opt-out report; *Op. Cit. Government Response*.

<sup>36</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>37</sup> Paragraph 189 of our original opt-out report.

<sup>38</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 18 July 2013. Contained in the volume of correspondence, which is available online; Q 16.

<sup>39</sup> Articles 82(3) and 83(3), Treaty on the Functioning of the European Union.

(or indeed leader, as it has often been in the past)”.<sup>40</sup> Justice Across Borders also considered that the UK would suffer a loss of reputation if it withdrew from many of these measures.<sup>41</sup> Helen Malcolm QC argued that the UK’s lack of participation in these measures would send an “insular message” to other Member States.<sup>42</sup> We explore the potential loss of reputation with regard to one of these measures—the Framework Decision on xenophobia and racism—in Chapter 4.

28. We were concerned that the Lord Chancellor and Secretary of State for Justice saw no problem with the potential for a future government to be able to repeal decisions that made the UK compliant with the current minimum standards measures. He saw this as a positive development as it meant that Parliament was free to take any future decision.<sup>43</sup> This weakens the credibility of one of the Government’s key arguments in support of the opt-out: namely that many minimum standards requirements would still be met through domestic legislation. **We consider that the Government’s approach to minimum standards measures does not give sufficient consideration to the possible damage to the UK’s reputation in the areas covered by these measures.**

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<sup>40</sup> Europol.

<sup>41</sup> Justice Across Borders.

<sup>42</sup> Helen Malcolm QC.

<sup>43</sup> Q 4.

### CHAPTER 3: THE 35 MEASURES THAT THE GOVERNMENT INTEND TO SEEK TO REJOIN

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29. The Government agreed with our conclusion that cross-border cooperation between the UK and other Member States on police and criminal justice matters is crucial.<sup>44</sup> They are persuaded that the 35 measures they will seek to rejoin support this objective but argue that most cross-border cooperation in this area does not currently depend on EU measures.
30. The Government's selection of the 35 measures to rejoin was based on what they considered to be the UK's national interest. The Lord Chancellor and Secretary of State for Justice, and the Home Secretary, explained that the decisions were pragmatic ones—based on what law enforcement agencies tell them works balanced against the Government's principled concerns about excessive European influence in these areas.<sup>45</sup>
31. Our original inquiry concluded that there were compelling reasons of national interest to continue participating in a significant number of measures:
- European Arrest Warrant (EAW);
  - European Supervision Order;
  - Europol;
  - Eurojust;
  - European Police College (CEPOL);
  - Joint Investigation Teams (JITs);
  - Schengen Information System II (SIS II); and
  - Exchange of criminal records/European Criminal Records Information System (ECRIS).

The Government emphasised that their list of 35 measures included all of the measures identified in our original report, with the exception of the two Prüm measures (which we consider further in Chapter 4). The motion agreed by the House of Lords on 23 July 2013 specifically endorsed the 35 measures set out in the Command Paper. In contrast, the motion agreed by the House of Commons only gave agreement that the Government should exercise the opt-out.

32. Better Off Out argued that several of the measures were “included merely for party political reasons” and that such considerations were “not suitable justification for the permanent sacrifice of parliamentary control over potentially harmful areas of legislation to the ECJ”.<sup>46</sup> Torquil Dick-Erikson contended that the UK should not opt back in to any of the measures, on the basis that he believes we should not “hand control of our affairs” to EU institutions.<sup>47</sup> We do not find these arguments persuasive, both from the

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<sup>44</sup> Paragraph 118 of our original opt-out report; *Op. Cit. Government response*.

<sup>45</sup> Q 1.

<sup>46</sup> Better Off Out.

<sup>47</sup> Torquil Dick-Erikson.



evidence received to our original inquiry and as the Government have set out a convincing case for opting back in to these 35 measures.

33. Frank Mulholland QC, the Lord Advocate in the Scottish Government, and the Police Foundation were persuaded that all 35 measures ought to be rejoined.<sup>48</sup> Europol also recognised that the 35 measures “broadly reflect the most important instruments of law enforcement cooperation”.<sup>49</sup> The Law Societies of England and Wales and of Scotland welcomed the 35 as “of particular value to legal practice in the UK in cross-border cases”, but identified others that should also be rejoined.<sup>50</sup> The Italian Government welcomed the Government’s intention to seek to rejoin measures “regarded as essential in the fight against crime, such as those relating to the European arrest warrant and Europol”. They recommend seeking to join measures in addition to the 35.<sup>51</sup>
34. **The House of Lords has endorsed the 35 measures the Government will seek to rejoin; we are persuaded by the evidence received, and the findings of our initial inquiry, that it is in the UK’s national interest to rejoin the 35 measures set out by the Government.**

### Proposed Europol Regulation

35. Europol (European Police Office), the EU’s law enforcement agency, aims to achieve a more secure Europe by supporting Member States in their fight against serious organised crime and terrorism which affects two or more Member States. It was originally established as an intergovernmental body in 1995 and became operational in 1999. It supports the work of Member States’ law enforcement authorities by gathering, analysing and sharing information and coordinating operations. Europol is currently constituted on the basis of a Council Decision adopted in 2009, covered by the block opt-out decision, but in March 2013 the Commission proposed a new post-Lisbon Regulation to replace this Council Decision.<sup>52</sup>
36. In her statement of 9 July 2013, the Home Secretary praised “the excellent work of Europol and its British Director, Rob Wainwright” but confirmed that the Government did not intend to opt-in to the proposed Europol Regulation at the present time.<sup>53</sup> The House of Commons agreed a motion to this effect on 15 July 2013<sup>54</sup> but the House of Lords agreed a separate report by this Committee on 1 July 2013, which recommended that the UK opt in to this proposal at the earliest opportunity.<sup>55</sup> The Government intend to opt in to the Regulation after it has been adopted, provided that specific

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<sup>48</sup> Lord Advocate, Police Foundation.

<sup>49</sup> Europol.

<sup>50</sup> Law Societies of England and Wales and of Scotland.

<sup>51</sup> Italian Government. They recommend seeking to rejoin: the Convention on Mutual Assistance in Criminal Matter and its Protocol; the Convention on the Protection of the European Communities’ Financial Interests and its Protocols; the Convention on the Fight against Corruption; all Council framework decisions on harmonisation of penal law, including terrorism, organised crime, private-sector corruption and environmental protection; and Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.

<sup>52</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.

<sup>53</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>54</sup> HC Deb, 15 July 2013, cols 863-883.

<sup>55</sup> HL Deb, 1 July 2013, cols 1050-1070. See EU Committee: *The UK opt-in to the Europol Regulation* (2nd Report of Session 2013-14, HL Paper 16).

negotiating objectives are achieved. The Government have also noted that the Europol Regulation is unlikely to be adopted before 1 December 2014, the date the opt-out takes effect, which is why they intend to seek to rejoin the existing measure in the meantime.

37. In our report on the Europol Regulation, we noted that there were four other Council Decisions which may not be repealed and replaced by the proposed Europol Regulation, and which Europol told us are “directly connected” with the Europol Council Decision.<sup>56</sup> Article 78 of the proposal says that “all legislative measures implementing the [Europol and CEPOL Council] Decisions ... are repealed with effect from the date of application of this Regulation”, but the Government’s EM considered this provision to be “ambiguous” and stated that they intended to seek clarity on this issue during the negotiations.<sup>57</sup> Claude Moraes MEP argued that “without these measures”, specifically: rules on the exchange of data with police forces and other crime fighting agencies; rules for Europol’s analysis work files; the Council decision on third country cooperation; and the confidentiality of Europol information, “Europol simply could not do its work in the UK. Britain would become, in effect, a blind spot for the EU’s foremost cross border crime fighting institution”.<sup>58</sup> Europol itself suggested that the only implementing measure for which applicability to the UK would have to be considered more carefully was the Council Decision adopting the rules on the confidentiality of Europol. This contains provisions not found in the Europol Council Decision itself, including the establishment of the Europol Security Committee.<sup>59</sup> Justice Across Borders said that the Government’s reasoning that these measures were not required because of domestic legislative measures was flawed as “being party to these measures gives the UK’s authority for Europol to act, and to be associated with other parties, in accordance with these measures”.<sup>60</sup> The Home Secretary took the view that the implementing measures were not necessary for UK participation in Europol, although she did concede that the coherence of this set of measures (and all the other) would need to be discussed with the European Commission.<sup>61</sup>
38. **We welcome the Government’s decision to seek to rejoin the existing Europol Council Decision. We also welcome the fact that they intend to exercise their right to opt in to the proposed new Europol Regulation when it takes effect but remain disappointed that the Government have not chosen to opt in to it now so that they could play a fuller part in its negotiation.**

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<sup>56</sup> *Op. Cit. UK opt-in to the Europol Regulation*. These are: Council Decision 2009/934/JHA of 30 November 2009 adopting the implementing rules governing Europol’s relations with partners, including the exchange of personal data and classified information (OJ L 325, 11 December 2009, p. 12); Council Decision 2009/935/JHA of 30 November 2009 determining the list of third countries with which Europol shall conclude agreements (OJ L 325, 11 December 2009, p. 6); Council Decision 2009/936/JHA of 30 November 2009 adopting the implementing rules for Europol analysis work files (OJ L 325, 11 December 2009, p. 14); Council Decision 2009/968/JHA of 30 November 2009 adopting the rules on the confidentiality of Europol (OJ L 332, 17 December 2009, p. 17). All of these measures entered into force on 1 January 2010, at the same time as Council Decision 2009/371/JHA.

<sup>57</sup> Paragraph 1, EM 8229/13.

<sup>58</sup> Claude Moraes MEP.

<sup>59</sup> Europol.

<sup>60</sup> Justice Across Borders.

<sup>61</sup> Q 9.

39. **We repeat our earlier recommendation that the Government should opt back in to the other implementing Europol Council Decisions which fall within the scope of the block opt-out and are related to Europol's continued operations.**

### **Proposed Eurojust and European Public Prosecutor's Office Regulations**

40. The EU's Judicial Cooperation Unit (Eurojust) aims to improve the coordination of investigations and prosecutions among Member States' competent judicial authorities. On 17 July 2013, the Commission published proposals for a new Regulation concerning Eurojust, which would repeal and replace the existing Eurojust Council Decision, and for the establishment of a European Public Prosecutor's Office (EPPO).<sup>62</sup> The UK opt-in applies to both measures. As with the proposed Europol Regulation, since the proposed Eurojust Regulation is unlikely to be adopted before 1 December 2014, the Government have decided to seek to rejoin the existing Eurojust Council Decision in the meantime. The Government have already announced that they do not intend to participate in the EPPO Regulation. The European Union Act 2011 would require a referendum to be held and primary legislation to be passed before they could do so.
41. **We welcome the Government's decision to seek to rejoin the existing Eurojust Council Decisions and believe it will make sense to opt in to the proposed Eurojust Regulation which will repeal and replace that measure in due course. Participation in Eurojust is, in our view, very much in the UK's national interest.**

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<sup>62</sup> COM (2013) 535, Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), 17.7.2013 and COM (2013) 534, Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, 17.7.2013.

## CHAPTER 4: THE 95 MEASURES THAT THE GOVERNMENT DO NOT INTEND TO SEEK TO REJOIN

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42. Article 10 of Protocol 36 provides that, having exercised the block opt-out, “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”. Thus, **future governments will still have the option of seeking to rejoin those measures which the present Government do not intend to rejoin, as no time limits are stipulated in this regard.**
43. We considered whether the list of 35 measures contained all the measures that it was in the UK’s national interest to rejoin. Of the 95 other measures, the following required the most careful consideration.

### Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law

44. This minimum standards measure requires Member States to take steps to ensure that specified forms of conduct involving racism and xenophobia are punishable by effective, proportionate and dissuasive penalties. The Government stated that the UK is a “world leader” in tackling hate crime, and recognised that withdrawal from this measure may therefore have a negative impact on the UK’s reputation in this area.<sup>63</sup>
45. The Government said that the UK relied upon existing domestic legislation and common law to comply with the provisions of this measure, and that no new offences had been created as a result of it. The Command Paper notes that the UK has no specific offence of condoning, denying or grossly trivialising genocide, crimes against humanity, war crimes and crimes against peace when carried out in a manner likely to incite violence or hatred, but that this is likely to amount to an offence under existing UK legislation around incitement to hatred. New legislation would be required to create this as a specific offence under UK law.<sup>64</sup>
46. Civitas has expressed concern that the measure might undermine existing UK law in this area or require new legislation to be adopted by Parliament.<sup>65</sup> A letter of 18 July 2013 from the Government seems to lend credence to this concern by saying that “Parliament has made careful policy judgments on the substantive law of racism and xenophobia and those policy judgments should be respected”.<sup>66</sup> In contrast, the Centre for European Legal Studies has stated that the measure “only requires the Member States to criminalise those expressions of racism and xenophobia that are likely to provoke hatred or acts of personal violence, and these are already punishable under the laws of the different parts of the UK”.<sup>67</sup> The Lord Chancellor argued that the measure was vaguely drafted and expressed concern that the UK could be

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<sup>63</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671).*

<sup>64</sup> *Ibid.*

<sup>65</sup> Civitas: *We should opt out of the EU police and criminal justice measures*, July 2013: <http://www.civitas.org.uk/pdf/EuropeDebateNo3Justice.pdf>.

<sup>66</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 18 July 2013. Contained in the volume of correspondence, which is available online.

<sup>67</sup> Centre for European Legal Studies: *Opting out of EU Criminal law: What is actually involved?*, September 2012.

required by the CJEU to make “Holocaust denial” a crime.<sup>68</sup> We remain unconvinced by this argument. As previously stated, we consider that the Government are overstating the case when they cite poor drafting of measures as a reason for not joining them.<sup>69</sup>

47. **We consider that the UK should seek to rejoin the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law as its well-founded reputation in this area may be significantly damaged if it does not. We therefore recommend that the Government should review their decision not to seek to rejoin it. We believe that there has not been any suggestion that the UK is not currently compliant with the provisions of the Framework Decision on xenophobia and racism which has been in force since 2008.**

### Council Decision on the European Judicial Network

48. The aim of this measure is to improve judicial cooperation between Member States at both the legal and practical level in order to combat serious crime. The European Judicial Network is composed of a network of contact points from central authorities responsible for international judicial cooperation. Funding for its activities is provided from the Eurojust budget.
49. The Government said that the UK has fully implemented the measure by establishing contact points and sending representatives to plenary meetings. While they state that the network “may” help support effective international cooperation, and that it would be difficult for individual Member States to organise contacts comprehensively across the EU, they cast doubt on its necessity as a measure.<sup>70</sup> The Home Secretary said: “we talk to each other; that is part of the practical everyday and you do not need something with a European Judicial Network heading on it to be able to ensure that it takes place”.<sup>71</sup> The Government argue that it would be possible to maintain the contacts which the network fosters without formally participating in the measure. The Command Paper commented that the UK experience of the network’s plenary sessions is that they add “little or no value”.<sup>72</sup>
50. In contrast, the LSEW and the Law Society of Scotland (LSS) argued that the Government should seek to rejoin this measure as it could help address legal practitioners’ “lack of training and awareness” regarding police and criminal justice measures. They suggested that the EM overlooks the value of the network’s role in this regard.<sup>73</sup> Helen Malcolm QC agreed.<sup>74</sup> The Lord Advocate took the same view, as the network was frequently used by the Crown Office’s International Cooperation Unit to seek assistance in the execution of EAWs abroad. The network had also provided Scottish prosecutors with a rich source of advice on national law in other Member

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<sup>68</sup> Q 15.

<sup>69</sup> Paragraphs 92-94 of our original opt-out report.

<sup>70</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.

<sup>71</sup> Q 6.

<sup>72</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.

<sup>73</sup> LSEW and LSS.

<sup>74</sup> Helen Malcolm QC.

States at speed and was thus considered to be a “valuable tool in the armoury of prosecutors”.<sup>75</sup>

51. **We consider that the Government should seek to rejoin the European Judicial Network measure. We judge that this measure’s focus on practical cooperation across borders has merit, and that nothing would be gained by ceasing to engage with its purpose and terms.**

**Framework Decision on mutual recognition of judgments and probation decisions with a view to supervision of probation measures and alternative sanctions (“European Probation Order”)**

52. This measure provides a basis for the mutual recognition and supervision of suspended sentences, licence conditions and alternative sanctions (community sentences) where an individual has been sentenced in one Member State but is ordinarily and lawfully resident in another; or they wish to go to another Member State (to work, for example) and that Member State is willing to consider supervising the sentence. This is one of only two significant mutual recognition measures that were not included on the list of 35 measures.
53. All Member States should have implemented this measure by 6 December 2011 but it has not yet been implemented by the UK. The Command Paper states: “transfers of sentences enable offenders to be rehabilitated in their country of residence. However, there is a lack of clear understanding about how this measure will operate in practice”. The Government suggest that the provision in the measure allowing Member States to refuse to enforce orders in certain cases may result in uneven application of its provisions across the EU.<sup>76</sup> The Lord Chancellor and Secretary of State for Justice expressed concern that offenders might not be properly supervised by other countries and that there might be complications should their possible return to the UK arise.<sup>77</sup>
54. The LSEW and the LSS argued that the Government should seek to rejoin this measure, making reference to the suggestion in the Scott Baker Review of Extradition that it could prove useful as an alternative to an EAW being issued for a sentence imposed in default, thus potentially reducing the number of EAWs issued.<sup>78</sup> David Ford MLA agreed and told us that this measure would be “helpful in terms of offender management and public safety between Northern Ireland and the Republic of Ireland in particular. It appears that the unique nature of the relationship between the two states has not been taken into account in this area”.<sup>79</sup> Helen Malcolm QC and Justice Across Borders also considered that it would be useful for the UK to rejoin this measure.<sup>80</sup>
55. **We consider that the UK should seek to rejoin the European Probation Order. In our view, this measure has potential to provide benefits for the management of offenders on a cross-border basis and**

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<sup>75</sup> Crown Office and Procurator Fiscal Service (COPFS).

<sup>76</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.

<sup>77</sup> Q 6.

<sup>78</sup> LSEW and LSS. Sir Scott Baker: *A Review of the UK’s Extradition Arrangements*, 30 September 2011.

<sup>79</sup> Letter from David Ford MLA.

<sup>80</sup> Helen Malcolm QC, Justice Across Borders.

**that nothing is being gained by not implementing its provisions. The Government's concerns about proper implementation should be resolved at a European level, in the interests of all participating Member States.**

### Convention on Driving Disqualifications

56. The other significant mutual recognition measure not included in the list is the Convention on Driving Disqualifications. It establishes a legal framework between Member States so that drivers disqualified in a Member State other than their principal residence cannot circumvent the disqualification when they leave the State in which the offence was committed. The relevant offences include driving under the influence of drugs or alcohol; reckless or dangerous driving; hit-and-run driving; and speed limit violations. The measure is not yet in force as the Convention has not been ratified by all Member States. This Convention will clearly be beneficial to the UK as, ultimately, it will ensure that roads are safer.
57. The Government argue that there would be a considerable cost to enforce this measure, should ratification occur, and domestic legislation would be required to implement it. Given that amendments to domestic legislation would be required to continue mutual recognition arrangements already in place with Ireland, which the Government have committed to implementing, we do not find this argument persuasive.<sup>81</sup> **We consider the Convention on Driving Disqualifications to be of sufficient importance that the Government should reconsider their position on it.**

### Council Decisions on stepping up cross-border cooperation in combating terrorism and crime (the "Prüm Decisions")

58. Our original opt-out report considered whether the Government should seek to rejoin these two measures.<sup>82</sup> They aim to introduce procedures for promoting the fast, efficient and inexpensive means of cross-border data exchange regarding DNA, fingerprint and vehicle registration data.
59. Although some of the content of the measures has been implemented by the UK to the stipulated deadline, other more substantive provisions that were subject to a different implementation deadline—26 August 2011—have not. The Command Paper suggests that the implementation of these provisions is likely to be a lengthy process that may take at least three years to complete. The Government's original estimated cost for this (in 2007) was £31 million.<sup>83</sup>
60. The Government have stated on a number of occasions that the UK will not be in a position to implement these decisions by 1 December 2014, when the possibility of infringement proceedings would arise, and that they also have concerns that the measures' current technical requirements are out of date. The Government said that the minimum lump sum fine for UK non-compliance would be €9.6 million.<sup>84</sup> Furthermore, the Command Paper

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<sup>81</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671).*

<sup>82</sup> Paragraphs 206 and 208 of our original opt-out report.

<sup>83</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671).*

<sup>84</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 18 July 2013. Contained in the volume of correspondence, which is available online.

asserts that participation in these measures may result in the UK receiving a disproportionate number of requests from other Member States due to the fact that it has the largest DNA database in the EU. The UK has already successfully applied for EU funding to start work on the DNA elements of the measures.<sup>85</sup>

61. We appreciate the Government's argument for not seeking to rejoin these measures immediately. We are concerned, however, that not rejoining Prüm would mean that UK law enforcement agencies could no longer have automatic access to law enforcement databases in other Member States, which could hinder investigations and prosecutions. **We regret that the Government have maintained their earlier position not to seek to implement the Prüm Decisions. We hope that (outside the timeframe of this current opt out exercise) they or their successors will be prepared to implement them. We ask the Government to explain what will happen to the EU funding they received to implement the DNA provisions of these measures if the UK decides definitely not to implement these Decisions.**

### **EU Convention on Mutual Assistance in Criminal Matters and the Framework Decision on attacks against information systems**

62. Europol highlighted the fact that the Joint Investigation Teams (JITs) Framework Decision, which the Government intend to rejoin, has only temporary validity, and will cease to have any effect once all Member States have ratified the EU Convention on Mutual Assistance in Criminal Matters. Europol suggested that the UK should consider rejoining the Council Act establishing this Convention, which also includes provision for JITs, to avoid this gap.<sup>86</sup> LSEW and LSS also recommended rejoining this measure as the post-Lisbon European Investigation Order measure, which will supersede the majority of its provisions, is unlikely to be adopted and enter into force until two to three years after the opt-out takes effect.<sup>87</sup> Helen Malcolm QC agreed and considered relying upon the equivalent 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters not a feasible option.<sup>88</sup> Justice Across Borders were also concerned that unacceptable gaps could develop if the UK did not rejoin this measure.<sup>89</sup>
63. The Framework Decision on attacks against information systems sets out how Member States should tackle attacks on information systems, such as illegal access, data theft and damage. This measure has been repealed and replaced by the Directive on attacks against information systems, a post-Lisbon measure that the Government chose to opt in to.<sup>90</sup> However, the Directive provides for an implementation period until 4 September 2015, which raises the possibility of a gap developing between the opt-out and the expiry of the implementation period.

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<sup>85</sup> *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671).*

<sup>86</sup> Europol.

<sup>87</sup> LSEW and LSS.

<sup>88</sup> Helen Malcolm QC.

<sup>89</sup> Justice Across Borders.

<sup>90</sup> Directive 2013/40/EU of the European Parliament and of the Council on attacks against information systems and replacing Council Framework Decision 2005/222/JHA.



64. **We urge the Government to ensure that no gaps arise in the application of the EU Convention on Mutual Assistance in Criminal Matters and the Framework Decision on attacks against information systems, between the opt-out taking effect on 1 December 2014 and the measures that will supersede them. If necessary, the Government should seek to rejoin both of the original measures.**

**Anglo-Irish cooperation on policing and criminal justice matters**

65. The Lord Chancellor and Secretary of State for Justice told us that he had focussed on issues regarding the EAW in his conversations with the devolved Administrations and the Republic of Ireland. He did not give a clear reassurance that these authorities had not expressed concerns about other measure missing from the list the Government will seek to rejoin.<sup>91</sup> Our original inquiry concluded that exercising the opt-out could damage cooperation between the UK and the Republic of Ireland on tackling cross-border crime and terrorism.<sup>92</sup> Measures important to those efforts include the EAW; Europol; the criminal and customs mutual legal assistance measures; some drugs and organised crime measures; information exchange measures; and those concerning databases of criminal records and false documents. The Government response to our original inquiry stated: “we value the close working relationship between the UK and the Republic of Ireland on police, security and immigration matters and recognise its particular importance in the context of the Common Travel Area”, and that the Government will “continue to take full and proper account of the relationship with the Republic of Ireland, including the peace process, in considering this matter”.<sup>93</sup>
66. **The list of 35 measures that the UK will seek to rejoin, and in particular the decision to seek to rejoin the EAW, has gone some way to address our concerns but we remain concerned that insufficient attention has been paid to the possible negative impact on Anglo-Irish cooperation in policing and criminal justice matters. Some of the additional measures we have proposed the Government should seek to rejoin will go towards meeting these concerns. We recommend that the Government remain responsive to any further representations which might be made either by the government of Ireland or the Northern Ireland Executive.**

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<sup>91</sup> QQ 7-8.

<sup>92</sup> Paragraph 270 of our original opt-out report.

<sup>93</sup> *Op. Cit. Government response.*

## CHAPTER 5: THE GOVERNMENT'S PROPOSED REFORMS TO THE DOMESTIC IMPLEMENTATION OF THE EUROPEAN ARREST WARRANT

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67. Our original report concluded that the EAW was the single most important pre-Lisbon police and criminal justice measure, and recommended that the Government should seek to rejoin it if the opt-out was exercised.<sup>94</sup> When the Home Secretary announced the Government's intention to rejoin the EAW, she conceded that the 1957 Council of Europe Extradition Convention had serious drawbacks,<sup>95</sup> despite the Government's earlier assertion that it would have been feasible for the UK to fall back on this instrument were it to leave the EAW.<sup>96</sup> The Home Secretary also recognised our point that the EAW had made it easier for suspects to be returned to the UK and cited high profile examples.<sup>97</sup>
68. The Government stressed that the implications of exercising the opt-out for UK-Irish cooperation in combating crime had received much consideration before their decision was made.<sup>98</sup> Our report expressed significant misgivings about the efficacy and desirability of relying upon alternative arrangements in this context.<sup>99</sup> As the Government now intend to rejoin the EAW there would be no need to implement alternative extradition arrangements between the two countries.

### Domestic reforms

69. The Home Secretary emphasised that there have been problems with the EAW, to which our original report also drew attention.<sup>100</sup> We recommended specific actions to achieve improvement in the operation of the EAW. The Government now intend to make a number of changes to the domestic implementation of the EAW. They stressed that, in their view, these proposed reforms were fully consistent with the UK's desire to rejoin the EAW Framework Decision, including their obligations under that measure and the EU Treaties.<sup>101</sup> We are pleased that the Government have also accepted our recommendation to implement the European Supervision Order to make it easier for people to be bailed back to the UK.<sup>102</sup> The proposed changes are set out in Box 1.

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<sup>94</sup> Paragraph 160 of our original opt-out report.

<sup>95</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>96</sup> Government submission to the original inquiry.

<sup>97</sup> HC Deb, 9 July 2013, cols 177-193.

<sup>98</sup> *Op. Cit. Government response.*

<sup>99</sup> Paragraph 270 of our original opt-out report.

<sup>100</sup> Paragraph 161 of our original opt-out report.

<sup>101</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated September 2013. Contained in the volume of correspondence, which is available online.

<sup>102</sup> *Op. Cit. Government response.*

**BOX 1****Government's reforms to the domestic implementation of the European Arrest Warrant**

- The Extradition Act 2003 (“the 2003 Act”) will be amended to require a judge to consider whether extradition would be disproportionate, taking into account (so far as the judge thinks it appropriate to do so) the seriousness of the conduct, the likely penalty and the possibility of less coercive measures being taken.
- The United Kingdom will work with other Member States to enforce their fines and ensure that in future, where possible, a European Investigation Order (EIO) is used to obtain evidence, instead of an EAW, in order to avoid the extradition of suspects at the investigative stage [this was recommended in the Scott Baker Review of Extradition and endorsed by our original report].
- The 2003 Act will be amended to require a judge to bar extradition where there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing Member State. This intends to address concerns about lengthy and avoidable pre-trial detention, such as the Andrew Symeou case.
- The United Kingdom will implement the European Supervision Order to make it easier for people to be bailed back to the UK [this was also recommended in our original report]
- The 2003 Act will be amended to make clear that in EAW cases where part of the conduct took place in the UK, and is not criminal here, the judge must refuse extradition for that conduct.
- The 2003 Act will be amended to ensure that a person who consents to his or her extradition does not lose the benefit of any “specialty protection” he or she would otherwise have. Specialty protection ensures a person is, in general, only proceeded against for the offence or offences listed in the extradition request. At present, the 2003 Act states that a person waives specialty protection when he or she consents to extradition.
- Where a UK national has been convicted and sentenced in another Member State, for example in their absence, and is now the subject of a EAW, the Government will ask, with their permission, for the EAW to be withdrawn and will use the Prisoner Transfer Agreement [one of the police and criminal justice measures the Government will seek to rejoin] instead.
- The 2003 Act will be amended to allow the temporary transfer of a consenting person so that they can be interviewed by the issuing Member State's authorities or to allow them to do this through means such as video-conferencing while in the UK. The expectation is that, in some cases, this will lead to the extradition request being withdrawn or limit the period spent by that person in pre-trial detention.

70. Amendments to the Anti-Social Behaviour, Crime and Policing Bill seeking to implement these changes were introduced at the Committee stage of the passage of that Bill in the House of Commons and attracted minimal

comment from the relevant Public Bill Committee.<sup>103</sup> The Bill, including the new clauses, received its first reading in the House of Lords on 16 October 2013.<sup>104</sup> We are sure that the House will consider these clauses carefully in terms of their compatibility with the UK's EU obligations, as well as their overall merits.

71. Many witnesses supported the Government's decision to seek to rejoin the EAW, as well as their proposed reforms,<sup>105</sup> while others did not want the UK to rejoin the EAW, at least until it had been reformed.<sup>106</sup> The Lord Advocate warned that two of the proposed changes—allowing extradition to be barred for proportionality reasons or if a Member State's domestic proceedings were not trial ready—could potentially result in infringement proceedings being taken against the UK, as the amendments sought to introduce bars to extradition that fell outside the scope of the EAW Framework Decision, as well as being contrary to CJEU jurisprudence.<sup>107</sup> LSEW and LSS accepted that the proposed changes were clearly intended to be compatible with the EAW, but they expressed concern that this may not prove to be the case regarding the proportionality amendment.<sup>108</sup> Helen Malcolm QC considered that any breaches would be “ironic and frustrating”, in the light of the Government's concerns about the potentially negative role of the CJEU.<sup>109</sup>
72. **We welcome the proposed changes to the domestic implementation of the European Arrest Warrant while expressing the hope that the Government will engage constructively with the Commission and Council Legal Services to resolve and clarify any concerns that may arise.**

### Possible EU reforms

73. The Government also expressed support for reviewing the implementation of the EAW at the EU level and referred to ongoing discussions about making practical improvements to its operation with other Member States.<sup>110</sup> Poland is currently reforming the domestic implementation of the EAW in its jurisdiction.
74. Fair Trials International (FTI) welcomed the Government's proposed domestic changes, particularly the introduction of a proportionality test, but did not support rejoining the EAW until it had also been reformed at the EU level, noting that some of the domestic reforms were, to some extent, dependent on reforms to the EAW Framework Decision. It called upon the Government to seek a commitment from the EU institutions and Member States to reform the Framework Decision accordingly.<sup>111</sup> LSEW and LSS agreed but suggested that urgent consideration should also be given, at both the Member State and EU level, to practical rather than legislative measures

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<sup>103</sup> HC Deb, 16 July 2013, cols 493-505.

<sup>104</sup> HL Deb, 16 October 2013, col 542.

<sup>105</sup> Helen Malcolm QC, Claude Moraes MEP, Police Foundation. Letter from David Ford MLA.

<sup>106</sup> Better Off Out, Torquil Dick-Erikson, Fair Trials International.

<sup>107</sup> COPFS.

<sup>108</sup> LSEW and LSS.

<sup>109</sup> Helen Malcolm QC.

<sup>110</sup> *Op. Cit. Government response.*

<sup>111</sup> Letter from Jago Russell, Chief Executive of FTI, to Baroness Corston and Lord Hannay of Chiswick, dated 11 September 2013. Contained in the volume of evidence, which is available online.

that could be adopted to address the problems caused by differing Member State practices in relation to proportionality, including (but not limited to) producing a good practice handbook and sharing information on national practices.<sup>112</sup>

75. We note and welcome the decision by the European Parliament's Civil Liberties, Justice and Home Affairs Committee to prepare an own-initiative report on the potential review of the implementation of the EAW.

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<sup>112</sup> LSEW and LSS.

## CHAPTER 6: COHERENCE AND TRANSITIONAL ARRANGEMENTS

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76. The procedure for the UK to rejoin particular measures, the problem of ensuring coherence between measures, and the complexity of transitional arrangements were discussed in Chapter 8 of our original report. We concluded that, given the legal complexities and uncertainty that may arise, the Government would have done well to have commenced negotiations at a much earlier stage. We consider it to be imperative that, in the Home Secretary's own words, "there should not be any significant gap between the initial entry into force of the opt-out, were it to be exercised, and rejoining certain measures".<sup>113</sup>
77. Following the Prime Minister's notification of the Government's intention to opt out, the Commission was reported as saying that it respected the Government's choice to exercise the opt-out and welcomed their "intention to also opt back in to certain measures". It also said that "at first sight, it appears that the UK has looked at the opt-ins in a pragmatic way. The Commission hopes that the UK can continue to contribute actively and pragmatically to the EU wide fight against organised crime and terrorism".<sup>114</sup>

### Coherence

78. Article 10(5) of Protocol 36 states that:

"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 respecting their coherence".

Principal responsibility for ensuring coherence lies with the European Commission. Some of our witnesses expressed concerns about the overall coherence of the 35 measures that the Government intended to rejoin and of those they do not intend to seek to rejoin.<sup>115</sup> Claude Moraes MEP, for example, questioned the coherence of the package. He gave examples, including the Government's decision to seek to rejoin a Council decision on simplifying the exchange of information and intelligence between law enforcement authorities, but not the exchange of information and cooperation concerning terrorist offences; the Joint Action on a directory of specialised competences, skills and expertise in the fight against international organised crime; or the measure on cross-border cooperation, particularly in combating terrorism and cross-border crime.<sup>116</sup> Concerns regarding the coherence of the Europol measures have been discussed above.

79. The Government's position is that they are confident that the 35 measures comply with the coherence requirement but are open to discussing coherence issues with the Commission.<sup>117</sup>

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<sup>113</sup> Paragraph 235 of our original opt-out report.

<sup>114</sup> BBC News Online: *Theresa May says UK to keep European Arrest Warrant*, 9 July 2013.

<sup>115</sup> Claude Moraes MEP, Justice Across Borders.

<sup>116</sup> Claude Moraes MEP.

<sup>117</sup> Q 10.

80. **We hope and expect that both the Commission and the Government will handle discussions about the overall coherence of the police and criminal justice measures that the UK intends to rejoin in a technical and apolitical manner; and that the Government will respond flexibly to adjustments to the list of measures they wish to rejoin that may be proposed by the Commission in order to achieve coherence. We are pleased that the Government have confirmed their intention to handle this issue in a flexible manner.**

### **Transitional arrangements**

81. The Government said they are confident that there will be no difficulty with transitional arrangements, stating that until formal discussions commence with the Commission and Council at the beginning of November, informal talks are taking place in order to make good progress. The Lord Chancellor and Secretary of State for Justice said: “there is no reason why this cannot happen in a seamless way in the middle of the night of 30 November into 1 December next year”, and expressed confidence that agreement within the timescales was achievable.<sup>118</sup> The Home Secretary said that no contingency planning was currently underway for a failure to meet the deadline and defended that by saying:
- “there is every indication so far not just that other Member States are keen for there to be no transitional gap but that they will be giving that very clear message to the Commission. ... All the evidence so far is that everybody sees that the best way forward, if we are going to opt back in, is to allow that to happen in as seemly a way as possible”.<sup>119</sup>
82. The Lord Advocate and David Ford MLA raised concerns about the potential for gaps to arise in the application of the EAW in particular.<sup>120</sup> Such a gap would have serious negative repercussions for the UK and other Member States. Justice Across Borders said that “arrangements need to be drafted so that criminals and suspected criminals cannot exploit any loopholes or legal uncertainty arising out of the transition”.<sup>121</sup> The Police Foundation called for due consideration to be given to every possible eventuality.<sup>122</sup> The Home Secretary was very clear that the process with the Commission was a discussion, and that “if it becomes clear that the timetable is slipping or that there is a prospect of such a gap, we will of course look at the arrangements that can be put in place”.<sup>123</sup>
83. **We urge the Government to push ahead expeditiously with the negotiating process, seeking to bring it to a conclusion well ahead of the 1 December 2014 deadline in order to avoid potential gaps arising in the application of the measures they are seeking to rejoin and thus avoiding the need for any transitional arrangements. If transitional arrangements do prove to be necessary, we expect the Government to work with the Commission and the Council Legal Services to produce and adopt measures without delay.**

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<sup>118</sup> Q 11.

<sup>119</sup> Q 12.

<sup>120</sup> COPFS. Letter from David Ford MLA.

<sup>121</sup> Justice Across Borders.

<sup>122</sup> Police Foundation.

<sup>123</sup> Q 12.

84. **We are particularly concerned about potential gaps developing in the application of the European Arrest Warrant, which could have profound implications for victims of crime and the rights of individuals subject to a Warrant, as well as the criminal justice system in general.**



## CHAPTER 7: THE TIMING OF THE NEGOTIATIONS, FUTURE ENGAGEMENT WITH PARLIAMENT AND THE FINAL VOTES

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85. As we made clear in our original report, we believe that the Government's engagement with Parliament regarding this important decision has been deeply flawed. No consultation of any meaningful kind preceded the first public announcements on the opt-out by the Prime Minister and the Home Secretary in September and October 2012, respectively. Impact Assessments promised at the end of 2012 have still not been provided. Despite repeated requests, the list of measures the Government intended to seek to rejoin was not made available in time for it to be considered in our original inquiry.
86. Chapter 3 of our original report made it clear that we were not convinced that the Government had adequately consulted relevant stakeholders, including the Devolved Administrations, before announcing on 15 October 2012 that they were minded to exercise the opt-out.<sup>124</sup> The Government do not accept that this was the case and stress that consultation took place before this date at an official level. The evidence they presented regarding stakeholder engagement, including with Devolved Administrations at the ministerial level, showed that it did not begin to take place in earnest until after that announcement had been made.<sup>125</sup> In particular, we are concerned that crucial issues relevant to the cross-border relationship between the UK and Ireland did not receive the degree of weight that they deserve.
87. David Ford MLA told us that communication between the Government and the Northern Ireland Executive about the opt-out had improved at both the ministerial and official level. He said: "I welcome this, but have made it clear that this should continue and that the devolved administrations must be aware of the negotiation process as it unfolds and not be presented with the outcome when decisions have been made".<sup>126</sup>
88. **We consider that much ground needs to be made up in the period ahead if the Government's commitment to full engagement with both Houses of Parliament is to be met in the remaining stages of the process for exercising the opt-out and seeking to rejoin particular EU police and criminal justice measures. While we welcome the evidence that the Government's engagement with the Devolved Administrations has improved, we remain uncertain that their concerns, as well as any concerns of the Irish government, have been fully addressed. It is essential that all such concerns be addressed.**

### Overdue Government response to Committee's opt-out report

89. The Government have undertaken to respond to Committee reports within two months of publication.<sup>127</sup> Our original report was published on 23 April 2013 and so was due to receive a response by 24 June 2013 at the latest. On that date, the Government wrote to our Chairman stating that they anticipated that there would be a "short delay" in providing the Government's response. After the statement was made by the Home

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<sup>124</sup> Paragraph 56 of our original opt-out report.

<sup>125</sup> *Op. Cit. Government response.*

<sup>126</sup> Letter from David Ford MLA.

<sup>127</sup> Cabinet Office: *Departmental evidence and response to Select Committees*, 2009.

Secretary on 9 July 2013, Lord Boswell wrote to the Government to request that the response be made available without further delay. A further holding letter was received on 18 July 2013 from the Government outlining their rationale for exercising the opt-out. The Government response was then finally received on 23 July 2013, hours before the House of Lords debate that took place on the same day.<sup>128</sup>

90. At the beginning of their response, the Government apologised for the delay and said that this had occurred in order to allow them to produce a response that was as comprehensive and detailed as possible. The response did not accept the original report's point that they had not effectively engaged with Parliament on the opt-out. It did acknowledge that the EMs being submitted late was unhelpful, giving the same reason—the desire to produce comprehensive EMs—as for the delay in the response itself.<sup>129</sup> We do not find the Government's explanation of either delay convincing.

### **The organisation of the first vote in the House of Lords**

91. The motion to approve the Government's decision to exercise the block opt-out was held only two weeks after the publication of Command Paper 8651. We consider this insufficient time for the House to consider the Government's approach to the opt-out decision. We view this as inconsistent with the repeated undertakings by the Government to consult Parliament about this important decision properly. This failure to engage appropriately with the House and its EU Committee was further compounded by the late receipt of the Government response to our original report, which was only received on the day of the debate itself.

### **The organisation of the second vote in the House of Lords**

92. As we have already noted, the Government have confirmed that a further vote on the final package of measures will take place following the conclusion of negotiations with the Commission and the Council. The Government also invited us to submit our views on the format of this vote in this follow-up report.<sup>130</sup>
93. Justice Across Borders considered the Prime Minister's notification of the opt-out decision on 24 July 2013 to have been premature, as the Government had not yet received any guarantees about which measures they could rejoin, or approval from Parliament regarding the final list of measures. It also asked for clarity regarding the Government's proposed handling of the remaining process.<sup>131</sup>
94. The Government have again promised to make Impact Assessments on the final list of measures available to Parliament "in good time" ahead of the second vote.<sup>132</sup> James Brokenshire MP originally promised this to the House of Commons European Scrutiny Committee on 28 November 2012.<sup>133</sup> The

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<sup>128</sup> Letters contained in the volume of correspondence, which is available online.

<sup>129</sup> *Op. Cit. Government response.*

<sup>130</sup> Letter from the Home Secretary and the Lord Chancellor to Lord Boswell of Aynho dated 26 July 2013. Contained in the volume of correspondence, which is available online.

<sup>131</sup> Justice Across Borders

<sup>132</sup> Q 17.

<sup>133</sup> Oral evidence given by James Brokenshire MP to the House of Commons European Scrutiny Committee on 28 November 2012.

LSEW and LSS suggested that the Impact Assessments would be most helpful if they reflected domestic costs as well as those potentially incurred at the EU level.<sup>134</sup>

95. **We look forward to receiving clarification about the terms of the second and final vote on the package of measures that the Government will rejoin well in advance of the debate and vote being held.**
96. **The House needs to have enough time to reflect upon this important matter ahead of that vote and we trust that the Government will do all they can to avoid repeating the unfortunate circumstances that preceded the first vote on 23 July 2013. We therefore trust that the Government's Impact Assessments on the final list of measures that the UK will rejoin, and on the list of measures they do not intend to rejoin, will be made available to Parliament in good time (and much earlier than the two weeks that the House of Lords was given to consider 142 pages of Explanatory Memorandums in advance of the first vote). The Assessments should include further information about the financial consequences of exercising the opt-out as suggested in the Government's response to our original report, at both the domestic and EU level. The absence of this information would prevent the House from being able to take a properly informed decision.**

### **The negotiating process**

97. We noted in our earlier report that the time available to complete the negotiations on the list of measures that the Government intends to rejoin, before the deadline of 1 December 2014, is extremely short, given the complexity of matters under negotiation and of the procedures for so doing. The timing problem has been further aggravated by the Government's decision not to engage in formal negotiations until the beginning of November 2013, although we understand that informal discussions have already been taking place since the Prime Minister notified the UK's intention to opt out.<sup>135</sup>
98. We also note that the European Parliament elections will take place at the end of May 2014, following which a new President and College of Commissioners will be nominated and, after hearings and a vote in the newly elected European Parliament, will take office on 1 November 2014. In addition, the mandate of the current President of the European Council, Herman von Rompuy, will end on 31 December 2014. There is therefore a risk that these changes may further complicate the negotiations and attitudes toward this issue. David Ford MLA and Helen Malcolm QC expressed concerns about the lack of time to conclude the negotiations.<sup>136</sup> As set out above, the Government think they have sufficient time to complete the negotiations.
99. The Home Secretary committed to provide updates to Parliament on the progress of negotiations "as appropriate". When pressed on whether those

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<sup>134</sup> LSEW and LSS. See paragraph 260 of our original opt-out report.

<sup>135</sup> Q 13.

<sup>136</sup> Helen Malcolm QC. Letter from David Ford MLA.

updates would be “regular”, she clarified that it would not be helpful to provide precise timings of those updates given the impact that they could potentially have on negotiations, but accepted that it was right that Parliament should be kept informed about how they are progressing.<sup>137</sup>

100. **The Government should make every effort to advance the negotiations expeditiously, though we recognise that the progress of those negotiations is not wholly in their hands.**
101. **We recommend that the Government provide Parliament with regular reports on the progress of the negotiations after they commence in early November 2013.**
102. **Finally, looking further ahead, we endorse the suggestion made by the Police Foundation that the impact of the opt-out should be the subject of a review.<sup>138</sup> We recommend that the Government undertake such a review three years after the opt-out takes effect and report their conclusions to Parliament.**

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<sup>137</sup> Q 17.

<sup>138</sup> Police Foundation.

## CHAPTER 8: CONCLUSIONS AND RECOMMENDATIONS

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### Chapter 1: Introduction

103. We do not intend to repeat or rehearse the content of our original report in this follow-up report, which is being prepared at the Government and the House's request, but we will make reference to the relevant conclusions and recommendations where appropriate. We see no justification to resile from our original analysis (paragraph 4).
104. We restate our disappointment that important information about the measures covered by the opt-out was not provided in a timely manner to Parliament and was only made available a few days before both Houses were asked to take decision on the Government's proposed course of action (paragraph 6).
105. We make this report to the House for debate, together with our original report on the UK's block opt-out decision which has not yet been debated (paragraph 14).

### Chapter 2: The Government's approach

106. In our view, this lack of analytical rigour and clarity regarding evidence drawn upon is regrettable. Despite the length of its gestation, Command Paper 8671 showed signs of having been hastily put together. We are disappointed that the Command Paper presented both the 35 measures which the Government intend to rejoin and the 95 they do not intend to rejoin in an unconvincing manner. We regret that the grounds on which the Government made their selection of measures to seek to rejoin were not set out persuasively in the EMs (paragraph 19).
107. The Government have not dealt satisfactorily with our report's conclusions about CJEU jurisdiction. Their general approach is moreover not consistent with their decisions to opt in to many post-Lisbon police and criminal justice measures (paragraph 23).
108. We consider that the Government's approach to minimum standards measures does not give sufficient consideration to the possible damage to the UK's reputation in the areas covered by these measures (paragraph 28).

### Chapter 3: The 35 measures that the Government intend to seek to rejoin

109. The House of Lords has endorsed the 35 measures the Government will seek to rejoin; we are persuaded by the evidence received, and the findings of our initial inquiry, that it is in the UK's national interest to rejoin the 35 measures set out by the Government (paragraph 34).

### *Proposed Europol Regulation*

110. We welcome the Government's decision to seek to rejoin the existing Europol Council Decision. We also welcome the fact that they intend to exercise their right to opt in to the proposed new Europol Regulation when it takes effect but remain disappointed that the Government have not chosen to opt in to it now so that they can play a fuller part in its negotiation (paragraph 38).

111. We repeat our earlier recommendation that the Government should opt back in to the other implementing Europol Council Decisions which fall within the scope of the block opt-out and are related to Europol's continued operations (paragraph 39).

*Proposed Eurojust and European Public Prosecutor's Office Regulations*

112. We welcome the Government's decision to seek to rejoin the existing Eurojust Council Decisions and believe it will make sense to opt in to the proposed Eurojust Regulation which will repeal and replace that measure in due course. Participation in Eurojust is, in our view, very much in the UK's national interest (paragraph 41).

**Chapter 4: The 95 measures that the Government do not intend to seek to rejoin**

113. Future governments will still have the option of seeking to rejoin those measures which the present Government do not intend to rejoin, as no time limits are stipulated in this regard (paragraph 42).

*Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law*

114. We consider that the UK should seek to rejoin the Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law as its well-founded reputation in this area may be significantly damaged if it does not. We therefore recommend that the Government should review their decision not to seek to rejoin it. We believe that there has not been any suggestion that the UK is not currently compliant with the provisions of the Framework Decision on xenophobia and racism which has been in force since 2008 (paragraph 47).

*Council Decision on the European Judicial Network*

115. We consider that the Government should seek to rejoin the European Judicial Network measure. We judge that this measure's focus on practical cooperation across borders has merit, and that nothing would be gained by ceasing to engage with its purpose and terms (paragraph 51).

*Framework Decision on mutual recognition of judgments and probation decisions with a view to supervision of probation measures and alternative sanctions ("European Probation Order")*

116. We consider that the UK should seek to rejoin the European Probation Order. In our view, this measure has potential to provide benefits for the management of offenders on a cross-border basis and that nothing is being gained by not implementing its provisions. The Government's concerns about proper implementation should be resolved at a European level, in the interests of all participating Member States (paragraph 55).

*Convention on Driving Disqualifications*

117. We consider the Convention on Driving Disqualifications to be of sufficient importance that the Government should reconsider their position on it (paragraph 57).

*Council Decisions on stepping up cross-border cooperation in combating terrorism and crime (the “Prüm Decisions”)*

118. We regret that the Government have maintained their earlier position not to seek to implement the Prüm Decisions. We hope that (outside the timeframe of this current opt out exercise) they or their successors will be prepared to implement them. We ask the Government to explain what will happen to the EU funding they received to implement the DNA provisions of these measures if the UK decides definitely not to implement these Decisions (paragraph 61).

*EU Convention on Mutual Assistance in Criminal Matters and the Framework Decision on attacks against information systems*

119. We urge the Government to ensure that no gaps arise in the application of the EU Convention on Mutual Assistance in Criminal Matters and the Framework Decision on attacks against information systems, between the opt-out taking effect on 1 December 2014 and the measures that will supersede them. If necessary, the Government should seek to rejoin both of the original measures (paragraph 64).

*Anglo-Irish cooperation on policing and criminal justice matters*

120. The list of 35 measures that the UK will seek to rejoin, and in particular the decision to seek to rejoin the European Arrest Warrant, has gone some way to address these concerns but we remain concerned that insufficient attention has been paid to the possible negative impact on Anglo-Irish cooperation in policing and criminal justice matters. Some of the additional measures we have proposed the Government should seek to rejoin will go towards meeting these concerns. We recommend that the Government remain responsive to any further representations which might be made either by the government of Ireland or the Northern Ireland Executive (paragraph 66).

**Chapter 5: The Government’s proposed reforms to the domestic implementation of the European Arrest Warrant**

*Domestic reforms*

121. We welcome the proposed changes to the domestic implementation of the European Arrest Warrant while expressing the hope that the Government will engage constructively with the Commission and Council Legal Services to resolve and clarify any concerns that may arise (paragraph 72).

**Chapter 6: Coherence and transitional arrangements**

*Coherence*

122. We hope and expect that both the Commission and the Government will handle discussions about the overall coherence of the police and criminal justice measures that the UK intends to rejoin in a technical and apolitical manner; and that the Government will respond flexibly to adjustments to the list of measures they wish to rejoin that may be proposed by the Commission in order to achieve coherence. We are pleased that the Government have confirmed their intention to handle this issue in a flexible manner (paragraph 80)

### *Transitional arrangements*

123. We urge the Government to push ahead expeditiously with the negotiating process, seeking to bring it to a conclusion well ahead of the 1 December 2014 deadline in order to avoid potential gaps arising in the application of the measures they are seeking to rejoin and thus avoiding the need for any transitional arrangements. If transitional arrangements do prove to be necessary, we expect the Government to work with the Commission and the Council Legal Services to produce and adopt measures without delay (paragraph 83).
124. We are particularly concerned about potential gaps developing in the application of the European Arrest Warrant, which could have profound implications for victims of crime and the rights of individuals subject to a Warrant, as well as the criminal justice system in general (paragraph 84).

### **Chapter 7: The timing of the negotiations, future engagement with Parliament and the final votes**

125. We consider that much ground needs to be made up in the period ahead if the Government's commitment to full engagement with both Houses of Parliament is to be met in the remaining stages of the process for exercising the opt-out and seeking to rejoin particular EU police and criminal justice measures. While we welcome the evidence that the Government's engagement with the Devolved Administrations has improved, we remain uncertain that their concerns, as well as any concerns of the Irish Government, have been fully addressed. It is essential that all such concerns be addressed (paragraph 88).

### *The organisation of the second vote in the House of Lords*

126. We look forward to receiving clarification about the terms of the second and final vote on the package of measures that the Government will rejoin well in advance of the debate and vote being held (paragraph 95).
127. The House needs to have enough time to reflect upon this important matter ahead of that vote and we trust that the Government will do all they can to avoid repeating the unfortunate circumstances that preceded the first vote on 23 July 2013. We therefore trust that the Government's Impact Assessments on the final list of measures that the UK will rejoin, and on the list of measures they do not intend to rejoin, will be made available to Parliament in good time (and much earlier than the two weeks that the House of Lords was given to consider 142 pages of Explanatory Memorandums in advance of the first vote). The Assessments should include further information about the financial consequences of exercising the opt-out as suggested in the Government's response to our original report, at both the domestic and EU level. The absence of this information would prevent the House from being able to take a properly informed decision (paragraph 96).

### *The negotiating process*

128. The Government should make every effort to advance the negotiations expeditiously, though we recognise that the progress of those negotiations is not wholly in their hands (paragraph 100).



129. We recommend that the Government provide Parliament with regular reports on the progress of the negotiations after they commence in early November 2013 (paragraph 101).
130. Finally, looking further ahead, we endorse the suggestion made by the Police Foundation that the impact of the opt-out should be the subject of a review. We recommend that the Government undertake such a review three years after the opt-out takes effect and report their conclusions to Parliament (paragraph 102).

## APPENDIX 1: SUB-COMMITTEES ON JUSTICE, INSTITUTIONS AND CONSUMER PROTECTION AND HOME AFFAIRS, HEALTH AND EDUCATION

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The Members of the Sub-Committees that conducted this inquiry were:

### Sub-Committee on Justice, Institutions and Consumer Protection

Lord Anderson of Swansea  
 Lord Blair of Boughton  
 Baroness Corston (Chairman)  
 Lord Dykes  
 Baroness Eccles of Moulton  
 Viscount Eccles  
 Lord Elystan-Morgan  
 Lord Hodgson of Astley Abbots  
 Baroness Liddell of Coatdyke  
 Baroness O'Loan  
 Lord Rowlands  
 Lord Stoneham of Droxford

### Sub-Committee on Home Affairs, Health and Education

Baroness Benjamin  
 Lord Blencathra  
 Viscount Bridgeman  
 Lord Faulkner of Worcester  
 Lord Hannay of Chiswick (Chairman)  
 Lord Judd  
 Lord Morris of Handsworth  
 Baroness Prashar  
 Lord Sharkey  
 Earl of Stair  
 Lord Tomlinson  
 Lord Wasserman

### Declaration of Interests

#### *Sub-Committee on Justice, Institutions and Consumer Protection*

Baroness Corston (Chairman)  
*No relevant interests*

Lord Anderson of Swansea  
*Member, Legal Affairs Committee of Parliamentary Assembly of Council of Europe*

Lord Blair of Boughton  
*No relevant interests*

Lord Dykes  
*No relevant interests*

Baroness Eccles of Moulton  
*No relevant interests*

Viscount Eccles  
*No relevant interests*

Lord Elystan-Morgan  
*No relevant interests*

Lord Hodgson of Astley Abbots  
*Trustee of Fair Trials International*

Baroness Liddell of Coatdyke  
*No relevant interests*

Baroness O'Loan  
*No relevant interests*

Lord Rowlands  
*No relevant interests*

Lord Stoneham of Droxford  
*No relevant interests*

*Sub-Committee on Home Affairs, Health and Education*

Lord Hannay of Chiswick (Chairman)  
*Member, Advisory Board of the Centre for European Reform*  
*Member, The Future of Europe Forum, the proactive advisory board for the*  
*Centre for British Influence through Europe*

Baroness Benjamin  
*No relevant interests*

Lord Blencathra  
*No relevant interests*

Viscount Bridgeman  
*No relevant interests*

Lord Faulkner of Worcester  
*No relevant interests*

Lord Judd  
*Trustee, Saferworld*

Lord Morris of Handsworth  
*No relevant interests*

Baroness Prashar  
*Member of the Committee appointed to consider UK's involvement in Iraq*  
*Governor and Member of Management Committee, Ditchley Foundation*  
*Deputy Chair, British Council*

Lord Sharkey  
*Governor, Institute for Government*

Earl of Stair  
*No relevant interests*

Lord Tomlinson  
*No relevant interests*

Lord Wasserman  
*No relevant interests*

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

Lord Boswell of Aynho (Chairman)  
Lord Bowness  
Lord Carter of Coles  
Baroness Corston

Lord Dear  
Baroness Eccles of Moulton  
Lord Foulkes of Cumnock  
The Earl of Sandwich  
Lord Hannay of Chiswick  
Lord Harrison  
Lord Maclennan of Rogart  
Lord Marlesford  
Baroness Scott of Needham Market  
Baroness O’Cathain  
Baroness Parminter  
Lord Tomlinson  
Lord Tugendhat

During consideration of the report the following Member declared an interest:

Lord Bowness  
*Solicitor – Non-practicing*  
*Notary Public – Non-practicing*

A full list of Members’ interests can be found in the Register of Lords Interests:

<http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests/>

## **APPENDIX 2: LIST OF WITNESSES**

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Evidence is published online at [www.parliament.uk/hleuf](http://www.parliament.uk/hleuf) and available for inspection at the Parliamentary Archives (020 7219 5314)

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with \* gave both oral evidence and written evidence. Those marked with \*\* gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

### **Oral evidence in chronological order**

- \* QQ 1–17 Rt. Hon. Theresa May MP, Home Secretary, Home Office  
Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice

### **Alphabetical list of all witnesses**

- Better Off Out
- Torquil Dick-Erikson
- Europol
- Fair Trials International
- \* Rt. Hon. Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice
- Italian Government
- Justice Across Borders
- Law Societies of England and Wales and of Scotland
- Helen Malcolm QC
- \* Rt. Hon. Theresa May MP, Home Secretary, Home Office
- Claude Moraes MEP
- Frank Mulholland QC, Lord Advocate
- Northern Ireland Executive
- The Police Foundation

### APPENDIX 3: CALL FOR EVIDENCE

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The House of Lords EU Committee, chaired by Lord Boswell of Aynho, is reopening its inquiry into the United Kingdom's 2014 opt-out decision. We invite you to contribute evidence to this inquiry. Written evidence is sought by **11 September 2013**. Like the first inquiry, this short follow-up inquiry will be conducted jointly by the Justice, Institutions and Consumer Protection Sub-Committee, chaired by Baroness Corston, and the Home Affairs, Health and Education Sub-Committee, chaired by Lord Hannay of Chiswick.

#### Background

Protocol 36 to 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 for the first time to the Court of Justice of the European Union's jurisdiction and the enforcement powers of the European Commission on 1 December 2014.

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 was 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.<sup>139</sup> The Government also undertook to facilitate a debate and vote in each House before the final decision was made.

#### *The EU Committee's report on the opt-out decision*

The Sub-Committees named above conducted a joint inquiry into the UK's 2014 opt-out decision between November 2012 and April 2013 and published a report, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report of Session 2012-13, HL Paper 159), on 23 April. Among other things, the Committee concluded that the Government had not made a convincing case to exercise the opt-out and that to do so would have significant negative repercussions for the UK's internal security. A copy of the report, the evidence received for the inquiry, the correspondence between the Committee and the Government,<sup>140</sup> and various other resources related to the opt-out decision, are available on the Committee's website.<sup>141</sup>

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<sup>139</sup> 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.

<sup>140</sup> On the date this Call for Evidence was issued the Government's response to the Committee's 23 April opt-out report had not been received despite being due on 24 June. As soon as it is received it will be made available online.

<sup>141</sup> <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/inquiries/parliament-2010/protocol-36/>

*The Government's further announcement on the opt-out decision, 9 July 2013*

In a further statement to Parliament on 9 July 2013, the Government provided more information about their approach to the opt-out decision.<sup>142</sup> At the same time the Government published Command Paper 8671, which sets out a list of 35 measures that the UK will seek to rejoin if the opt-out is exercised and includes Explanatory Memorandums covering the 130 measures falling within the scope of the opt-out decision.<sup>143</sup>

The Government also set out the arrangements for the debates and votes that would be held in both Houses on the opt-out. This will include two sets of votes: the first on the opt-out decision (which took place in the House of Commons on 15 July and is due to take place in the House of Lords on 23 July);<sup>144</sup> and the second to take place in due course on the final package of measures, following the conclusion of the Government's negotiations with the Commission and the Council. These negotiations are not expected to conclude before the end of this year.

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 or to repeat evidence already submitted to the Committee during its earlier inquiry into the opt-out decision)

- (1) If you gave evidence in the first inquiry, do you have any supplementary comments in the light of our Report and the Government's latest announcements?
- (2) What is your view on the list of 35 measures that the Government will seek to rejoin if the opt-out is exercised? Are there in your view any measures that are not on the list that ought to be; or that are on the list but should not be?
- (3) Does the list of measures that the Government will seek to rejoin raise any coherence issues, i.e. are some of the measures on the list connected to other measures that are not included on the list?
- (4) Do the Government's Explanatory Memorandums raise any issues about particular measures on which you would wish to comment?
- (5) What are your views of the Government's Explanatory Memorandums and their assessment of the policy implications and fundamental rights analysis conducted on each measure?
- (6) Are the Government's proposed reforms to the European Arrest Warrant at the domestic level consistent with their desire to rejoin this measure, including the UK's obligations under the Framework Decision and the EU Treaties?

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<sup>142</sup> Oral Ministerial Statement regarding the opt-out decision by the Home Secretary, Commons Hansard, 9 July 2013, cols 177-193; repeated in the House of Lords by the Deputy Leader of the House, Lords Hansard, cols 228-239.

<sup>143</sup> HM Government, *Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union*, 9 July 2013 (Cm 8671): <http://www.official-documents.gov.uk/document/cm86/8671/8671.pdf>

<sup>144</sup> A transcript of the House of Commons debate is available in Commons Hansard, 15 July 2013, cols 770-862. A transcript of the House of Lords debate will become available in Lords Hansard the day after the debate.

#### **APPENDIX 4: LIST OF MEASURES THAT THE GOVERNMENT INTEND TO SEEK TO REJOIN**

This is the list of measures subject to the opt-out, produced by the Home Office as at 15 October 2012, which has been subsequently updated through correspondence.<sup>145</sup> We have re-ordered the list (appendix 4 is those measures the Government will seek to rejoin and appendix 5 is those measures the Government will not seek to rejoin) and grouped the measures under headings. The reference numbers in the first column are those in the original Home Office list and the notes in the last column are adapted from the list published by the Home Office and Command Paper 8671.

#### **Abbreviations**

CoE	Council of Europe	LEA	Law Enforcement Agencies
EAW	European Arrest Warrant	EIO	European Investigation Order
JIT	Joint Investigation Team	MuLAMutual Legal Assistance	
MS	Member State	SOCASerious Organised Crime Agency	

<b>Number</b>	<b>Measure</b>	<b>Cm Paper Pages</b>	<b>Notes</b>
<b>CRIMINAL OFFENCES AND PENALTIES</b>			
	<b>Pornography</b>		
23	Council Decision to combat online child pornography	88–90	Sets out how MSs should tackle online child abuse images through development of appropriate LEA response, close working with internet industry and international cooperation. The UK is already compliant with the terms of this measure through a range of non-EU specific domestic administrative and legal measures. UK participation may contribute to its good reputation in this area. Little practical impact if the UK withdrew but its influence may be reduced. Cooperation could also continue through alternative measures, including MuLA and JITs

<sup>145</sup> See <http://www.homeoffice.gov.uk/publications/about-us/corporate-publications/2014-decision/table-of-measures?view=Binary>; the volume of correspondence, which is available online; *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.



Number	Measure	Cm Paper Pages	Notes
<b>MUTUAL RECOGNITION OF NATIONAL DECISIONS</b>			
41	European Arrest Warrant Framework Decision	94–96	The purpose of the EAW is to speed up the extradition process between MSs. Concerns about proportionality and use for charges not considered criminal acts in the UK. However, EM states that EAW contains many safeguards to protect fundamental rights and the Government considers that the measure, on balance, complies with such principles. If the UK were to withdraw then it could fall back on the 1957 CoE Extradition Convention (which is not considered to be perfect)
48	Framework Decision on orders freezing property or evidence	63–65	Establishes rules under which a MS recognises and executes a freezing order for property or evidence issued by another MS. Little used and the EU/CoE MuLA Conventions would provide a viable fall back option. Implemented in UK through primary legislation. There is evidence that elements of this measure will also be superseded by EIO in due course (UK post-Lisbon opt-in). Since implementation in 2009 the UK has issued no requests and has received only four from another MS, of which one was executed
59	Framework Decision on mutual recognition of financial penalties	127–130	Requires MSs to collect financial penalties of over €70 transferred by other MSs as they would a domestic financial penalty. Between 2010 and 2012, England and Wales received 393 cases from other MSs, with an average value of £240 per penalty. 126 outgoing penalties from England and Wales during the same period, with an average value of £400 per penalty. Numbers will rise once all MSs have implemented the measure—currently only 23 have done so. Implemented through primary legislation. UK’s participation in the measure may have reputational benefits. Withdrawal may result in loss of revenue from foregone penalty income
68	Framework Decision on mutual recognition of confiscation orders (“European Confiscation Order”)	70–72	Facilitates direct execution of confiscation orders for proceeds of crime by establishing simplified procedures for recognition among MSs and rules for dividing confiscated property between them. Few MSs have implemented this measure properly, and some have not yet done so, including UK. If implemented changes to primary legislation would be required. UK currently relies upon the 1990 CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime
83	Framework Decision on taking account of convictions in other MSs in course of new criminal proceedings	129–130	Requires MS courts to take account of defendant’s previous convictions in any other MSs. Implemented through primary legislation. The UK was already compliant before the measure was adopted, which will continue to be the case regardless of withdrawal but other MSs would not be obliged to take into account previous UK convictions
85	Framework Decision on mutual recognition of judgments in criminal	130–132	Measure allows non-UK EU nationals held in UK prisons to be returned to their home MS to serve the remainder of their sentence without their consent, and for UK nationals held in other

Number	Measure	Cm Paper Pages	Notes
	matters imposing custodial sentences or measures involving deprivation of liberty (“Prisoner Transfer Agreement”)		EU MS prisons to be returned to serve the remainder of their sentences in the UK. Implemented through primary legislation. UK policy is to reduce number of foreign national offenders in UK prisons. UK already party to the CoE Convention on Transfer of Sentenced Persons, which has been implemented by all but 6 MSs. The measure builds on and extends the scope of these arrangements and also restricts the scope of circumstances in which consent of prisoner and executing MS is required for transfer to take place. Withdrawal may result in foregone savings in the form of current and future prison places
88	Framework Decision on mutual recognition of judgments and probation decisions with a view to supervision of probation measures and alternative sanctions (“European Probation Order”)	132–133	Provides basis for mutual recognition and supervision of suspended sentences, licence conditions and alternative sanctions (community sentences) where an individual has been sentenced in one MS but is ordinarily/lawfully resident in another. Measure should have been implemented by 6 December 2011 but the UK has not yet done so—only 7 MSs have so far. There is a lack of clear understanding about how the measure will operate in practice. It is based on the earlier 1964 CoE Convention on supervision of conditionally released offenders. The number of cases that will be affected in the UK is likely to be small and it is very difficult to quantify costs of participating in this measure. The total number of EU cases is unlikely to be very evident until all MSs have implemented the measure. The measure currently allows MSs to refuse to enforce orders if they so wish which may result in uneven application across the EU
92	Framework Decision amending EAW, European Confiscation Order, mutual recognition of financial penalties, prisoner transfer agreement and European Probation Order, thereby enhancing the procedural rights of persons and fostering application of mutual recognition to decisions rendered in the absence of the person concerned at trial	135–136	The measure aligns and clarifies criteria used in various other measures for the mutual recognition of in absentia judgments. It ensures that fewer criminals will be able to evade justice by arguing that their conviction was unfair and by preventing MSs from declining to recognise judgments from other MSs. The measure does not create a new right to try a person in their absence but does provide a judge in the executing MS with the option of refusing an EAW if the person did not appear at the trial unless certain procedural safeguards were met in the case concerned. Measure not yet implemented in the UK in so far as it relates to the European Confiscation Order and the European Probation Order (measures 68 & 88—UK to rejoin), both of which have not yet been fully implemented in the UK. UK implementation is complete in relation to remaining measures (measures 41, 59 & 85—UK to rejoin all). The UK’s participation in this measure should be considered in conjunction with the measures that it amends
97	Framework Decision on mutual recognition of decisions of supervision measures as an alternative to provisional detention (“European	136–138	Enables a suspect or defendant subject to a pre-trial non-custodial supervision measure (bail) in a MS in which they are not ordinarily resident to be supervised in their home MS until such a time as their trial takes place. It does not oblige MSs to release suspects or defendants on bail. The measure should have been implemented by 1 December 2012 but the UK has not yet done

Number	Measure	Cm Paper Pages	Notes
	Supervision Order")		so. No evidence is yet available for its application but it is predicted that incoming ESOs could have operational impact on UK police forces because of the need to monitor suspects. An estimated 15% of non-UK EU nationals in UK prisons may be eligible to apply for an ESO. Approximately 56% of potentially eligible UK nationals held on remand abroad could also be eligible for an ESO. The true extent of the measure's utility will not be evident until all MSs have implemented it. Potential cost savings from transferring foreign suspects to home MSs must be weighed against cost of receiving UK nationals back
<b>COOPERATION BETWEEN POLICE AND OTHER NATIONAL AUTHORITIES</b>			
<b>Organised crime</b>			
13	Joint Action establishing organised crime evaluation mechanism	86–87	Enables operation of the Working Party on General Matters including Evaluation (GENVAL), which focuses on MS cooperation in countering serious and organised crime and provides for peer review of implementation of EU measures in this area. Five mutual evaluations of EU measures have been conducted so far. Government consider that it would be harder for the UK to participate in these if it withdrew from this measure but consider bilateral work with other MSs possible
<b>Threats to order</b>			
37 & 72	Council Decision concerning security of international football matches, as amended	104–106	Established National Football Information Points to coordinate and facilitate international police cooperation and information exchange in connection with football matches with an international dimension. UK already compliant with measure's terms. UK also leads in this area so there may be reputational damage from withdrawing. MSs may decide to continue sharing information with UK if it withdrew. Not implemented through legislation but UK considered to be compliant with measure's terms, including through existing domestic legislation
<b>Investigations, evidence and exchange of information</b>			
14 (related to 100)	Council Act drawing up the Convention on mutual assistance and cooperation between customs administrations ("Naples II Convention")	144–146	Measure provides for customs cooperation and mutual assistance between customs authorities, including surveillance of consignments of drugs and other prohibited goods and permitting joint investigations/operations, which would no longer be available to UK if it withdraws and in the absence of effective alternative arrangements. Regularly used by Her Majesty's Revenue and Customs and the Border Force to share information about drugs smuggling, money laundering and other forms of cross-border crime, resulting in the regular seizure of prohibited goods, including class A drugs (examples provided). Approximately 2000 instances of usage a year, being used on a daily basis in practice. Alternative options for cooperation are available,

Number	Measure	Cm Paper Pages	Notes
100 (related to 14)	Council Decision on use of information technology for customs purposes (“Customs Information System”)	151–153	including under MuLA and the Swedish Initiative, but would be limited and less comprehensive than provisions under the measure. Implemented through existing legislation Establishes CIS and permits MS customs authorities to share information electronically to assist each other in combating customs crimes including the smuggling of drugs, weapons and tobacco. CIS is umbrella term for CIS database and customs files identification database (FIDE), which are both fully funded and provided with technical support by the Commission. UK was responsible for 26 of 302 active CIS cases in 2011 and 18 of 259 in 2012. No secure alternative to CIS are available although information can be exchanged under Naples II but with restricted scope and coverage. Implemented administratively
18	Joint Action setting up a European Image Archiving System (FADO)	87–88	FADO is a computerised archive containing images and textual information relating to falsified and authentic identity documents such as passports, ID cards, visas, residence permits and driving licences. Regularly used by Government departments and agencies. No equivalent database currently available in the UK and alternatives likely to take several years to develop. If the UK withdrew then alternatives would unlikely be as comprehensive. Costs the UK £40,000 a year. Implemented administratively
27	Council Decision on arrangements between MS financial information units (FIUs) in exchanging information	55–57	Enables improved disclosure and exchange of financial information between MS FIUs in combating money laundering. Implemented administratively. Operational consequences and reputational risks of withdrawal. Without instrument MoUs or bilateral agreements would be necessary, which would incur additional administrative burdens and costs
38	Framework Decision on Joint Investigation Teams (JITs)	61–63	The Government considers that cooperation with other MSs could continue without this instrument but Protocol 2 to 1959 CoE MuLA Convention is not a viable alternative as many MSs have not signed it. JITs must operate in accordance with the law of the host MS and foreign police are not immune from prosecution when operating in the territory of another MS. UK involved in 21 JITs since 2009
69	Framework Decision simplifying exchange of information and intelligence between MS LEAs (“Swedish Initiative”)	70–72	Seeks to simplify exchange of information and intelligence between MS LEAs for the purposes of conducting criminal investigations or criminal intelligence operations. Provides standard forms to exchange information (used by AROs) and time bound (8 hours) process for exchange. Implemented administratively. Withdrawal may make it more difficult for UK to participate with other MSs
81	Council Decision on improvement of cooperation between MS special intervention units in crisis situations	108–109	Designed to provide a legal framework for MSs to provide law enforcement assistance to one another to deal with man-made crisis situations such as terrorist attacks, hijacking, hostage-

Number	Measure	Cm Paper Pages	Notes
93 & 94	Framework Decision on exchange of information extracted from MS criminal records and Council Decision on establishment of European Criminal Records Information System (ECRIS)	112-114	<p>taking, and so on. Implemented administratively and obligations broadly met by existing legislation. Measure allows for bilateral arrangements to continue, which would subsist if the UK withdrew</p> <p>Require MSs to inform each other about convictions of EU nationals in another MS and permit MSs to request previous convictions of individuals from other MSs. The Framework Decision sets out legal requirements for the transfer of information and the Council Decision stipulates that this will occur electronically. Implemented administratively. The measure has allowed much more information to be exchanged than before. APCO Criminal Records Office (UKCA-ECR) designated as Central Authority for exchange of records in UK. UKCA-ECR costs £750,000 a year to operate and ECRIS cost £250,000 to implement. If the UK reverted to exchange of data under the 1959 CoE MuLA Convention then it would likely decrease in volume and become slower. It is particularly useful in the UK-Irish context as UK nationals commit 12,000 criminal offences in Ireland each year, which were not notified to UK under CoE MuLA Convention arrangements</p>
73	<b>Recovery of proceeds of crime</b> Council Decision concerning cooperation between MS Asset Recovery Offices (AROs) in field of tracing and identification of proceeds of crime	72-73	<p>Obliges each MS to establish or designate an ARO to cooperate in identifying proceeds of crime. Information requests between AROs are regulated by set time limits. The UK was made compliant through the establishment of ARO within SOCA FIU. In 2012 there were 72 ARO requests from other MSs and only 5 from non-MSs through the alternative CARIN network. It would be more difficult to make requests to other MSs if the UK did not participate in this measure but considered that exchange/cooperation with other MSs would continue regardless of UK participation</p>
<b>INSTITUTIONS</b>			
95	<b>Europol</b> Europol Council Decision	43-50	<p>Cross-border cooperation is crucial but could continue through bilateral liaison officer arrangements. Estimated annual cost of UK's membership of Europol is £10.5 million. No requirement to implement into UK law. UK participation in Europol plays a major and generally positive role in UK LEAs operational work, which would be diminished as a result of withdrawing. Successful operations are provided. Proposed Europol Regulation will supersede this measure and remove it from the scope of the opt-out if adopted before 1 December 2014 (there is a UK commitment to opt-in post-adoption provided certain conditions are met)</p>

Number	Measure	Cm Paper Pages	Notes
26	<p><b>Data protection</b></p> <p>Council Decision establishing secretariat for joint supervisory data protection bodies set up by Europol Convention, Convention on use of information technology for customs purposes and Convention implementing Schengen Agreement</p>	125–126	Establishes a single, independent joint secretariat for joint supervisory data protection bodies established under various measures. The Government's decision to participate in this measure is related to its participation in SIS II, CIS and Europol Council Decision (which replaced the Europol Convention)—measures 128, 100 & 95 respectively (UK to rejoin all). No requirement for implementation into UK law through legislation
35, 77 & 136	<p><b>Eurojust</b></p> <p>Eurojust Council Decision, as amended</p>	58–61	The EU's judicial cooperation unit. Mandated to improve cooperation and coordination between MSs in cross-border criminal investigations and prosecutions, through resolving conflicts of jurisdiction and the posting of liaison magistrates. Also supports MuLA and JITs. No consideration of financial consequences of leaving this measure. Hard to quantify benefits. UK LEA supports continued participation in this measure. Posting of bilateral liaison magistrates to other MSs would be possible if UK withdraws. UK contributes around 12% of Eurojust budget. Implemented administratively and through primary legislation. Will be superseded in due course by the proposed Eurojust Regulation (UK post-Lisbon opt in decision pending) but not by the proposed EPPO Regulation, which will not apply to the UK in any event
67	<p><b>European Police College</b></p> <p>European Police College (CEPOL) Council Decision</p>	68–69	EU agency that aims to train senior police officers from across the EU by optimising cross-border cooperation. Organises 80–100 courses and seminars each year. Articles 2 and 3 have not been properly implemented in the UK to the required standard. To do so would require further Statutory Instruments or orders to be laid in Parliament. Other provisions implemented administratively. UK pays approximately 11.5% of the annual CEPOL budget. CEPOL currently rents accommodation from (English and Welsh) College of Policing at Bramshill but that lease is due to end next year. Proposed Europol Regulation will supersede this measure and remove it from the scope of the opt-out if adopted before 1 December 2014 (UK commitment to post-adoption opt-in if certain conditions are met)
<b>OTHER</b>			
90	Framework Decision on protection of personal data processed in the	133–135	Purpose is to encourage cross-border exchange of law enforcement information by establishing high level of security when MSs exchange personal data within framework of police and judicial

Number	Measure	Cm Paper Pages	Notes
	framework of police and judicial cooperation in criminal matters (“Data Protection Framework Decision”)		cooperation in criminal matters. Implemented through primary legislation. UK already compliant before measure was adopted, which will continue to be the case regardless of withdrawal but there is a risk that UK may not be able to exchange data with other MSs in this area. Participation could also enhance UK’s reputation in its commitment to data protection standards. Likely to be superseded by proposed Data Protection Directive (UK post-Lisbon decision not to opt-out) but will not necessarily be adopted before 1 December 2014 in which case this measure will remain within scope of opt-out
<b>SCHENGEN MEASURES</b>			
115	Schengen measure—Handbook on cross-border police cooperation	20–22	Handbook provides a practical reference point for MS LEAs by setting out current legal references and basis of practical cooperation as contained in the Schengen Convention. SOCA makes significant use of the handbook and there may be reputational risks of withdrawing. Implemented administratively in the UK
110, 120 & 121	Convention implementing Schengen Agreement, as amended	14–17	Provides for police cooperation between Schengen States. Makes provision for cross-border surveillance, MuLA, the principle of ne bis in idem (double jeopardy), among other things. MuLA provisions will be superseded by EIO (UK post-Lisbon opt-in) in due course. Loss of surveillance provisions would have operational implications for SOCA operating overseas and available alternatives are slower. The UK has made 154 outbound requests for surveillance and has received five requests from other MSs. Implemented by primary and secondary legislation
128	Council Decision establishing second-generation Schengen Information System (SIS II)	26–28	SIS II enables all participating States to share real-time information on missing people, people wanted for extradition, stolen vehicles and ID documentation to LEAs through a series of “alerts”. The measure provides the necessary legislative base for UK’s participation in SIS II. It allows more efficient notification of EAWs. The UK has already spent £100 million on its development. The UK is due to connect to SIS II at the end of 2014

### APPENDIX 5: LIST OF MEASURES THAT THE GOVERNMENT DO NOT INTEND TO SEEK TO REJOIN

This is the list of measures subject to the opt-out, produced by the Home Office as at 15 October 2012, which has been subsequently updated through correspondence.<sup>146</sup> We have re-ordered the list (appendix 4 is those measures the Government will seek to rejoin and appendix 5 is those measures the Government will not seek to rejoin) and grouped the measures under headings. The reference numbers in the first column are those in the original Home Office list and the notes in the last column are adapted from the list published by the Home Office and Command Paper 8671.

Number	Measure	Cm Paper Pages	Notes
<b>CRIMINAL OFFENCES AND PENALTIES</b>			
<b>Fraud</b>			
1, 8 & 12	Council Act drawing up the Convention on the protection of the European Communities' financial interests, with two further Council Acts drawing up a first and second Protocol	143–144	Measures established a common definition of fraud affecting EU expenditure and revenue, as well as requiring MSs to adapt their national laws to penalise acts of corruption against the EU budget by EU and MS officials. Measures will be superseded by the proposed Directive on the fight against fraud to the EU's financial interests of criminal law (UK post-Lisbon opt in decision pending)
24 & 34	Framework Decision on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with introduction of euro, as amended	124–125	Designed to ensure protection of the euro against counterfeiting by MS criminal law, requiring minimum standards for requisite offences and recognition of convictions from other MSs for purposes of sentencing. Low level of counterfeit coins in the UK and falling. Extensive domestic legislation already in place to deal with problem. Likely to be superseded in due course by the proposed Directive to protect the euro and other currencies against counterfeiting by criminal law (UK post-Lisbon decision not to opt in)
33	Council Decision on protection of euro against counterfeiting	90–91	Seeks to protect the euro against counterfeiting by laying down procedures for expert analysis of suspected counterfeit notes and coins, and obliges MSs to notify investigations to Europol. Low level of counterfeit coins in the UK and falling. Domestic legislation already in place to deal with problem and also implemented administratively
29	Framework Decision on combating fraud and counterfeiting of non-cash means of payment	126–127	Designed to ensure fraud and counterfeiting involving all forms of non-cash means of payment (including credit cards and cheques) are criminal offences in all MSs. UK already compliant before measure was adopted through existing domestic legislation, which will continue to be the

<sup>146</sup> See <http://www.homeoffice.gov.uk/publications/about-us/corporate-publications/2014-decision/table-of-measures?view=Binary>; the volume of correspondence, which is available online; *Op. Cit. Decision pursuant to Article 10 of Protocol 36 (Cm 8671)*.



Number	Measure	Cm Paper Pages	Notes
			case regardless of withdrawal
	<b>Corruption</b>		
9 & 49	Convention on fight against corruption involving EU and MS officials and Council Decision concerning the application of Convention to Gibraltar	122–123	Measure sets minimum standards for public sector corruption offences, requires MSs to ensure corruption involving EU and MS public officials is criminalised and that such offences attract a minimum penalty. Implemented through primary legislation and the UK would continue to comply regardless of withdrawal
47	Framework Decision on combating corruption in the private sector	123–124	Measure sets minimum standards for private sector corruption offences and requires MSs to ensure that active and passive bribes in private sector amount to criminal offences and that these incur effective, proportionate and dissuasive penalties. Also implemented through primary legislation and the UK would continue to comply regardless of withdrawal
	<b>Drugs</b>		
7	Joint Action on the approximation of MSs laws and practices to prevent and combat drug addiction and illegal drug trafficking	37–38	Ensures MSs take measures to cooperate on tackling drug addiction, tourism and trafficking, including severe penalties for drug trafficking offences. Implemented administratively and through legislation. Provisions reflect existing operational practice and there would be no need to enter bilateral agreements to continue cooperating with other MS LEAs
20, 36, 50, 62 & 76	Council Decisions on synthetic drugs and psychoactive substances	50–52	Requires MSs to share information and intelligence with each other, sometimes with a requirement to submit particular substances to control measures and criminal sanctions. No domestic legislative implications of leaving these measures. UK participation allows it to influence the EU's and other MSs' agenda in this area. Measure 62 is likely to be superseded by the proposed Directive on psychoactive substances in due course which would be removed from scope of opt-out decision if adopted by 1 December 2014
54	Framework Decision laying down minimum provisions on constituent elements of criminal acts and penalties in field of drug trafficking	65–66	Requires MSs to ensure national law lays down minimum provisions on constituent elements of criminal acts and penalties in field of drug trafficking. Other measures, including JTTs and EIO (UK post-Lisbon opt in) in due course, will provide alternative mechanisms for cooperation in this area so no need for negotiation of bilateral agreements with MSs
	<b>Terrorism</b>		
39 & 87	Framework Decision on combating terrorism, as amended	91–92	Set requirements for the creation of a number of terrorism offences, and attempts to harmonise and streamline definitions. Not prescriptive but require MSs to be capable of prosecuting these offences. UK already compliant through primary legislation but may be useful to raise standards in other MSs
	<b>Illegal migration</b>		
43	Framework Decision to prevent	96–97	Requires MSs to create a penal regime to prevent facilitation and unlawful entry of illegal

Number	Measure	Cm Paper Pages	Notes
	facilitation and unlawful entry of illegal migrants to EU		migrants to the EU. Reputational risk of withdrawal but domestic legislation already compliant
	<b>Crimes against humanity</b>		
51	Council Decision on investigation and prosecution of genocide, crimes against humanity and war crimes	93–94	Requires MSs to inform LEAs when facts are established which give rise to a suspicion that a migrant has committed genocide, crimes against humanity or war crimes. Cross-border cooperation already takes place through existing MuLA structures and procedures and this will continue regardless of UK's participation in this measure. Implemented administratively and information sharing requirements make it difficult to operate in practice
	<b>Cyber attacks</b>		
60	Framework Decision on attacks against information systems	102	Sets out how MSs should tackle attacks on information systems, such as illegal access, data theft and damage. Will be superseded by Directive on attacks against information systems (UK post-Lisbon opt in)
	<b>Organised crime</b>		
84	Framework Decision on fight against organised crime	109–110	Requires MSs to have legislation in place to counter organised crime (including making it an offence to participate in a criminal organisation), the commissioning of organised crime, including minimum and maximum imprisonment penalties. UK fulfilled minimum standard in advance of measure's adoption. Withdrawal may carry reputational risks. No impact on domestic legislation if the UK withdraws. UK already has comprehensive domestic legislation in place regarding this area
	<b>Racism</b>		
86	Framework Decision on combating racism and xenophobia	110–112	Measure requires implementation of criminal penalties into MS national law in order to safeguard citizens from racism and xenophobia. The UK is a world leader in tackling hate crime and withdrawal may have reputational risks. Existing UK legislation and common law are used to comply with the measure and no new offences were created as a result. No specific offence of condoning, denying or trivializing genocide, crimes against humanity and war crimes in a manner likely to incite violence or hatred exists in UK law but is likely to amount to an offence under existing UK legislation around incitement to hatred
<b>CRIMINAL PROCEDURE</b>			
	<b>Confiscation of criminal assets</b>		
17 & 31	Joint Action on money laundering, the identification, tracing, freezing, seizing	41–43	Encourages improved cooperation between MS LEAs. Most provisions are met by existing domestic asset recovery legislation but other provisions not implemented. Measure 17 will be

Number	Measure	Cm Paper Pages	Notes
58	and confiscation of proceeds of crime, as amended by Framework Decision Framework Decision on confiscation of crime-related proceeds and property	66–68	superseded by proposed Proceeds of Crime/Confiscation Directive if the UK decides to opt-in post-adoption, and measures 31 and 58 in part (UK to opt-out) Aims to ensure all MSs have effective rules governing the confiscation of the proceeds of crime, including property, derived not only from the crime for which an individual has been convicted but also from related criminal activities. Implemented into UK law through primary legislation. Will essentially be superseded by proposed Proceeds of Crime/Confiscation Directive if the UK decides to opt-in post-adoption
<b>MUTUAL RECOGNITION OF NATIONAL DECISIONS</b>			
15	Council Act drawing up the Convention on Driving Disqualifications	146–148	The 1998 EU Convention on Driving Disqualification is a supplementary measure to the existing EU driving license directive, which disqualifies individuals who have lost their licence in one EEA from obtaining a licence in any other EEA state. Convention not yet in force due to limited MS implementation but the UK and Ireland used its provision to enter into a mutual recognition agreement in this area. Implemented through primary legislation. If UK withdraws then new bilateral treaty with Ireland would be required and domestic legislation would need to be amended
91	European Evidence Warrant (EEW) Framework Decision	75–76	Originally intended to replace system of MuLA in criminal matters between MSs for obtaining objects, document and data for use in criminal proceedings. The EEW only applies to existing evidence and the majority of MSs have not yet applied this measure. Inadequacies with the EEW led to proposed EIO, which will supersede this measure in due course (UK post-Lisbon opt-in)
<b>COOPERATION BETWEEN POLICE AND OTHER NATIONAL AUTHORITIES</b>			
<b>Corruption</b>			
135	Council Decision on contact-point network against corruption	77–79	Establishes network of MS contact points responsible for preventing and combating corruption, particularly connected to LEAs. Fully implemented by the UK. Network can be helpful for looking at trends and best practice across borders. Withdrawal unlikely to make any practical difference and there are no legal barriers to continued cooperation between UK and other MSs
<b>Drugs</b>			
4	Joint Action on cooperation between customs authorities and business organizations in combating drug trafficking	35–36	Aims to combat drug trafficking and other customs offences by requiring MSs to establish or develop Memoranda of Understanding (MoUs) between customs authorities and business organisations. No requirement to implement measure into UK law. No implications of withdrawal and considered to have a neutral effect in combating drug trafficking

Number	Measure	Cm Paper Pages	Notes
5	Joint Action concerning exchange of information on the chemical profiling of drugs to facilitate improved cooperation in combating illicit drug trafficking	36–37	Aims to enable exchange of information relating to the chemical profiling of drugs, including by facilitating interaction between Europol and MSs. Small reputational risk of withdrawal but limited operational impact. Cooperation between UK and MSs unlikely to stop and could continue through other networks including Europol Analysis Work Files. Implemented administratively
<b>Terrorism</b>			
3	Joint Action concerning the creation and maintenance of a directory of specialised counter-terrorism competences, skills and expertise	83–84	Seeks to create and maintain a directory of specialised counter-terrorist competences, skills and expertise to facilitate counter-terrorist cooperation between MSs. Little used in practice and existing bilateral relationships unlikely to be affected by withdrawal. UK world leader in this area so measure could help to enhance the UK's reputation. Implemented administratively
66	Council Decision on exchange of information and cooperation concerning terrorist offences	102–103	Relates to provision of terrorist offences information to Eurojust (measures 35 & 37—UK to rejoin), Europol (measure 95—UK to rejoin) and other MSs. Sharing such information is important for the UK in operational and reputational terms but this will continue regardless of the UK's participation in this measure on a bilateral or multilateral basis. Implemented administratively
<b>Crimes against humanity</b>			
40	Council Decision setting up network of persons responsible for genocide, crimes against humanity and war crimes	92–93	Establishes a network of national contact points for exchanging information on investigations of genocide, crimes against humanity and war crimes. Well attended meetings, which UK actively participates in but this is likely to continue if the UK withdrew. Implemented administratively and has nominated contact points
<b>Organised crime</b>			
6	Joint Action concerning creation of directory of specialist international organised crime competences, skills and expertise	84	Created directory of areas of specialised competences, skills and expertise, which would be available to MSs to assist cooperation in fighting crime across EU. Directory closed in 2012 and now considered to be defunct
<b>Threats to order</b>			
10	Joint Action with regard to cooperation on law and order and security	84–85	Measure allows for cooperation and mandates information sharing regarding sporting events (not football games—covered by measures 35 & 72—UK to rejoin), concerts and demonstrations. Alternative instruments can be used to facilitate such cooperation, including through the Swedish Initiative (measure 69—UK to rejoin). UK police would continue to share information bilaterally and multilaterally through established communication channels if the UK withdrew. Implemented administratively

Number	Measure	Cm Paper Pages	Notes
44 & 96	Council Decision setting up European Network for the Protection of Public Figures (ENPPF), as amended	97–98	Sets up ENPPF to enable sharing/exchange of information and intelligence relating to the protection of public figures. Sharing of information is minimal and would occur regardless of UK participation. MSs rarely attend ENPPF biannual meetings. UK implemented administratively
	<b>Vehicle crime</b>		
56	Council Decision on tackling cross-border vehicle crime	99–100	Sought to create a network of law enforcement specialists (single points of contact) to exchange information and best practice on how to tackle organised cross-border vehicle crime. Also requires MSs to issue alerts for stolen vehicles and registration certificates. Allows establishment of bilateral agreements but UK has not concluded any. Possible for cooperation to continue regardless of withdrawal. Implemented administratively
	<b>Investigations, evidence and exchange of information</b>		
11	Joint Action for refining of targeting criteria, selection methods and collection of customs and police information	38–39	Requires MSs to make the best use of targeting and selection methods to select consignments for examination to tackle drug trafficking. UK already fully compliant and no operational impact of withdrawal. Measure never used to share intelligence or information for joint customs operations—Naples II Convention used instead (UK to seek to rejoin)
16	Joint Action on good practice in MuLA in criminal matters	40	Requires MSs to send the Council Secretariat a statement of good practice in the sending and executing of MuLA requests. No impact on existing domestic law, which already makes provision for MuLA operations. Many provisions already overtaken by EU MuLA Convention (UK opt-out) and will be fully superseded by the EIO (UK post-Lisbon opt in) in due course
22	Council Decision on improved exchange of information to combat counterfeit travel documents	88	Designed to fill the gap before the European Image Archiving System (FADO) (measure 18—UK to rejoin) became fully operation so now effectively defunct
25 & 32	Council Act establishing Convention and Protocol on mutual assistance in criminal matters (“EU MuLA Convention”)	52–55	Currently one of the main measures used between MSs for MuLA. Introduced to speed up and supplement 1959 CoE MuLA Convention. Secretary of State has discretion to refuse MuLA requests. JIT provisions superseded by JIT Framework Decision (measure 38—UK to rejoin). Likely to be superseded by the EIO in due course (UK post-Lisbon opt-in). Ireland has not implemented this measure nor opted-in to the EIO. Implemented into UK law through primary legislation. CoE MuLA Convention considered to be viable alternative for UK cooperation with Ireland and Denmark and other MS if the UK withdraws from these measures
79 & 80	Council Decisions on stepping up cross-border cooperation in combatting	106–108	Allows reciprocal searches of MSs DNA, vehicle and fingerprint data. Should have been implemented by 26 August 2011 but not implemented in the UK. If so implemented then likely

Number	Measure	Cm Paper Pages	Notes
	terrorism and crime (the “Prüm Decisions”)		to take three years and cost approximately £31 million. The measure’s technical requirements may be out of date. UK likely to receive lots of requests due to size of national DNA database. UK applied and received funding from Commission to implement DNA elements of the proposal
98	Council Decision setting up European Crime Prevention Network (EUCPN)	114–115	EUCPN established to facilitate and promote the exchange of crime prevention measures and best practice among MS LEAs, with a particular focus on reducing juvenile, urban and drug-related crime. Inconsistent MS attendance at meetings. UK won awards at events in 2004 and 2008. Implemented administratively
99	Framework Decision on accreditation of forensic service providers carrying out laboratory activities	115–116	Measure ensures consistent quality standards between laboratories involved in DNA and fingerprint work. The quality standards delivered by the measure could be achieved without an EU instrument and would persist through UK regulatory frameworks. UK benefits from exchange of science evidence and quality received from other MSs is being driven up. Implemented administratively
2	<b>Exchange of personnel</b> Joint Action on the exchange of liaison magistrates	33–35	Establishes framework for posting and exchange of liaison magistrates between MSs on basis of bilateral and multilateral arrangements. No requirement to implement measure into UK law. Withdrawal may diminish UK’s ability to coordinate complex investigations and prosecutions in international cases involving Spain, Italy and France. However, liaison magistrate network could continue without this measure
46 & 65	Council Decision on common use of liaison officers posted abroad by MS LEAs, as amended	103–104	Aims to promote cooperation between MSs in relation to the use of their liaison officers posted in third countries and international organisations. UK has a wide network of liaison officers. SOCA and Her Majesty’s Revenue and Customs have not made or received any requests under this measure. Future liaison cooperation would be likely to continue regardless of UK’s participation in this measure. Implemented administratively
89	<b>Cooperation among prosecutors</b> European Judicial Network (EJN) Council Decision	73–75	Aims to improve judicial cooperation between MSs at both legal and practical level to combat serious crime. Funding for EJN activities is provided from the Eurojust budget. UK implemented fully by establishing contact points and attending meetings. EJM plenary sessions add “little or no value” to UK. Possible for the UK to maintain contact points without participating in this measure and UK judges will know who to talk to
57	<b>International cooperation</b> Council Decision on exchanging	101–102	Provides for exchange of data with Interpol in relation to lost and stolen passports. No practical

Number	Measure	Cm Paper Pages	Notes
	certain data with Interpol		implications as UK LEAs already have direct access to Interpol data
	<b>Jurisdiction</b>		
107	Framework Decision on prevention and settlement of conflicts of exercise or jurisdiction in criminal matters	138–139	Provides non-mandatory procedural guidance to settle conflicts. Compels MSs to try and resolve conflicting proceedings, and provides for a reference to Eurojust where agreement cannot be reached. However, MSs not obliged to resolve dispute or follow Eurojust's advice. Measure should have been implemented by 15 June 2011. UK has not fully implemented measure but is largely compliant through existing domestic guidance, which represents best practice
<b>INSTITUTIONS</b>			
<b>Europol</b>			
19, 21 & 64	Council Act on Europol staff regulations, as amended by Council Decision and Council Decision designating Europol as Central Office for euro counterfeiting	43–50	Considered not to be necessary to rejoin in order to participate in Europol
104, 105, 106 & 108 (related to 95)	Council Decisions concerning Europol's relations with partners; list of third countries with which it shall conclude international agreements; Europol analysis work files; and confidentiality of Europol information	43–50	Considered not to be necessary to rejoin any of the associated measures (regarding remit and mandate) in order to participate in Europol. No domestic legislation was required to implement these into UK law. Considered to be vital by Europol as they relate to measure 96 (UK to seek to rejoin)
<b>AGREEMENTS WITH THIRD COUNTRIES</b>			
<b>Exchange of information</b>			
53, 55, 61, 63, 71, 75, 78 & 109	Council Decisions on Agreements between EU and Bosnia and Herzegovina, Norway, FYROM, Ukraine, Iceland, US, Switzerland and Russia on security procedures for exchange of classified information and EU-Russian Agreement on the protection of classified information	148–151	Security of Information Agreements establish the rules and mechanisms by which EU classified information is shared with third countries. Based upon a template which is adapted to suit particular state party circumstances. Covers EU information that UK may have contributed to but does not include MS national classified information, which UK retains primary discretion over, so data could be exchanged between UK and a third country. UK has used these Agreements but the quantity of information exchanged is relatively low at present although an upward trajectory is projected, particularly on security issues and the Middle East. If UK withdraws there will be operational and logistical constraints on access to such information

Number	Measure	Cm Paper Pages	Notes
	<b>Mutual Legal Assistance</b>		
101	EU-US MuLA agreement	76–77	Originally proposed in the wake of 9–11. Fully implemented by the UK and necessitated changes to bilateral UK-US MuLA Treaty, which would subsist if UK left this measure
	<b>Extradition</b>		
102 & 103	EU-US extradition agreement and Council Decision on extension of territorial scope of agreement	116–118	Originally proposed in the wake of 9–11. Fully implemented by UK and necessitated changes to bilateral UK-US extradition treaty, which would subsist if UK left this measure. Council Decision extended territorial scope to Dutch overseas territories
134	Council Decision determining which provisions of the 1995 and 1996 EU Extradition Conventions constitute developments of the Schengen acquis, as well as associating Iceland and Norway with those provisions	118–119	Sets out which provisions of the 1995 and 1996 EU Extradition Conventions constitute developments of Schengen acquis and also associates Iceland and Norway with those provisions. 1995 and 1996 Conventions replaced by EAW except with respect to Iceland and Norway. Measure likely to be superseded by 2006 Agreement between EU, Iceland and Norway in due course (Council Decision to conclude still pending). If agreement enters into force before 1 December 2012 then no impact on extradition between UK and Iceland/Norway but if it does not then UK's extradition relations with those countries will revert to 1957 CoE Extradition Convention
<b>OTHER</b>			
45	Council Decision establishing evaluation mechanism MS legal systems in the fight against terrorism	98–99	Establishes mechanism for peer evaluation of MS legal systems regarding the fight against terrorism. UK seconded national experts to evaluation teams in other MSs but has not implemented resultant reports. UK already has a comprehensive body of counter-terrorism legislation in place
<b>SCHENGEN MEASURES</b>			
111, 122, 132	Accession Protocols and Council Decisions on Swiss Confederation's accession to Schengen acquis	17–18	Accession agreements cover States that joined Schengen Area without being original signatories to the Convention but before the Schengen acquis was incorporated into EU law. Council Decisions cover Switzerland's accession to the Schengen acquis. No need for UK to implement these measures.
112	Schengen measure on judicial cooperation for combating drug trafficking	18–19	Requires a MS that has refused an MuLA request in relation to drug trafficking to provide reasons to the requesting MS. No legislative basis in UK law but constitutes established practice. Will be superseded by EIO in due course
113	Schengen measure—declaration on extradition	19	Requires MSs to protect the Schengen Area when considering extradition requests. Superseded by EAW
114	Schengen measure—Standing Committee on evaluation and	19–20	Peer evaluation system to ensure States participating in Schengen Area to any degree are applying the Schengen acquis correctly. No requirement for implementation into UK law.



Number	Measure	Cm Paper Pages	Notes
	implementation of Schengen		Linked to SIS II but will be superseded by proposed Schengen Evaluation Mechanism in due course (UK post-Lisbon decision not to opt-out of this measure). Likely to be adopted before 1 December 2014 at which point measure 114 will be removed from scope of opt-out
116	Schengen measure relating to telecommunications	22-23	Purely technical measure, which aims to achieve greater interoperability of EU communications systems. Cooperation would not be affected by withdrawal and there would be no operational impact
117	Schengen measure on liaison officers	23	Non-mandatory measure, which provides for reciprocal secondment of police liaison officers to external Schengen borders. Due to its nature and legal base the UK does not participate in this measure. No requirement to implement measure into UK law
118	Schengen measure on general principles governing payment of informers	23-24	Sets out non-binding principles for payment of police informants in Schengen Area but without prejudice to MS national guidelines. ACPO guidelines preceded this measure, which added no regulatory burden to UK
119	Schengen measure on cooperation in proceedings for road traffic offences	24	Measure does not appear to be in force. Considered to be defunct and will shortly be superseded by mutual recognition of financial penalties measure (UK to seek to rejoin) and Prüm Decisions (UK to opt-out)
123, 124, 125, 126, 131	Council Decisions concerning SIS I	24-25 & 28	As these measures relate to SIS I only, they are of no practical relevance to UK and have not been fully implemented
127, 129 & 133	Council Decisions on network requirement for, tests of and migration to SIS II	25-26 & 28	Preparatory measures relating to SIS II that no longer have any practical impact in or relevance for the UK
30	Council Decision on the transmission of controlled substances samples	57-58	Provides system for transmitting seized samples between MSs for purposes of detection, investigation and prosecution of offences or the forensic analysis of samples. Exchanges would continue to be lawful without measure. Likely to be superseded by EIO in due course (UK post-Lisbon opt-in)

**APPENDIX 6: GLOSSARY**

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CEPOL	European Police College
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EAW	European Arrest Warrant
ECJ	European Court of Justice
ECRIS	European Criminal Records Information System
EIO	European Investigation Order
EM	Explanatory Memorandum
EPPO	European Public Prosecutor's Office
ESO	European Supervision Order
Eurojust	European Union's Judicial Cooperation Unit
Europol	European Police Office
FTI	Fair Trials International
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
LEA	Law Enforcement Agency
LSEW	Law Society of England and Wales
LSS	Law Society of Scotland
MEP	Member of the European Parliament
MLA	Member of the Legislative Assembly
MS	Member State
MuLA	Mutual Legal Assistance
PCJ	Police and Criminal Justice
QC	Queen's Counsel
SIS II	Second generation Schengen Information System
SOCA	Serious Organised Crime Agency