The European Scrutiny Committee

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;

b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and

c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression "European Union document" covers —

i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;

ii) any document which is published for submission to the European Council, the Council or the European Central Bank;

iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;

iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;

v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;

vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee's powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House's Standing Orders, which are available at www.parliament.uk.

Current membership

Mr William Cash MP (Conservative, Stone) (Chair)
Andrew Bingham MP (Conservative, High Peak)
Mr James Clappison MP (Conservative, Hertsmere)
Michael Connarty MP (Labour, Linlithgow and East Falkirk)
Geraint Davies MP (Labour/Cooperative, Swansea West)
Julie Elliott MP (Labour, Sunderland Central)
Stephen Gilbert MP (Liberal Democrat, St Austell and Newquay)
Nia Griffith MP (Labour, Llanelli)
Chris Heaton-Harris MP (Conservative, Daventry)
Kelvin Hopkins MP (Labour, Luton North)
Chris Kelly MP (Conservative, Dudley South)
Stephen Phillips MP (Conservative, Sleaford and North Hykeham)
Jacob Rees-Mogg MP (Conservative, North East Somerset)
Mrs Linda Riordan MP (Labour/Cooperative, Halifax)
Henry Smith MP (Conservative, Crawley)
Mr Michael Thornton MP (Liberal Democrat, Eastleigh)

The following members were also members of the committee during the parliament:

Mr Joe Benton MP (Labour, Bootle)
Jim Dobbin MP (Labour/Co-op, Heywood and Middleton)
Tim Farron MP (Liberal Democrat, Westmorland and Lonsdale)
Penny Mordaunt MP (Conservative, Portsmouth North)
Sandra Osborne MP (Labour, Ayr, Carrick and Cumnock)
Ian Swales MP (Liberal Democrat, Redcar)

Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at http://www.parliament.uk/business/committees/committees-a-z/commons-select/european-scrutiny-committee/publications/.

Staff

The staff of the Committee are Sarah Davies (Clerk), David Griffiths (Clerk Adviser), Terry Byrne (Clerk Adviser), Leigh Gibson (Clerk Adviser), Peter Harborne (Clerk Adviser), Paul Hardy (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Hannah Finer (Assistant to the Clerk), Julie Evans (Senior Committee Assistant), Jane Lauder (Committee Assistant), Beatrice Woods (Committee Assistant), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

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Second Special Report

On 7 November 2013, the European Scrutiny Committee published its Twenty-first Report of Session 2013–14, *The UK's block opt-out of pre-Lisbon criminal law and policing measures*, as House of Commons Paper No. 683. The Government sent its response on 31 December 2013, which we publish as an Appendix to this Special Report.[1]

Appendix: Government response

Firstly we would like to express our thanks for the Committee's work on the 2014 opt-out decision. We consider it important that Parliament has an appropriate opportunity to conduct scrutiny of this matter.

We are grateful for the opportunity to respond to your conclusions and recommendations. These are addressed in our response below. Where appropriate we have grouped together several answers in order to avoid repetition.

Before replying to the points you make we thought it necessary to reply to one of the principal criticisms running through your report: a perceived lack of engagement by the Government with Parliament on this issue. We have been clear throughout this process that Parliament should play a full and active role in scrutinising this matter and it is perhaps instructive to set out a full chronology of our engagement with Parliament.

On 20 January 2011 the Minister for Europe David Lidington set out in a Written Ministerial Statement the Government's commitment to consulting Parliament on this matter. He stated:

> *'The treaty of Lisbon provides for a five-year transitional period after which the infringement powers of the European Commission and the jurisdiction of the European Court of Justice (ECJ) will apply to all unamended police and criminal justice instruments adopted under the pre-Lisbon "third pillar" arrangements. The transitional period began on 1 December 2009 and will end on 30 November 2014. The UK has until 31 May 2014 to choose whether to accept the application of the Commission's infringement powers and jurisdiction of the ECJ over this body of instruments or to opt out of them entirely, in which case they will cease to apply to the UK on 1 December 2014.*

1 Annex A, one of four Annexes accompanying the Government's response, comprises a table of Parliamentary Questions and Answers on the 2014 block opt-out decision. It has not been printed but is available in the 'background papers' section of the Committee's website: www.parliament.uk/escom.

> *Parliament should have the right to give its view on a decision of such importance. The Government therefore commit to a vote in both Houses of Parliament before they make a formal decision on whether they wish to opt-out. The Government will conduct further consultations on the arrangements for this vote, in particular with the European Scrutiny Committees, and the Commons and Lords Home Affairs and Justice Select Committees and a further announcement will be made in due course.'*

Since that commitment the Government have taken steady and consistent steps to engage with Parliament and contribute to the relevant Committees' scrutiny of this matter.

On 21 December 2011 the Home Secretary wrote to your Committee in relation to the 2014 opt-out decision and provided a list of measures subject to the decision. The letter reiterated the Government's commitment to Parliamentary scrutiny and stated:

> *'I am committed to ensuring the Parliament is able to scrutinise the decision that flows from Article 10(4) of Protocol 36 of the Treaty of Lisbon as part of our undertaking to hold a debate and vote in both Houses on this decision. We look forward to engaging with Parliament fully in this matter.'*

This letter was copied to the then Chair of the House of Lords EU Committee (HoL EUC), Lord Roper. At this point we contend it would have been possible for scrutiny of each of these measures, and the overall opt-out decision, to begin.

In July 2012 Dominic Raab MP posed 125 Parliamentary Questions on this matter. The Government provided responses to each of the Parliamentary Questions posed, including information on how measures have been implemented and how they are used. The Government recognised Parliament's interest in this matter and the need for full disclosure to help inform scrutiny. We note that the information provided in response to these questions helped to inform the Open Europe report: *Cooperation Not Control: The Case for Britain Retaining Democratic Control over EU Crime and Policing Policy*. We also note that this report was able to draw its own conclusions on the use of the opt-out and the utility of individual measures. We commend Mr Raab MP for his work in this regard.

On 18 September 2012 the Home Secretary wrote to your Committee to provide an update on this matter. This letter set out the changes to the list as a result of measures being repealed and replaced by new Commission proposals. This letter also informed of changes to the list as a result of further technical level discussions at official level with the Council Secretariat and European Commission. Finally the letter reiterated the Government's commitment to Parliamentary scrutiny of this matter and stated:

> *'The Government has also committed to consulting the relevant Committees as to the form of that vote. I will be writing in the coming months to invite you, and all other relevant Committee chairman, to engage on this important issue.'*

This letter was copied to the Chair of the HoL EUC, Lord Boswell, the Chair of the Justice Select Committee (JSC), Sir Alan Beith, and to the Chair of the Home Affairs Committee (HAC), Rt Hon Keith Vaz.

On 15 October 2012 the Home Secretary announced in a statement to Parliament that the Government's current thinking was to exercise the opt-out and seek to rejoin measures that were in the national interest. The Government considered it important to communicate the proposed direction of travel on this matter at an early stage to enable scrutiny of that position to take place. This is in line with standard practice on post-Lisbon opt-in decisions where relevant Committees have informed the Government that it is helpful to have an early indication of the Government's thinking in order to allow for proper scrutiny. Consequently, we found criticism of this position to be somewhat surprising.

The Home Secretary's statement also invited the Committees to consider this matter in more detail:

> *'I fully expect that these committees will want to undertake their own work on this important decision. The Government will take account of the committees' overall views of the package that the UK should seek to apply to rejoin. So that the Government can do that, I would invite the committees to begin work, including gathering evidence, shortly and to provide their recommendations to government as soon as possible.'*

On 15 October 2012 we wrote to the Chairs of all the relevant Parliamentary Committees to advise them of the Home Secretary's announcement on this matter. This letter provided an updated list of measures subject to the decision A fact sheet providing further information was also placed in the House Library. The letter stated:

> *'This Government has done its utmost to ensure that Parliament has the time to properly scrutinise our decisions relating to the European Union and that its views are taken into account. We would like to take this opportunity to assure you that the 2014 decision will be no exception. On 20 January 2011 the Minister for Europe, by way of a Written Statement, set out the Government's commitment not only to holding a vote prior to the final decision being taken, but also to consulting you on the arrangements for that vote. In line with the commitment made in January 2011, and following my statement to the House today we would now like to seek your views on this matter.'*

On 7 November 2012 the Home Secretary wrote to the Chair of the Joint Committee on Human Rights, Dr Hywel Francis inviting his Committee to undertake work on this matter. The letter stated:

> *'The Government is interested to hear the views of Parliament before coming to a final decision. Should the Joint Committee on Human Rights wish to undertake*

> *any work in this regard the Government would of course take due account of that work.'*

This letter was copied to the Chair of the HoL EUC, Lord Boswell, the Chair of the JSC, Sir Alan Beith, the Chair of the HAC, Rt Hon Keith Vaz and to Chair of the ESC Mr William Cash MP.

On 7 November 2012 the Home Secretary wrote to the Chair of the ESC Mr William Cash MP with regards to the opt-out. In this letter the Home Secretary stated:

> *'I would like to assure you that my statement on 15 October and the Prime Minister's announcement on 28 September were not in any way intended to pre-empt any view the European Scrutiny Committee may wish to express on this matter. Indeed, my statement actively invited your Committee to take forward work on this matter.'*

This letter was copied to the Chair of the HoL EUC, Lord Boswell, the Chair of the JSC, Sir Alan Beith and to the Chair of the HAC, Rt Hon Keith Vaz.

On 28 November 2012 The Security Minister provided evidence to the European Scrutiny Committee (ESC) and answered thirty-five questions in relation to the opt-out during this evidence session. The Security Minister reiterated the Government's commitment to engaging constructively with Parliament throughout.

On 14 December 2012 we provided twelve pages of written evidence to the HoL EUC's Inquiry into the opt-out. This was copied to the Chair of the ESC Mr William Cash MP, the Chair of the JSC, Sir Alan Beith, and the Chair of the HAC, Rt Hon Keith Vaz. Our evidence provided detailed information on the use made of measures such as the European Arrest Warrant, Article 40 of the Schengen Convention, the Mutual Legal Assistance Convention, Freezing Orders, Europol, Joint Investigation Teams, Eurojust, ECRIS and the Prison Transfer Framework Decision. Our evidence also provided information on the measures that the UK was yet to implement in full and the process for rejoining measures. Additionally our evidence also addressed the potential effects of ECJ jurisdiction over the measures in question and potential alternative arrangements for cross-border cooperation.

On 13 February 2013 we appeared before the HoL EUC to provide oral evidence to its Inquiry into this matter. During this session we answered thirty four questions on a number of topics related to this decision. Our responses included information on our consultation with operational partners and the Devolved Administrations. We also set out in detail the Government's concerns about ECJ jurisdiction.

On 23 April 2013 the HoL EUC produced its report: *EU police and criminal justice measures: The UK's 2014 opt-out decision.* We were very grateful to the Committee for heeding our call to report on this matter and producing its report in a timely fashion. As

we noted in our response to that report, this was very helpful in informing our view about which measures the Government is now seeking to rejoin. The Government considers it disappointing that the other relevant Committees did not submit reports on this matter, despite the Government's request for them to do so. Whilst the Government accepts that the late provision of the Explanatory Memoranda may have been unhelpful in this regard we do not accept that it was not possible for a substantial and informative report to be published without them – the HoL EUC report is testament to that.

The Security Minister James Brokenshire attended a HoL EUC seminar on 26 June 2013 organised to support the publication of their report. During this seminar the Security Minister set out the Government's current position on its consideration of this matter and debated with members of the HoL EUC, Emma Reynolds MP, Helen Malcolm QC and Martin Howe QC

On 12 June 2013, an Opposition Day Debate was called in the House of Commons. The Home Secretary responded on behalf of the Government. This debate lasted for just over two hours and runs to thirty-three columns in Hansard. During this debate the Home Secretary repeated the commitment to consult with Parliament on this matter. The Home Secretary set out clearly that a full list of the measures that we would seek to rejoin would be provided to Parliament ahead of a vote. The Home Secretary stated:

> *'it is indeed the Government's intention to provide Parliament with a list of the measures that we wish to opt back into, so Parliament will have that before it votes on the matter.'*

The Home Secretary also committed that the Government would:

> *'supply the Select Committees with explanatory memorandums and the list of measures that the Government propose to opt back into'*

On 9 July the Home Secretary reaffirmed the Government's intention to exercise the opt-out. This followed consultation with operational partners, discussions with the European Commission and other Member States, detailed analysis of all the measures within scope of this decision and a number of discussions with the Departments within the Government responsible for the measures. On the same day we provided Parliament with Command Paper 8671. This 155 page document sets out details of all the measures that remain subject to this decision and highlights the 35 measures the Government believes it is in the national interest to rejoin. This fulfilled the Government's commitment to provide Parliament with a full list of measures that the Government will seek to rejoin ahead of a vote on this matter. It also fulfilled the Government's commitment to provide Explanatory Memoranda on this matter.

In deciding to make this announcement almost a year before the deadline we were particularly mindful of the evidence submitted to the HoL EUC Inquiry. We note that the Commission DG for Justice Françoise Le Bail said that '*the key issue is to have a*

decision by the British Government' and that there is '*nothing else*' the Commission can do before that. We also considered carefully the recommendation at paragraph 225 of the HoL EUC report which stated *'Government would have done well to have commenced negotiations at a much earlier stage'*. Whilst we do not accept that it would have been possible to commence negotiations at an earlier stage, we do accept that it was necessary to communicate the Government position as early as possible.

Following this announcement the Government held a vote in both Houses of Parliament. This fulfilled the commitment from the Minister for Europe David Lidington set out above.

On 15 July the Home Secretary set out the Government's reasons for exercising the opt-out to the House of Commons, and invited the European Scrutiny Committee and the Home Affairs and Justice Select Committees to submit reports before the end of October, in advance of the Government opening formal discussions with the European Commission and other Member States. The motion supported by the House of Commons by a majority of 97 stated:

> *'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.'*

On 23 July Lord McNally repeated the reasons for exercising the opt-out to the House of Lords and invited the HoL EUC to reopen their Inquiry and submit reports before the end of October, in advance of the Government opening formal discussions. The motion supported by the House of Lords by a majority of 112 stated:

> *'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.'*

We are clear that these successful votes demonstrate Parliament's support for the Government's approach and satisfaction with the information provided. If this were not the case we do not believe Parliament would have supported the Government in such

numbers. However, as we have said throughout this process, Parliament should play a full and active role in scrutinising this important matter. That is why we gave a commitment not to begin formal negotiations until November and why we invited all the relevant Parliamentary Committees to submit reports on this matter. That is also why we have continued to support the Committee's Inquiries.

In October we submitted three further pages of written evidence to support the reopened HoL EUC Inquiry. This evidence set out details of the reforms to the European Arrest Warrant that we are implementing to safeguard better the rights of British citizens.

We submitted eight pages of written evidence to support the HAC Inquiry. This provided further data and information on Eurojust, Europol, ECRIS, Naples 2, Joint Investigation Teams and the European Arrest Warrant.

We submitted four pages of written evidence to support the JSC Inquiry. This provided further information on the Prisoner Transfer Framework Decision, the European Supervision Order, the Mutual Recognition of Financial Penalties measure and the Data Protection Framework Decision.

On 9 October 2013 we appeared before the HoL EUC to provide evidence. During the session we answered seventeen questions and provided detailed information on our reasons for not seeking to rejoin individual measures.

We were surprised that your Committee did not issue a call for evidence. However, we gave evidence to you on 10 October 2013 and answered eighty-six questions. These covered a range of topics, including the Government's concerns about the threats of ECJ jurisdiction. We also set out in detail the Government's reasons for seeking to rejoin the 35 measures set out in Command Paper 8671 and the approach that followed in considering whether rejoining these measures would be in the national interest.

We also provided evidence on 15 October 2013 to the HAC and answered ten questions including detailed questions on Europol and the reforms to the European Arrest Warrant.

On 16 October 2013 the Justice Secretary provided evidence to the JSC and answered thirty-eight questions relating to the opt-out, including some detailed questions on the Framework Decisions on prisoner transfer, probation and alternative sanctions, and data protection. Following the evidence session, on 21 October the Justice Secretary wrote to the Chair of the Committee, copying in your Committee and the other Committees, providing further detail on his concerns about rejoining the Framework Decision on probation and alternative sanctions.

The evidence sessions alone amount to well over ten hours of Ministerial time. We are clear that it cannot be said that we have failed to engage with Parliament on this issue.

We are also clear that we will continue to provide information as required on the measures subject to this decision, as appropriate. You will be aware that in October 2013 the Government responded to over 150 Parliamentary Questions requesting further information on measures that the Government is not seeking to rejoin. Since 2011, the Government has responded to over 300 Parliamentary Questions in relation to the 2004 decision. For reference, a table including all Parliament Questions on this matter is annexed to our response at Annex A.

We will also continue to engage with Parliament as appropriate. You will be aware, as the Home Secretary set out on 15 July, that the Government will hold a second separate vote on the measures the Government proposes to rejoin ahead of our formal application to do so. We are content to repeat that commitment here.

We have committed to a full impact assessment on the final package of measures we seek to rejoin. This will be provided in good time ahead of a second vote and set out the full details on all of the measures we seek to rejoin.

We are also clear that the motions supported by Parliament in July were clear that the Government would commence negotiations in November without returning to Parliament. Your report has been useful in informing our negotiating position. We are thankful for your support. However, this is a negotiation and this must guide our approach.

We will now turn to the key findings from your report.

Paragraphs 16 and 544

The Balance of Competences Review derives from a commitment in the Coalition's Programme for Government and is far broader in scope than the 2014 block opt-out decision. Whilst we understand that the Government wishes to treat them as separate exercises, we think that the parallels between them are nevertheless evident, not least because both seek to assess the impact of specific areas of EU competence on "the national interest." The principal difference, in our view, is that the 2014 block opt-out decision will have an immediate and material impact on the balance of competences in the police and criminal justice field. It seems to us that an objective, factual analysis by a range of stakeholders on the impact of EU competence in this field would undoubtedly have made an important contribution to public understanding of, and engagement with, an area of policy which is politically sensitive and legally complex and could have informed, rather than pre-empted, policy making. We consider the Government's decision to launch its call for evidence at the end of the review period, after its decision to exercise the block opt-out and to seek to rejoin individual measures has been taken, to be a serious omission as well as a missed opportunity to inform the debate in Parliament and beyond.

EU competence in the police and criminal justice field remains a contested area in the UK, as is evidenced by the "Opt-in" arrangements negotiated as part of the

Lisbon Treaty. EU police and criminal justice measures are often politically sensitive and legally complex, and require difficult judgments to be made about whether the UK's national interest is better served by opting into an EU measure or seeking alternative forms of cooperation which exclude formal oversight and supervision by the Court of Justice and Commission. We would expect these issues to be explored in some detail in the Government's review of EU competence in the police and criminal justice field, which forms part of the wider balance of competences review. We very much regret that the Government's call for evidence will not be launched until spring 2014 and its findings published in autumn 2014, far too late to inform our Report and, in all probability, the second debate and vote in Parliament on the 2014 block opt-out (see paragraph 16).

These are two separate exercises. The 2014 opt-out decision is a decision that is provided for under the EU Treaties. It is limited to those police and criminal justice measures that were adopted before the Lisbon Treaty came into force.

The Balance of Competences Review is a commitment in the Coalition Programme. The review will examine the scope of the EU competences, how they are used and what that means for the national interest. The review will look at everything the EU does, and so has a much wider remit than the 2014 opt-out decision. It will ensure that our national debate is grounded in knowledge of the facts. The review will not make specific policy recommendations as it is designed to broaden and deepen public understanding of what EU membership means for the UK, not pre-judge policy.

Where possible we tried to de-conflict individual reports with upcoming policy decisions to allow the reports to fulfil their remit of taking a step back to take a strategic look at the impact of EU competence over time, without being caught up in immediate policy-making. We considered that had we run the Balance of Competence exercise prior to the opt-out decision being taken there was a real risk that the two would become conflated. We also consider that by producing the report into police and criminal justice in the fourth semester this gives the Government and stakeholders the chance to take into account the Government's position on the opt-out. This should ensure that the report is not out of date as soon as it is produced and can help to inform the current, not past, debate.

Paragraphs 31, 551, 556, 557, 558, 559 and 560

These safeguards were not needed to the same extent before Lisbon, because the UK had the power to veto any EU police or criminal justice measure which it considered to be contrary to the national interest. The post-Lisbon opt-in/opt-out arrangements ensure that the UK cannot be compelled to participate in any new EU police and criminal justice measures unless it chooses to do so. The block opt-out serves a similar purpose in relation to the pre-Lisbon EU police and criminal justice measures in which the UK currently participates. It enables the UK to turn the clock back and address the question left unanswered at that time: would the UK have chosen to participate in them on the terms agreed if it had known that the Court of

Justice would, at some future date, be given jurisdiction to interpret them and to sanction the UK for any failure to implement them correctly? The impact of the Court of Justice's jurisdiction is one of the most important factors the Government should consider when deciding whether to rejoin any of the pre-Lisbon measures.

Participation in any EU police and criminal justice measure necessarily entails a degree of EU control to the extent that it establishes legally binding requirements which, from 1 December 2014, will be subject to oversight by the Commission and Court of Justice. What matters, therefore, is the degree of control that is likely to be exercised by these institutions and the extent to which it tips the balance from beneficial cooperation to excessive, intrusive and unwarranted interference. A significant number of the measures which the Government does not intend to rejoin, such as those establishing cross-border contact points, networks, directories, or nonbinding forms of guidance or peer evaluation, are those least likely to be susceptible to infraction proceedings or to adverse rulings by the Court of Justice. By contrast, although numerically far smaller, many of the measures the Government does propose to rejoin are far more likely to be susceptible to control by the Commission and Court of Justice because of their inherent significance. As a result, the potential for adverse judgments must be considered high. For this reason alone, we question the Home Secretary's suggestion that "the vast majority" of these measures are "uncontroversial" and have urged the Government to provide a detailed analysis of the implications of the Court's jurisdiction in its response to our Report (see paragraph 84).

Adherence to any legally binding EU police and criminal justice measure brings with it the risk of legal principles and practices of other jurisdictions influencing or interfering with our own, as the Court of Justice will have the ultimate say on how it is interpreted and applied. That, at its simplest, is the compromise made, and against which we suggest the benefits of adherence should be tested. Whilst the UK has had some success in both influencing this area of policy and preserving national legal principles —it was, for example, instrumental in developing the principle of mutual recognition as an alternative to harmonisation—the risks are real. The proposed repeal and replacement of the Eurojust decision is a case in point. Without waiting for the evaluation of the current Eurojust Decision, which is underway, and without the benefit of an impact assessment, the Commission has proposed a new Eurojust Regulation. Amongst its proposals is the giving of coercive powers to the Member State representatives of Eurojust; were these to be incorporated in the final text to which the UK opted in, they would be in conflict with fundamental national principles of separation of function between police officer and prosecutors.

It is of course the case that of the measures the Government proposes to rejoin, some are far more likely to lead to litigation before the Court of Justice than the measures which the Government proposes not to rejoin. This is partly because, as has been said above, they interfere with the human rights of suspects or convicted persons, such as in extradition proceedings or prisoner transfers, and so have to be legally justified.

Accordingly, much consideration has been given to how the Court of Justice is likely to influence EU police and criminal justice measures when they are fully within its jurisdiction. On this point the Secretary of State for Justice told us that he had:

> **looked at this issue and would not necessarily single out the Court as having a particular motivation in the work it does. I think the issue is that many of the legal frameworks it works with are pretty vague but contain some pretty big signposts about greater European integration. If you have a big signpost that says more Europe and laws and principles that are quite vague, the Court will interpret those in a way that delivers more Europe.**

We have some sympathy with this view. In our view opinions on the Court can be based as much on ideology as on track record, which makes a balanced assessment more difficult. There are strong arguments that the EU should be governed by the rule of law at the apex of which sits a court ensuring its uniform and correct application: yet there are also equally strong arguments that the power of a supranational court over national courts, and the reduced flexibility for Parliament to change the law as a result of an adverse Court of Justice decision, affronts the UK's sovereignty. Similarly, it can be argued that the jurisdiction of the Court of Justice over these policies will have the welcome effect of raising fair trial standards in some Member States: but it will do by standardising them across the EU in a way that could seriously interfere with the UK's distinctive and well-established legal system.

In terms of track record, from an analysis of the Court's case law a mixed picture emerges: it certainly does not always rule in favour of more Europe. But in cases of unclear wording, often the product of multilateral law-making, the Court will use the general objectives in the Treaties to guide its interpretation of disputed EU law (the purposive approach), and these objectives are generally integrationist. This leads to the Court often to ruling in favour of the EU. The case of Pupino is illustrative of this.

Our own analysis leads us to conclude that it is very difficult to predict how the court will adjudicate on its new area of competence, other than to say that it will follow the content of clear legal provisions where they exist, will rely on a purposive approach where they do not, and will bring its human rights jurisprudence to bear, which could lead to significant new interpretations of measures.

The Government agrees that the extension of ECJ jurisdiction into Justice and Home Affairs was an important development brought about by the Lisbon Treaty. This Government, through the European Union Act 2011, has ensured that any similar future developments will be subject to a referendum and will ensure that the British public have their say over such important matters.

As we have said throughout this process, the Government is concerned about the risk that the Court could make unexpected adverse decisions on the interpretation of pre-Lisbon measures. The *Metock* judgement - on the extension of free movement rights to

an illegal migrant who was married to an EEA national who was exercising free movement rights – is a good example of the potential risk that the ECJ may rule in unexpected and unhelpful ways. This case has raised considerable concern in other Member States.

In addition, we are concerned that much of the third pillar legislation was made to the 'lowest common denominator' in order to secure unanimity and was not negotiated with ECJ jurisdiction in mind. As a result some of these measures are ambiguous and could lend themselves to expansive interpretation by the ECJ. This raises the prospect of further unexpected judgments.

We have also set out our concerns with the impact of these judgements on the domestic law. If we disagree with the ECJ's interpretation of legislation, it will be impossible for the UK to amend the law itself. Indeed, it would be very difficult to alter it at all as this would require the Commission to propose an amendment to the EU legislation itself, or a cohort of Member States to do so under the auspices of a Member State initiative. There is also the possibility of infraction if the Court deems that we have not met our obligations under EU law.

Given the prospect of unexpected judgements, concerns about the drafting of measures and the difficulty in altering EU legislation we believe that minimising the possibility of an adverse judgment is a sensible and pragmatic approach. It is only correct that the Government consider carefully whether to accept the full jurisdiction of the ECJ before seeking to rejoin measures.

We accept that there is always a risk attached in terms of ECJ jurisdiction if we do decide to participate. However, in certain cases, it will be in the national interest for the UK to participate and the Government will accept that risk given the wider benefits of the instrument in question.

Paragraph 56

In our view, Article 10(5) of Protocol No. 36 is predicated on the assumption that the individual measures which the UK wishes to rejoin "have ceased to apply to it". This is consistent with the obligation imposed on the EU institutions and the UK to seek to "re-establish" the widest possible measure of UK participation in the EU's justice and home affairs acquis, again pre-supposing that the measures that the UK wishes to rejoin no longer apply to it. We therefore consider that the earliest date on which the UK may formally notify its request to rejoin individual measures subject to the block opt-out is 1 December 2014 and that the Commission and Council will not formally be in a position to act on the UK's request until then. We ask the Government to ensure that Parliament is kept informed of the process and timescales envisaged by the Commission and Council for considering and approving the UK's request to opt back into individual measures and whether transitional measures are likely to be required.

We are keen to conclude negotiations as soon as possible to ensure as smooth a handling of this domestically and in the EU as we can. Avoiding a transitional gap for the measures we seek to rejoin is our key objective and we are clear that the Treaty allows for us to avoid such a gap completely. There is no reason that we cannot conclude this process early so there is political and legal certainty for all involved. As we have said throughout this process we need to agree a common understanding of the legal framework for rejoining measures. This is a matter that we will discuss in detail with the Commission during formal negotiations and the Government will, of course, keep you informed as appropriate.

Paragraph 59

We are not aware of any decisions having been taken under Article 5 of the Schengen Protocol or Article 4a of the Opt-in Protocol to eject the UK from an EU justice and home affairs measure in which it already participates, or to impose any conditions on its continuing participation. Experience would therefore tend to reinforce the Government's view that the conditions set out in Article 10(5) of Protocol No. 36 constitute "a high threshold" which would make it difficult to exclude the UK from opting back into individual measures subject to the block opt-out. However, we do not consider that a precise analogy can be drawn with the procedures established under the Schengen and Opt-in Protocols, which are based on an assessment of the practical implications of a decision by the UK not to participate in a specific EU measure. The scale of the task envisaged under Article 10(5) is undoubtedly far greater, given the number of measures subject to the block opt-out and the depth of analysis needed to discern any possible interaction between them. Whilst the ability of the UK to rejoin measures in which it has participated since their adoption should not seriously be in doubt, the UK may encounter difficulties if it seeks to opt back into only some of a group of measures which are inter-linked, or if it would be impossible or very difficult in practice to opt back into one measure and not another.

The Government acknowledges that some measures are both practically and operationally interlinked and has taken this into account when deciding on the set of 35 measures we wish to rejoin.

For example, we know that it is a commonly held view in Europe that in order for the European Supervision Order (ESO) to function properly all States, including the UK, would need to participate in the European Arrest Warrant. This is because of ESO Articles 15 and 21.

We recognise this is a negotiation and that we will need to have discussions with the Commission and Council about our set of measures. We hope that the Commission will adopt a pragmatic approach and work with us to find a solution in the interests of all parties.

Paragraph 68

Transitional arrangements will potentially play a crucial role in addressing any legal and practical issues likely to arise as a result of the UK's block opt-out but, in order to do so, the Council will need to ensure that they are drafted in such a way as to avoid, rather than create, further uncertainty or confusion and are sufficiently robust to withstand legal challenge. The Government appears to suggest that, if needed, transitional arrangements could be used to preserve the legal effects of certain measures during the period from 1 December 2014, when all of the block opt-out measures cease to apply to the UK, and the date or dates on which the UK's application to rejoin a limited number is formally accepted. For reasons which we set out later in our Report, if transitional arrangements are to be used for this purpose, it is essential to limit their scope to measures which the Government intends to rejoin and which Parliament has approved. Transitional arrangements should not be used to preserve the legal effects of measures which the Government has said it will not rejoin, even if (as is the case for a number of Europol measures) they are closely related to a measure which the Government does intend to rejoin.

It is not the intention to have a gap between the date on which the opt-out will take effect and the point at which the UK can rejoin measures. We place a great deal of importance on this issue and believe it is in everyone's interest to try to eliminate any operational gap between our opt-out taking effect and our continued participation in the measures we formally apply to rejoin.

If it is necessary to use transitional measures we consider that transitional arrangements could be used to preserve the legal effects of measures which the Government has said it will rejoin.

Paragraph 70

We note that the costs could, potentially, be substantial if Member States seek to hold the UK to account for any costs incurred in establishing alternative mechanisms for cooperation with the UK outside the EU legal framework. A similar provision is contained in Article 4a of the Opt-in Protocol, but has not been used, so there is no precedent to indicate how it may be interpreted and applied.

The Security Minister responded to Parliamentary Question 124839 from Rushanara Ali MP (Bethnal Green and Bow) on the 22 October 2012 on this topic. His reply stated;

> *"The Council, acting by qualified majority on a proposal from the Commission, may adopt a Decision determining that the UK shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in the third pillar acts. Until we hold discussions with the EU Institutions and other Member States it is impossible to say with any certainty whether the UK will be held liable for any costs. However, the Government considers this to be a high threshold to meet".*

Paragraphs 84, 94, 95, 553, 554 and 555

We comment further on the information provided in the Government's Explanatory Memoranda in the following section. We note here, however, that whilst we agree with the Government that the implications of the Court's jurisdiction require very careful consideration in respect of each of the measures subject to the block opt-out, and an even more exacting analysis for those the Government proposes to rejoin, we see no evidence of such consideration or analysis in the Government's Explanatory Memoranda. In particular, the Memoranda do not include an assessment, for each instrument, of the effect that CJEU jurisdiction would have for the common law systems in England and Wales, Scotland, and Northern Ireland. Nor do they show how the Government has sought to balance "the risk" associated with CJEU jurisdiction against the "wider benefits" of each instrument. It is straining credulity to suggest that there would be a lesser degree of risk, or unexpected and unhelpful judgments, for a number of the instruments the Government intends to seek to rejoin — notably the European Arrest Warrant and other mutual recognition measures — than for many of those it does not wish to rejoin. The Government's reasons for concluding that the wider benefits of participation outweigh the risks, and are in the national interest, need to be transparent and open to scrutiny by Parliament. Given the deficiencies of the analysis in the Explanatory Memoranda, we request and require the Government to give this issue detailed consideration in its response to our Report.

The Government raised expectations that all of its Explanatory Memoranda would be published by mid-February 2013, but none appeared until 9 July, at the same time as the Home Secretary confirmed that the Government would exercise the block opt-out and seek to rejoin 35 measures. Our intention, in requesting the Explanatory Memoranda nearly a year ago, last November, was to ensure that Parliament had the information it needed to understand the nature and content of the measures subject to the block opt-out, as well as their actual or potential operational significance, before the Government determined whether to exercise the block opt-out and which measures to seek to rejoin.

Such a lengthy delay in their publication might have been justified if the Explanatory Memoranda gave some insight into the reasons which have led the Government to conclude that seeking to rejoin some measures, and not others, would be in the national interest. In her statement to the House on 9 July 2013, the Home Secretary made clear that the Government only intends to rejoin measures which will "help us cooperate with our European neighbours to combat cross-border crime and keep our country safe" and that the benefits of participation must demonstrably outweigh the risk involved in conferring full jurisdiction on the Court of Justice. The Explanatory Memoranda do not provide sufficient analysis to enable Parliament to weigh these factors, and give the impression that they were drafted "blind", before the Government had decided which measures it intended to seek to rejoin. This seriously undermines their utility and the ability of Parliament to hold the Government to account in asserting that participation in some pre-Lisbon EU police and criminal

justice measures, and not others, serves the UK's national interest. It is essential that the Government's response to our Report addresses these shortcomings.

The Secretary of State for Justice told us in evidence that the Government's approach to choosing which measures to rejoin was as follows:

> **If you look at the steps that we have taken in this, the broad thrust of how we have allocated the different measures is we have almost entirely—it is never quite an exact science—accepted the need to be part of international partnerships in fighting crime. That is in the interests of our citizens—to protect them against the risk of serious and organised crime and terrorism. However, we are trying to resist moves to take us down to having European criminal penalties and European systems of law. That was a very telling factor in our decision-making process. We went through all this measure by measure to understand what we should be part of and what we should not.**

An analysis of the measures, however, does not confirm this approach. Whilst a number of the measures widely considered influential in fighting cross-border crime are within the list, many which appear peripheral, or where the Government has not explained the national interest in rejoining, are also included, as we highlight in chapters 7 to 10. In this respect the Government's repeated assertion in the Command Paper that not rejoining a measure will incur a "reputational risk" is, without a clear explanation why, too easily made for us to take into consideration without substantive justification. Additionally, there is considerable incoherence between those measures which the Government seeks to rejoin with those that it does not, as we mention above and highlight in chapters 11-16.

It is likely, in our view, that this incoherence is a consequence of coalition politics, particularly because the two coalition parties have markedly different policies on how many EU police and criminal justice measures should be rejoined. Trade-offs were, therefore, inevitable. As the Justice Secretary told us "it is in the nature of coalition governments that you have to reach collective agreements." Perhaps it is for this reason that several of the explanations for measures the Government wants to rejoin appear to have been written as if the Government was not intending to rejoin them, and vice versa.

We set out to provide Explanatory Memoranda that would explain each of the measures and would assist the Committees in their scrutiny of the process. As we explained in our letter of 14 December 2012, as discussions with the Commission and Council were ongoing we did not think it was appropriate for the Explanatory Memoranda to provide a view on how 'useful' each of the measures were.

The Explanatory Memoranda are fact based and objective documents that set out the policy implications and fundamental rights considerations of the measures subject to the opt-out. These were written in line with standard practice and submitted to

Parliament to assist with scrutiny. We believe that it was perfectly open for Parliament to take its own look at these measures and make its own assessment.
We very much regret that we were not able to produce the Explanatory Memoranda at an earlier date. This is because the issues covered by the 2014 Decision are numerous and complex and required collective agreement within Government. The process of considering within Departments and across Government what the Government's position on each of the measures should be took longer than we anticipated. We were therefore unable to produce the Explanatory Memoranda until July when we had agreed on the set of 35 measures that we believe are in the UK's best interest to rejoin.

Paragraphs 98, 102 and 554
The original undertaking given by the Minister for Security in November 2012 was to provide a full Impact Assessment on the final package of measures that the Government intends to apply to rejoin and not, as the Home and Justice Secretaries have subsequently indicated, on "the final package of measures the UK will formally rejoin." By then, negotiations with the Commission and Member States will all but have concluded and the scope for Parliament to influence the content of the package of measures will be greatly reduced. The Justice Secretary has made clear to Parliament that the Government is "strongly committed" to the list of 35 measures set out in Command Paper 8671. We can therefore see no justification for any further delay in the publication of an Impact Assessment on these measures, supplemented where necessary at a later stage to take account of any additions to, or subtractions from, the list as negotiations progress.

As our earlier Report — The 2014 block opt-out: engaging with Parliament — made clear, we consider the slow and unpredictable drip-feed of information to Parliament to be inimical to effective scrutiny. In our view, a second Impact Assessment is essential for two reasons. First, as the Home Secretary made clear in the debate on 15 July, Parliament will have the opportunity to vote on "the number and content of any measures that we seek to opt into." In reaching a view, Parliament is entitled to expect the Government to provide a more comprehensive assessment of how cooperation could be pursued outside the EU framework, how effective it would be and how readily appropriate measures could be put in place before 1 December 2014. Second, the analysis of fundamental rights in the Explanatory Memoranda only concerns EU measures in which the UK already participates. A second Impact Assessment should supplement this with a more considered analysis of any risk to fundamental rights which might, for example, arise from the development of ad hoc or informal arrangements established without a clear underpinning legal framework. We therefore reiterate our insistence on a second Impact Assessment to be produced without further delay.

In light of these deficiencies, we again underline the importance of publishing a full Impact Assessment on the measures the Government proposes to rejoin as a matter of urgency and not, as was the case with the Government's Explanatory Memoranda, a matter of days before the next debate and vote in Parliament take place. We also

reiterate our request for a second Impact Assessment on the measures that the Government does not propose to rejoin so that Parliament has a clear understanding of the areas in which alternative arrangements may be necessary, what form they are likely to take, how readily they can be achieved, and what impact they will have on the protection of fundamental rights. Pending publication of these Impact Assessments, and given the imminent onset of formal negotiations, we look forward to receiving a full and timely Government response to the issues we have raised in our Report which sets out clearly, where the Government proposes to rejoin pre-Lisbon police and criminal justice laws, the basis on which it regards such a course as serving the national interest (see paragraphs 98 and 102).

The Government remains committed to providing an Impact Assessment on the final package of measures that it will seek to rejoin. This will be provided in good time ahead of the second vote.

The Government does not intend to provide an Impact Assessment on the measures it is not seeking to rejoin. This is because the starting point for any analysis is that the opt-out has been exercised and therefore not seeking to rejoin a measure will not have a direct impact upon the UK.

Paragraph 122
The investigation and prosecution authorities that gave evidence to the House of Lords inquiry into the block opt-out rank the EAW as easily the most significant pre-Lisbon mutual recognition measure. The statistics provided by the Government appear to back up their view. Between April 2009 and April 2013, 5,184 people were arrested under an EAW in England and Wales, and 4,005 were surrendered to another EU Member State. Over the same period, 507 people were surrendered to the UK from another EU Member State. According to the Association of Chief Police Officers (ACPO), the growth in EAW requests reflects the growth in cross-border crime, a process which it considers to be irreversible. We ask the Government to put these figures in greater context, though. On average approximately 125 people a year were surrendered to the UK between 2009 and 2013 under an EAW. We ask the Government whether this figure can be said to amount to a significant contribution to the UK's ability to investigate and prosecute serious crime, compared to overall annual figures for those convicted of such crimes.

According to the latest statistics ending September 2012, published by the Ministry of Justice, indictable proceedings2 numbered 377,000. The total number of offenders found guilty of indictable offences at either the Magistrates' or Crown Court between 2011 and 2012 was 308,900. This figure includes those surrendered under an EAW by another Member State and subsequently prosecuted in the UK.

The Government considers the EAW to be an effective law enforcement tool that makes a significant contribution to the UK's ability to investigate and prosecute serious crime.

2 Including triable-either-way offences.

A comparison with the overall annual figures for those convicted of such crimes is not an effective method of evaluation.
Statistics published by the Serious and Organised Crime Agency (SOCA) as was, and validated by Her Majesty's Chief Inspectorate of Constabulary (HMIC) show that in 2012/13, EAWs issued by the UK to other Member States led to 13 people being surrendered to the UK for child sex offences, 11 people for murder, and 12 people for rape.[3] Between 2009 and 2012, a total of 507 serious offenders were returned to the UK to face justice.

The use of the EAW in these cases demonstrates its value to law enforcement. It also demonstrates the benefits this measure brings to the victims of such crimes, and their families, who might otherwise wait years for a prosecution to take place in a UK court. Both the Government and police and prosecution services consider that the EAW is an extremely significant tool for tackling such crimes where the alleged perpetrator has fled the country. During our consultation, law enforcement partners made it clear that the EAW is a vital tool in combating cross-border crime and keeping our streets safe. This is borne out when looking at the evidence provided to a number of Parliamentary inquiries into the 2014 decision. Furthermore, the very effectiveness of the measure may help to keep the numbers down, preventing the UK from becoming a safe haven for criminals wanted abroad, and deterring UK criminals from fleeing abroad.

To illustrate to the Committee the effectiveness of the measure, the NCA and the Crown Prosecution Service (CPS) have, where possible, provided the conviction and sentence details of those people returned to the UK for prosecution or to serve a sentence already imposed, from January 2012 – November 2013. The following figures are based on this sample[4]:

- Of the 8 people extradited for murder whose cases have been determined, 6 were convicted (75% conviction rate);

- Of the 21 people extradited for child sex offences whose cases have been determined, 17 were convicted (81% conviction rate); and

- Of the 19 people extradited for rape whose cases have been determined, 17 were convicted (89% conviction rate).

The overall average conviction rate for the persons returned in that time period was 91%. This is a slight increase in trend from the last published statistics but may not be direct comparison due to the way that figures have been calculated[5]. In addition, following arrest in the issuing state, it took on average 105 days for a person to be

3 In 2012, the conviction ratio for all offences was 83%, a decrease of less than one percentage point on 2011. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/203958/criminal-justice-stats-dec-12.pdf

4 Analysis undertaken in conjunction with the NCA and the CPS.

5 Due to the way data is recorded, the conviction details of all persons surrendered are not held centrally. The analysis has been conducted only on the known conviction details.

surrendered to the UK. The sentence and conviction details of those people returned between January 2012 and November 2013 can be found at Annex B.
It is important to stress that the UK will only issue an EAW for serious offences or where there is a genuine and compelling public interest reason for a person being brought to justice. It will also only do so for the purposes of conducting a criminal prosecution or the execution of a detention order, as is required by the Framework Decision. In addition, in a prosecution case, the CPS will only issue a warrant where the case is ready to proceed to trial. Indeed, when issuing an EAW (or when making any other extradition request), the CPS apply strict guidance for crown prosecutors to assess firstly whether there is a realistic prospect of conviction, and secondly whether it would be in the public interest to proceed. This ensures that where an alleged criminal, or person convicted of a serious offence, has fled the UK and it is in the interests of justice to prosecute that person, a warrant can be issued for their return.

By way of comparison, prior to the implementation of the EAW, between 2000 and 2003, the UK made approximately 220 extradition requests under the predecessor regime, the European Convention on Extradition 1957 (ECE). This figure pertains to requests made to both EU Member States and other non EU signatories to the Convention so is not directly comparable to the EAW regime, but it does usefully demonstrate the increase in requests made by the UK for crimes committed in the UK since the EAW came into force. Although the higher number of extradition requests currently issued is undoubtedly a by-product of EU enlargement (see reply to paragraph 124 for further details on growth in migration to the UK from Poland) and the growth in EU nationals living and working in the UK[6], the EAW has undoubtedly made it easier to return and prosecute these people for serious offences committed in the UK. The often referenced case of Hussain Osman (the failed 21/7 London bomber) demonstrates how fast the EAW can work in comparison to alternative schemes. It took 56 days to return Osman to the UK, whereas in non EAW cases it can often take many months and sometimes years to return serious offenders to face justice. This can be contrasted with examples of alleged terrorist offenders going unpunished under the old regime because of various procedural bars which the EAW has since removed. In terms of extraditions from the UK, it took the UK 10 years to extradite Rachid Ramda to France, where he was subsequently convicted of terrorist offences. By contrast, a number of terrorist suspects wanted in connection with ETA or Al Qaeda have been returned by the UK to Spain under an EAW, for example Farid Hilali, Inigo Maria Albisu Hernandez, Zigor Ruiz Jaso, and Ana Isabel Lopez Monge. These cases were all completed much more quickly than the Ramda case.

The Government strongly welcomes the work of Operation Captura, a joint initiative between Crimestoppers, SOCA/NCA and the Spanish Police that clearly demonstrates the role and value of the EAW in targeting fugitives from British justice who are believed to be resident in Spain. Government Ministers have taken an active interest in the operation and have discussed and have held discussions with their Spanish counterparts on a number of occasions. The Security Minister, James Brokenshire, has

6 According to NCA statistics, of the 507 people surrendered to the UK, 277, or 54%, were UK nationals.

consistently emphasised the success of the operation and the impact of our ongoing effective relations with the Spanish.
On 20 October 2011 James Brokenshire spoke with Ignacio Cosido, from the Partido Popular about the 5th anniversary of Operation Captura. They agreed to cooperate closely to tackle organised crime. The Security Minister met the Spanish Security Minister Francisco Martínez Vázquez on 17 December 2013, to continue to promote our relationship; and, the importance of maintaining effective cooperation to ensure serious criminals are brought to justice. They issued a joint statement following this meeting which highlighted the recent successes under Operation Captura.

No longer is Spain an appealing destination for British criminals evading capture. The EAW has played a large part in making it easier to bring British criminals back to face justice. Fifty five of the 76 people wanted under Operation Captura have now been arrested and brought to justice including the following:

- **James HURLEY** – convicted killer of 27-year-old PC Mason on 14 April 1988 who escaped custody in 1994. He was arrested in 2007 in the Netherlands for drug offences and returned to the UK.

- **Markcus JAMAL** – wanted for conspiracy for murder of Nageeb El Hakem in 2005. He was arrested in Spain and returned to the UK in January 2007.

- **John SETON** – wanted for the murder of Jon Bartlett in March 2006. Arrested in the Netherlands and returned to the UK in May 2007.

- **Andrew MORAN** was wanted for his involvement in a robbery that took place on 23rd May 2005. He was arrested in Spain in May 2013, where he awaits trial for offences committed there while on the run.

- **Martin Anthony SMITH** - Smith was wanted in connection with a rape of a child under 16, gross indecency with a girl under the age of 16, indecent assault of a girl under 16 and attempted rape of a girl under 16. He was returned to the UK in 2010 and was convicted of child rape.

- **Mark Alan LILLEY** was arrested in July 2013, after he was sentenced in 2000 to 23 years in jail for drugs and firearms offences. Lilley was surrendered to the UK on 5 August and is now detained at Belmarsh prison.

More generally, between January 2012 and November 2013 a number of high profile and very serious offenders were returned to the UK. This includes:

- **Constantin Nan,** who was surrendered to the UK from Romania in 2013. He was found guilty of the torture and murder of a retired school teacher in 2010; he was sentenced to life imprisonment to serve a minimum of 31 years.

- **Warwick Spinks**, who was returned to the UK from the Czech Republic in 2012 to serve the remainder of a sentence imposed in 1994 for the sexual assault of young boys. He had evaded capture for 15 years after breaching the terms of his licence in 1997 and his arrest was a result of cooperation between the National Crime Agency, the Metropolitan Police, CEOP and Czech police forces.

- **Joseph Davies,** who was surrendered from the Netherlands in 2012. He was subsequently convicted of killing his then girlfriend and sentenced to life imprisonment to serve a minimum of 22 years.

Further examples of serious offenders returned between January 2012 and November 2013 can be found at Annex C.

As the Home Secretary was clear in her statement to Parliament in July 2013, the views of law enforcement were sought prior to making the decision on the 35 measures the UK will seek to opt back into. ACPO's evidence to the Home Affairs Committee on 3 September made clear their view that the EAW is an *"essential weapon"* in the fight against serious criminality. This view was echoed by the outgoing Director of Public Prosecutions, who was clear that the streamlined process of the EAW makes it easier for serious criminals to be returned to face justice. In oral evidence to the same committee he said;

> "*...Do you want people back speedily for serious offences like the [attempted] 21/7 bombing, or do you want it to be a longer process.....I think most people would say if there is a serious allegation against an individual we would rather have them back to be tried for a serious offence speedily....*"

The Government agrees with that assessment and would refer the Committee again to the written evidence regarding the EAW which was provided by the Home Office to the Home Affairs Committee in October 2013.

Finally, in taking a decision to seek to opt back into the EAW, the Government has been mindful of the concerns of the Devolved Administrations and we have also taken extremely seriously the views of our partners in the Republic of Ireland about the impact on security relations between our two countries.

Prior to the commencement of the EAW, extradition relations between the UK and Ireland were governed by an administrative system which gave effect to Irish arrest warrants in the UK, and vice versa. The relevant legislation, the Backing of Warrants Act 1965 (UK) and Part III of the Extradition Act 1965 (ROI) have both since been repealed.

Ministers in the Irish Republic and in Northern Ireland have been consistently clear that the EAW has real benefits in swiftly tacking serious cross border criminality. In July

2013, Alan Shatter, Irish Minister for Justice responded to the Government's decision to opt out of all pre-Lisbon criminal justice measures, and said the following:

> *"It is particularly important that the co-operation between our two jurisdictions in tackling so-called dissident republican activity should not be hindered, and I emphasised the vital role of the European Arrest Warrant in this regard. As such, I very much welcome Ms. May's confirmation that the EAW is among the measures that the UK government will be seeking to opt back into."*

Similar representations have been made by both David Ford, the Justice Minister for Northern Ireland, and the Police Service of Northern Ireland (PSNI). In evidence to the House of Lords European Union Committee, the PSNI stated that since 2004, of the 50 EAWs issued by Northern Ireland to other Member States, 30 of these had been made to Ireland. Dr Gavin Barrett (University College Dublin) stated that the extradition figures between the two countries were "*striking*": 170 out of the 601 individuals (28 per cent) surrendered by Ireland between 2004 and 2011 were to the UK, and 160 out of the 184 individuals (87 per cent) surrendered to Ireland during the same period were by the UK..

In his representations to the same Committee, the Rt. Hon Frank Mulholland QC, the Lord Advocate for Scotland said that he would have "*real concerns*" if the UK were to opt out of the EAW. Mr Mulholland gave evidence that of the 20 EAWs issued by Scotland to other Member States, over 10 had been charged with murder, drugs, child pornography, very serious assault and rape, and of the previous extradition arrangements Mr Mulholland said, "*You required affidavits, evidence, statements, sworn statements, and very detailed documentation. It does take a lot of time to be able to process such a request*." The Committee published this evidence in its report in April 2013.

In conclusion, and as evidenced above, the Government would strongly rebut the assertion that the EAW (and extradition to the UK in general) does not make a significant contribution to prosecuting and bringing to justice dangerous criminals who have committed serious crimes in the UK.

Paragraph 123

The Government provides statistical evidence of the effectiveness of the EAW compared to the extraditions under the 1957 Council of Europe Convention (ECE). We note, for example, that since 2009 over 100 people have been returned to the UK from countries that did not extradite their own nationals under the ECE; and that an EAW takes approximately three months to execute, whereas an extradition under the ECE took upwards of two years. We ask the Government to tell us how many of those 100-plus people extradited to the UK from countries that previously did not extradite their own nationals were convicted following extradition, the crime(s) they were each convicted of and what sentence they each received.

The ECE allowed countries to make a reservation under article 6 that they could refuse to extradite their own nationals. The following countries have made such a reservation, which we understand still remains in force for any extradition request made under the ECE:

- Bulgaria
- Croatia
- Cyprus
- Estonia
- France
- Germany
- Hungary
- Lithuania
- Luxembourg
- Netherlands
- Poland
- Portugal
- Romania

Due to the way data is processed and stored by the NCA and the CPS it has not been possible to obtain conviction details in all cases from the countries listed above. However, conviction details of 60 individuals extradited to the UK from these countries has been obtained. Details of these convictions are set out in at Annex D[7].

In addition, under the ECE, extradition could be barred for own nationals even if a reservation had not been entered, if there is a constitutional bar in place. The following EU countries still have a constitutional bar in place, which we believe could prevent the extradition, to the UK, of their nationals if we no longer operated the EAW. These are;[8]

- Italy[9]
- Slovakia
- Austria
- Belgium
- Sweden
- Finland
- Latvia
- Czech Republic

7 Some of the countries with a nationality bar to extradition would have extradited an own national if they had an assurance that they would be returned to serve sentence (such as the Netherlands). The conviction details at Annex C includes Dutch nationals surrendered from the Netherlands. For the purpose of this analysis we have not relied on people extradited from Romania or Hungary as the requirements are exceptional.

8 The UK asked other EU countries for this information, not all countries have responded to this request for information and there may be other countries to add to this list.

9 Italy has a constitutional bar, but it does not have effect if the surrender of own nationals is provided for by the relevant extradition arrangements [for example a particular bilateral treaty], it is unclear what the position with the UK would be if extradition was not governed by the EAW.

- Ireland[10]

There have been some high profile cases where the nationality bar has prevented people being surrendered to the UK to face justice. The Russian Federation's refusal to extradite Andrey Lugovoy (accused of the murder of Alexander Litvinenko) is a good example of this. While the refusal to extradite a national would not necessarily result in the person going unpunished, in order to prevent this, the proceedings would have to be transferred to the executing state. This is not always possible or desirable (as in the case of Lugavoy) and would be unfair on victims and witnesses who would have to travel abroad to see justice done.

Paragraph 124

No doubt because of its impact on the rights of suspects, the Framework Decision has attracted considerably more criticism than other pre-Lisbon mutual recognition measures. Particular concerns have been raised about the disproportionate use of the EAW for trivial offences, the lack of a sufficient human rights safeguard in UK legislation, the lengthy pre-trial detention of some British citizens overseas, the use of the EAW for actions that are not considered to be crimes in the UK, and the use of the EAW as an aid to investigation rather than prosecution. We have in mind in these regards the long campaigns run by Fair Trials International, Justice and Liberty, and the cases of Mark [sic] Symeou and Garry Mann, among others, which have been brought to the attention of the House of Commons in particular. If the EAW is premised on the equivalence of the protections and standards in the criminal justice systems in each Member State, certain individual cases show that such equivalence is not met in every EU Member State.

The Government has been consistently clear about some of the more problematic operational issues with the EAW, particularly in respect of proportionality and lengthy pre-trial detention. Proportionality, in particular, has been the focus of a number of reports and studies into the operation of the EAW, including the most recent EU Commission's implementation report on the operation of the EAW in 2011, which stated the following;

> *"Confidence in the application of the EAW has been undermined by the systematic issue of EAWs for the surrender of persons sought in respect of often very minor offences"*
>
> "*....there is general agreement among Member States that a proportionality check is necessary to prevent EAWs from being issued for offences which, although they fall within the scope of Article 2(1)23 of the Council Framework Decision on the EAW, are not serious enough to justify the measures and cooperation which the execution of an EAW requires."*

10 As with Italy, Ireland has a constitutional bar, but it does not have effect if the surrender of own nationals is provided for by the relevant extradition arrangements, it is unclear what the position would be if extradition was not governed by the EAW.

> *"Several aspects should be considered before issuing the EAW including the seriousness of the offence, the length of the sentence, the existence of an alternative approach that would be less onerous for both the person sought and the executing authority and a cost/benefit analysis of the execution of the EAW. There is a disproportionate effect on the liberty and freedom of requested persons when EAWs are issued concerning cases for which (pre-trial) detention would otherwise be felt inappropriate. In addition, an overload of such requests may be costly for the executing Member States."*

It concluded:

> *"it is essential that all Member States apply a proportionality test, including those jurisdictions where prosecution is mandatory."*

The issue of proportionality in the UK has primarily been associated with the large volume of requests from Poland; while many of these requests are for serious offences, there have been many examples of offences for which extradition is a disproportionate measure. The Polish authorities are aware of Parliament's concerns about this and have provided evidence to the various inquiries into the 2014 opt-out decision on this issue. The large amount of Polish migration to the UK may have played its part in this, together with a highly systematised approach to the issuing of EAWs. However, Poland has taken steps to reduce the number of EAWs that are issued and the overall number of EAWs received from Poland has reduced by approximately 25% in the last few years. In addition Polish legislation is currently being taken through their Parliament and will come into force in July 2015 that is anticipated to make further reductions in the number of EAWs issued to the UK. This legislation will amend section 607b of their Criminal Procedure Code so that an EAW can only be issued if it is in the interests of justice to do so.

According to the latest published statistics provided by the NCA, Poland accounts for almost 60% of all surrenders made from the UK to other Member States, making Poland the UK's biggest extradition client. However, the UK also receives EAWs for minor offences from other EU Member States. The proportionality bar which the Government intends to introduce will address the issue of proportionality more generally, as it could be applied to all prosecution EAWs received by the UK.

The Government agrees with the Committee that Member States have different legal systems and often different judicial and penal standards to the UK. However, this is inevitable and not a by-product of the EAW scheme itself. The former Director of Public Prosecutions gave evidence to this committee in February 2013, stating:

> *"…[the judicial systems do] vary and one keeps a careful eye on that. It is important to look at what the practical alternatives are… Whatever arrangements you have, unless you have a full trial here or something close to it before the person goes back—an examination of every issue—there is a reliance on the arrangements*

back in that country. It is difficult to see how one lives in a world where that can be otherwise. You could have a system where all of the evidence was tested in our courts before someone was returned, but one, you would get very close to a finding on their guilt, which would not be helpful, and two, it would take a very long time. There has to be this reliance."

The requirement to consider the evidence or issues would require the UK courts to consider, at the very least, *prima facie* evidence. Even under the ECE, the courts would not have considered such evidence and in those cases still governed by this regime, there is no requirement to provide it.

It is a fact that many of the problems identified by the Committee would still occur even if the UK no longer operated the EAW. In addition, extradition would be more difficult, slower and in some cases impossible. For example, as well as allowing extradition to be barred for own nationals, the ECE allows refusal for tax offences in certain circumstances; and also provides for refusal on statute of limitation grounds (which could allow serious offenders to escape being brought to justice if the statute of limitations had passed).

The Government's view is that in order to find solutions to commonly acknowledged problems, we should work with and challenge the EU institutions for reform of EU law where it is required, and work bilaterally with other Member States to address practical problems.

There are several recent notable examples of this:

- Working to secure UK objectives on new mutual recognition instruments such as the European Investigation Order;
- Engaging with the European Parliament's Own Initiative review of the EAW which has made recommendations on improving the measure itself and safeguarding the fundamental rights of those subject to EAWs; and
- Provision of bilateral support to the Romanian Government to develop options for prison reform using private sector investment.

The Government is determined that the UK's extradition processes should be as effective and fair as possible. This is why we commissioned the Baker review, to get an impartial view on our existing procedures and to look for ways in which the processes could be improved. The Government has considered the recommendations made by the review, as well as the concerns raised by Parliament and members of the public and has introduced a number of amendments to improve the workings of the Extradition Act 2003 ("the Act"). These reforms are being introduced via the Anti-social Behaviour, Crime and Policing Bill currently before Parliament. These reforms will address many of the concerns raised by the Committee and others, including NGOs such as Fair Trials International.

The purpose of the Government's proportionality bar is to require the courts to consider whether execution of an incoming EAW request would be disproportionate. This is in addition to requiring the judge to be satisfied that extradition would be compatible with the Convention rights (which is already the case). In deciding whether extradition would be disproportionate, the judge will have to take into account the seriousness of the conduct, the likely penalty and the possibility of the issuing State taking less coercive measures than extradition. The new section 21A of the 2003 Act is intended to apply in cases where an EAW has been issued in order to prosecute the person for an offence. In addition, the National Crime Agency (as the UK's designated authority for the receipt of EAWs) will operate an administrative filter of cases with a view to preventing the most obviously disproportionate cases ever reaching court. To that end, we have tabled an amendment to the Bill to empower the Lord Chief Justice with the agreement of the Lord Chief Justice of Northern Ireland and the Lord Justice General of Scotland to issue guidance to the NCA on this point.

The Government is also amending the Act to ensure that in EAW cases where the person is wanted for the purposes of prosecution, extradition can only take place where the issuing State has taken a decision to charge and a decision to try the person. This will provide that EAWs which are issued when the case is still being investigated may be refused. Where it appears to the judge that there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing State (and that the person's absence from that State is not the only reason for that), extradition will be barred by new section 12A unless the issuing State can prove that those decisions have been made (or that the person's absence from that State is the only reason for the failure to take the decision(s)). This will help prevent people spending potentially long periods in pre-trial detention following their extradition, whilst the issuing State continues to investigate the offence. This would have allowed Andrew Symeou to raise, in his extradition hearing, the issue of whether or not a decision to charge him and a decision to try him had been taken and as the Home Secretary said in her statement, it would likely have prevented his extradition at the stage he was surrendered – and, quite possibly, altogether. The Government's intention to seek to opt into the European Supervision Order (ESO) signals a clear intent to provide additional safeguards that make it easier for people like Mr Symeou to be bailed back to the UK and prevent such injustices occurring in future.

The Committee also refers to the case of Gary Mann. By way of background, Mr Mann's appeal was not filed within the statutory time limit (7 days from the day extradition was ordered). His solicitors also lodged three judicial review applications. All of these judicial review applications were unsuccessful. During one of the judicial review hearings, Lord Justice Moses referred to a "serious injustice". This was in reference to the consequences of the failure of two sets of lawyers representing Mann (one in Portugal and one in the UK) to lodge appeals against (i) the Portuguese sentence and (ii) the extradition order within statutory time limits.

To address cases such as this, the Government has made an amendment regarding appeals. These provisions will provide an important new protection for those people who, through no fault of their own, are unable to serve notice on the Court of their intention to appeal in time. This would have made a difference in the cases like that of Gary Mann, and any future such cases.

The new appeals provisions will afford people in such circumstances much needed additional protections, and overall the package of EAW reforms, alongside work that continues within the EU will contribute to fewer cases of injustice and serve to enhance procedural equality across the EU.

Paragraph 130
We expect the Government in its response to this Report to:

- **explain the legal basis on which it considers the proposed amendments to be consistent with the EAW Framework Decision, were the UK's amended implementing legislation to be challenged before the Court of Justice;**
- **explain how tests applied in Ireland and Germany (and any other Member State) can be relied upon in support of the UK's domestic amendments;**
- **provide a detailed assessment of the risk that the Commission, when considering whether the conditions for the UK's participation in the EAW Framework Decision have been fulfilled, will conclude that the amendments to the UK's implementing legislation mean that the UK no longer fulfils those conditions and so cannot rejoin the EAW.**

Command Paper 8671 makes clear there are many safeguards in place to ensure fundamental rights are protected. The Framework Decision is clear that when a person is arrested s/he must be informed of the EAW and its contents, and have the right to be assisted by legal counsel and an interpreter (Article 11). A decision on detention must be taken in accordance with the law of the executing Member State (Article 12). The person has a right to be heard by the courts in the executing Member State before a decision is taken on surrender (Articles 14 and 19). EAWs must be dealt with as a matter of urgency, there are tight time limits for the decision to execute the warrant and the extension of those time limits is only possible in exceptional circumstances (Article 17). Likewise, there are tight timescales for the surrender of the person after a decision to execute the EAW, and the person must be released if s/he is still in custody at the expiry of those time scales (Article 23). In addition, post-surrender, the issuing Member State is obliged to deduct all periods of detention from the execution of the EAW from the total period of detention to be served in the issuing State as a result of a custodial sentence being imposed (Article 26).

In addition, and bearing in mind Article 50 of the Charter of the Fundamental Rights of the European Union, the mandatory grounds of refusal in Article 3 of the FD require the executing Member State to refuse to execute the EAW where the person has already been finally judged by a Member State in respect of the relevant acts (and has served

his/her sentence, where there has been one). This provides a powerful protection against double jeopardy.

Although there is no express ground of refusal to cover cases where the executing State is satisfied that execution would result in a breach of the person's human rights, recital (12) and Article 1(3) are relevant. Recital (12) stresses that the FD respects fundamental rights and observes the principles recognised by ex-Article 6 TEU and reflected in the Charter and Article 1(3) makes clear that the FD shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles enshrined in ex-Article 6 TEU. It is on this basis that the UK has enacted section 21 of the Extradition Act 2003, which requires the judge at the extradition hearing to discharge the person if the judge is of the view that execution of the EAW would result in the person's ECHR rights being breached.

The 2003 Act requires a judge to assess whether surrender would be compatible with the Human Rights Act 1998 and discharge the person if not so satisfied. Indeed there have been cases where a person has been discharged because the UK courts have found that the prison conditions in the issuing member state would be a breach of that person's human rights.11

The Baker review looked at the issue of safeguards in the extradition Act and concluded (at paragraph 11.11) that Section 21 (Part 1) of the Act (Human Rights), coupled with other safeguards contained in the 2003 Act, provided fair and transparent mechanisms for contesting surrender and that they did not operate in a way that caused or permitted manifest injustice or oppression. A judge's consideration of Human Rights must be applied in strict accordance with the terms of the Human Rights Act 1998 and relevant case law.

However, the Government has been consistently clear about its concerns with the operation of the EAW, which is why a series of reforms are being introduced in the Anti-Social Behaviour, Crime and Policing Bill.

New Section 21A (proportionality) provides an additional safeguard that explicitly guards against surrender where it would be otherwise disproportionate to do so. Section 21A specifically states that regard must be had to Article 1(3) of the EAW FD, which provides that that Decision shall not have the effect of modifying the obligation to respect *fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union."* New section 12A will also bar surrender in cases where the issuing state is not ready to proceed to trial, which will help to deal with the issue of lengthy pre-trial detention. These new amendments to the Act will provide additional safeguards and protections for those subject to EAWs, particularly UK citizens. We consider that the existing safeguards and new legislation currently before Parliament, together with the additional measures the UK will seek to opt into (such as the ESO and

11 In the cases of *Campbell* and *Boson* the UK courts have found that prison conditions in Lithuania and Greece respectively are not compliant with Article 3 of the ECHR.

Prisoner Transfer FD) will help to address some of the operational deficiencies with the EAW and provide robust enhancements to the existing safeguards contained in the Act.

Finally, as previously explained, the Government believes that there is further work that can be undertaken at the EU level to ensure that the rights of individuals subject to EAWs are fully protected. This includes work that continues to be undertaken with the EU institutions, and also bi-laterally with other Member States to ensure that the UK continues to be central to driving up standards across the EU where problems (e.g. detention conditions in some Member States) persist.

As provided in written evidence to the House of Lords Inquiry to the 2014 decision, the Government believes that the domestic reforms which the Home Secretary announced to Parliament on 9 July are fully consistent with the UK's desire to rejoin the European Arrest Warrant ('the EAW') Framework Decision, including our obligations under that Framework Decision and the EU Treaties. The necessary changes to the Extradition Act 2003 ('the Act') are being made by way of amendments to the Anti-social Behaviour, Crime and Policing Bill.

Proportionality

The use of the EAW for relatively minor offences has long been identified as a problem, not only by the UK. We are clear that resources that could be directed at dealing with more serious cross-border crime are often being diverted to matters which should be tackled in a different way (for example, by way of a fine or a court summons). This is consistent with the European Commission's handbook on how to issue an EAW, which is clear that issuing States should consider alternative punitive measures prior to issuing an EAW, where it would be more appropriate to do so.

New clause 138 will require the judge to consider – in addition to whether extradition would be compatible with the Convention rights – whether it 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. This will apply in all cases where the EAW has been issued in order to prosecute the person.

We believe this is consistent with the UK's obligations under EU law. Proportionality is a cornerstone of EU law. Its origins lie in the case law of the European Court of Justice and it is specifically enshrined in Article 5(4) TEU. Moreover, and bearing in mind that in many cases proportionality issues are inextricably linked with fundamental rights, Article 1(3) of the EAW Framework Decision is clear that the Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles. In addition, Article 52(1) of the Charter of Fundamental Rights makes clear that limitations on rights enshrined in the Charter are "subject to the principle of proportionality".

Absence of prosecution decision

Parliament has expressed concerns about lengthy and avoidable pre-trial detention, and it is important that these situations are avoided.

Where an EAW has been issued when the issuing State is still investigating the alleged offence, this could lead to the person spending potentially long periods in pre-trial detention following extradition while the issuing State continues to investigate the offence. New clause 137 will address this. The effect of the clause will be that where it appears to the judge that there are reasonable grounds for believing that a decision to charge and a decision to try have not both been taken in the issuing State (and that the person's absence from that State is not the only reason for that), extradition will be barred unless the issuing State can prove that those decisions have been made (or that the person's absence from that State is the only reason for the failure to take the decision(s)).

We believe that this new clause is consistent with the UK's obligations under EU law. Article 1(1) of the EAW Framework Decision is clear that an EAW is "a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence of detention order".

Request for temporary transfer etc.

New clause 140 will allow the requested person and the issuing State to speak to one another, if they both consent, before extradition takes place. It will allow for the temporary transfer of the person to the issuing State and also for the person to speak with the authorities in that State whilst he or she remains in the UK (e.g. by video link).

In some cases, it is to be expected that the result of this will be the withdrawal of the EAW – e.g. in cases where, having spoken with the person, the issuing State decides that he or she is not the person they are seeking or that he or she did not in fact commit the offence in question. In other cases, where extradition goes ahead, it is to be expected that in some cases the person will spend less time in pre-trial detention, as some of the questions which need to be asked and the processes which need to happen ahead of the trial could take place during or as a result of the temporary transfer or videoconference.

This amendment transposes Articles 18 and 19 of the EAW Framework Decision, which allow for temporary transfer and for the person to be heard ahead of extradition. As such, the change is consistent with EU law. The previous government failed to implement these safeguards.

Amendments to the definitions of "extradition offence"

Parliament has also expressed concern about people being extradited for conduct which is not criminal in British law.

To help address these concerns, the changes we are making to the definitions of "extradition offence" in the Act – clause 145 – will make clear that, in all EAW cases, in cases where part of the conduct took place in the UK, and is not criminal here, the judge must refuse extradition for that conduct.

We believe this is consistent with the terms of the Framework Decision, Article 4(7)(a) of which is clear that the executing judicial authority may refuse to execute the EAW where it relates to offences which are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State.

Consent to extradition not to be taken as waiver of specialty rights

Clause 144 ensures 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 Act states that a person waives specialty protection when he or she consents to extradition. This leads in practice to very few people consenting to extradition, even where they may otherwise have no objections. Removing this waiver will enable those who wish to be extradited to be surrendered quickly without risking being tried for any other alleged offences.

As the Home Secretary has stated to several committees and inquiries relating to the 2014 opt out decision, Germany and Ireland, in particular, have taken steps in respect of proportionality and barring surrender in the absence of a prosecution decision respectively. Irish legislation (on no decision to charge or try) and the approach of the German and Irish courts (on proportionality) show that other Member States have taken steps to tackle the same problems that we are seeking to deal with in the Anti-social Behaviour Crime and Policing Bill. In order to do so they must have concluded that doing so is compatible with EU law.

Whilst of course this is relevant to our policy approach, we have analysed the position very carefully and have satisfied ourselves that our reform package is compatible with EU law.

Paragraph 131
We also ask the Government to say on what basis it has decided to opt into the Framework Decisions on the ESO and transfer of prisoners, but not the Framework Decision on judgment and probation decisions, given that all three are considered to be means of achieving a more proportionate use of the EAW. In addition, we ask the Government to say what assessment, if any, it has made of pursuing reforms to EU free movement rules as part of an alternative to opting back in to the EAW.

The Government has been clear that it will only seek to rejoin measures that are in the national interest. The Home Secretary was clear in her statement to Parliament that the Prisoner Transfer Framework Decision should be used to the fullest extent and where UK citizens are convicted abroad, but are now in the UK and the subject of a European Arrest Warrant, they should stay in the UK to serve their sentence wherever possible. This change could have prevented the extraditions of Michael Binnington and Luke Atkinson – sent to Cyprus, only to be returned to the UK six months later. This was identified by Sir Scott Baker in his review of extradition as something that could help to deal with this problematic issue.

In terms of the Framework Decision on mutual recognition to judgements and probation decisions (the Probation FD), the Government considered this measure carefully. However, what differentiates it from other mutual recognition measures that we are seeking to rejoin is that while we support the principle behind it we do not consider that its benefits outweigh its risks.

As we have stated 'practical operability' was a key test when considering which measures to rejoin. A key issue here is that this measure may well lead to different practices amongst Member States following EU wide implementation, especially in the event of a breach of a Community Order. Some Member States will be willing to address the breach domestically and have the right to do so, but some Member States will wish to return jurisdiction back to the issuing state on breach, and they will also have the right to do so.

This is a particular concern for the UK as our community orders do not specify a penalty in the event of breach. So in many cases the UK may well not be able to transfer community orders out, without running a risk that jurisdiction is returned to us. If we fail to act when jurisdiction is returned then the offender will have effectively evaded their sentence, so in order to properly administer justice we would have to bring them back to the UK. However, we are not clear that there is any effective means of ensuring their return and even if the EAW could be used it is not CPS policy to use the EAW for what could well be minor offences. This would be exacerbating the proportionality problems around its operation that the UK has actively been trying to resolve at EU level.

However, this is not the only area of concern in relation to this instrument. As the Justice Secretary set out in a letter of 21 October to the Justice Select Committee that was also copied to your Committee, we are also concerned about the complex issues around the status of deportees. Article 5 of the measure relates to the criteria for forwarding on a judgment and, where applicable, a probation decision. In our view it is entirely unclear in relation to its application to persons who have been returned to another Member State as a consequence of being deported and who did not consent to be returned but who are now lawfully and ordinarily residing there. We consider that the better reading of the Probation FD is that this does not apply to deportees, as the provision implies that return should be a choice, but it is absolutely not clear whether

other Member States, the Commission and ultimately the ECJ would agree. As the Justice Secretary said when giving evidence to your Committee:

> "*That is the kind of area where I am extremely reluctant to see the European Court take jurisdiction over measures that have a practical impact in this country, and where we would not be able to do anything about a decision we disagreed with*".

Of course we reiterate that at this stage only 10 Member States have implemented it and it has never been used to our knowledge so there is no clear understanding as to how this measure will work in practice and very little evidence on which to judge its effectiveness. However, we note that no new evidence has been put forward by your Committee or the other Committees looking at this matter, which outweighs the concerns we have highlighted. As such, this Government continues to intend not to seek to rejoin it at this stage. It of course remains open to future Governments to reconsider.

In relation to the EU Free Movement Directive (FMD), this is an intrinsic part of the single market; as the Minister for Immigration made clear during the European Committee Debate on this issue in July 2013, the Government has recognised that it benefits British citizens who can exercise their free movement rights across the European Union. It should not, however, be an open door policy that has no regard to consequences.

There is no direct causal relationship between the FMD and extradition. The Government has been clear that the EAW is a necessary tool in returning people to face justice. The implicit suggestion in this question is that an amendment to the FMD would result in fewer EU nationals being in the UK which would result in fewer requests for extradition. This overlooks the fact that regardless of the means by which a person enters the UK, a proper extradition process is required to bring people to justice. This is why we have concentrated on improving our Extradition legislation and why we will continue to work with other EU states to improve the work of the EAW generally.

However, the Government has been clear that the immigration system that we inherited from the last Government was chaotic and dysfunctional. We are committed to changing this system and reducing the annual net migration of immigrants by the end of this parliament. To this end we are taking through the Immigration Bill in this Parliamentary session. We must also reform the immigration system that manages the flow of migrants in and out of the UK.

The Government is clear that EU citizens who benefit from the right to free movement must adhere to the responsibilities this brings with it and abide by our laws. Those who engage in serious or persistent criminality are liable to deportation. As specified by the FMD, an EEA national may be deported on the grounds of public policy, public security, or public health. EEA nationals are liable to deportation on grounds of public policy when their conduct represents a genuine, present and sufficiently serious threat affecting one of the fundamental interests of society. Anyone not meeting this test who is convicted of an offence that attracts a prison sentence may also be removed from the UK using administrative powers and returned to their country of origin.

The Home Office will continue to take a robust approach in considering and, where international obligations allow, pursuing the deportation of EEA nationals.

Furthermore, the Prime Minister announced in November 2013 further toughening of the rules with regards to administrative removal. EEA nationals who are administratively removed from the UK for not exercising Treaty rights will be unable to re-enter for twelve months following removal unless that EEA national can prove that they will be immediately exercising Treaty rights.

Paragraphs 142, 143 and 144

The Government's evidence in the Command Paper on why it is in the national interest to opt back into the Framework Decision on freezing orders is not compelling. The UK's implementing legislation excludes property, so it may be at risk of infringement proceedings after opting back in unless further primary legislation were to be enacted. The instrument is little used by the UK and other Member States, all of whom rely on alternative processes. It will also be repealed by the EIO in relation to the freezing of evidence.

When we questioned the Home Secretary on this instrument, we were similarly unconvinced:

> **This particular measure is, as I understand it, the only EU measure regarding the freezing of property. This is an important tool that we believe exists in order to deal with organised criminals. We want to rejoin this measure as part of the process of increasing the speed at which we are able to freeze criminal property in the UK, on behalf of EU Member States. The information about the policy implications, and obviously each section has a policy implication and a fundamental rights analysis, is within the Explanatory Memorandum. What I am searching for is exactly what information the Committee was expecting to see in the Explanatory Memoranda.**

Two things struck us about this reply: the Home Secretary implied the Freezing Order applied to property in the UK, which it does not; and she could not accept any criticism of the Command Paper, a characteristic of her evidence throughout.

The Government acknowledges that the UK's implementing legislation currently excludes property. However, it is not correct to say that primary legislation is needed to implement these elements. This is because section 96 of the Serious Organised Crime and Police Act 2005 provides an enabling power to make such provisions in respect of property by secondary legislation. We are committed to putting in place the necessary legislation.

The Government is keen to drive up international asset recovery performance. Improving our performance on the recovery of hidden assets overseas is a commitment in the Serious and Organised Crime Strategy. The mutual recognition of freezing orders will be an additional tool for operational practitioners. It is also not correct to suggest

that the Home Secretary implied that we had implemented this Framework Decision as regards property. Instead, she made it very clear that rejoining this measure was part of the process of '*increasing the speed*' at which we can act. The only implication here is that the Government considers this measure to be more operationally effective than the alternative arrangements. We know that this is a view shared by CPS.

Paragraph 150
As with the previous instrument, the Government's evidence on why it is in the national interest to opt back into the Framework Decision on confiscation orders is not compelling. The UK, along with seven other Member States, has not implemented it. It may therefore be at risk of infraction proceedings if it opts back into it unless further primary legislation were enacted. The Government, and we presume other Member States given the implementation gap, rely on alternative processes for confiscation orders. The Government makes no criticism of the alternative processes.

The reasons given for rejoining the measure on freezing of evidence and property apply equally to this measure. This measure should facilitate increased international cooperation in pursuit of the recovery of the proceeds of crime.

Our efforts to recover UK criminal assets from Spain (the country with the highest volume of UK criminal assets) are at present hampered by having to rely on the 1990 Convention rather than the mutual recognition framework decision. The Spanish authorities are required to open a domestic money laundering investigation in order to freeze or confiscate assets for the UK. Any recovered assets are kept by the Spanish authorities and are not shared. The Spanish authorities are clear that these problems would be overcome, and assets would be shared, were the UK to be participating in the mutual recognition Framework Decision. This is one reason why the CPS supports rejoining this measure.

The Government acknowledges that legislation will be required to implement this measure.

Paragraph 158
We note that this Framework Decision has been largely implemented in the EU, and the level to which it has been used for non-resident EU nationals who commit offences carrying the penalty of a fine in the UK and for UK residents who commit similar offences in other EU Member States. This level strikes us as very low, however: for example, the UK only relied on this measure 126 times in a little over two years for non-payment of fines of €70 and over by non-residents. We ask the Government to say how many similar fines incurred by non-residents over the same period were not enforced through this measure. Given our concern that the use of this measure has been trivial, and at the fact that the Government does not have a reliable estimate of the net financial cost of enforcing other Member States'

penalties, we ask the Government why the UK should opt back into this measure, and thereby the jurisdiction of the Court of Justice.

We are unable to provide any figures or estimates with regard to similar financial penalties incurred by non-residents but not enforced through the Mutual Recognition of Financial Penalties (MRFP). This is because data on unpaid fines is not broken down by the residence of the offender. However, the UK has used this measure 267 times from December 2010 to September 2013 for non-payment of fines and there appears to be an upwards trend in the volume both of incoming and outgoing penalties (although there are insufficient years of data to be confident of any trends).

However, use of the measure may well rise further as more Member States start to use the MRFP system to transfer penalties (some Member States are yet to implement this measure), or as Member States that are already transferring penalties start to use it more fully. In addition, there may be an increase in the volume of outgoing penalties as domestic awareness of this instrument increases. It should also be noted that the commercial process to appoint an external provider for the future delivery of Her Majesty's Courts and Tribunal Service (HMCTS) compliance and enforcement services formally commenced in July 2013. All enforcement activity, including the management of accounts that fall under MRFP will be transferred to the successful provider. HMCTS are not guaranteeing financial penalty volumes to suppliers so the successful bidder will be expected to manage any risk pertaining to change in volumes, but the move to an external supplier may lead to changes in the use of this instrument.

The Government believes that fines are an important tool for punishing those who break particular laws. However, any dissuasive element of this is diminished if people can avoid paying a fine by returning to a different Member State.

The Government believes that this measure provides for practical and desirable cooperation in ensuring that fines will be collected. This makes sure that any dissuasive effects of monetary penalties are not diminished. This means that visitors in the UK from another Member State may be less inclined, for example, to commit road traffic offences if they know they will likely still have to pay the resulting fine imposed for any offence.

Paragraphs 165 and 166

The Secretary of State for Justice, when questioned about this instrument by us, confirmed the Government's view that it was an important measure in the fight against international crime.

However, we are not convinced of the need for the UK to be bound by this measure. The mutual recognition principle it sets out is already recognised in statute and common law in the UK. Opting back in to this EU measure would introduce full Court of Justice jurisdiction into this area of UK criminal law, with unpredictable results.

The Committee is correct that the principle of taking account of foreign convictions in the same way as domestic convictions existed in statute and common law in the UK before the adoption of this measure; as such we support the principle of this measure. When judges know about a defendant's previous criminality, it can result in longer and more appropriate prison sentences. Information on previous convictions can also be used by prosecutors to resist bail applications; for example, where an individual has a history of convictions in another Member State for violence or sexual offences and may reoffend whilst on bail. The measure thereby ensures appropriate justice within the EU and helps to create more equal treatment between EU nationals and UK nationals.

If the UK does not rejoin the Framework Decision, other Member States would not be required to take account of a defendant's conviction from a UK court. In a Europe of free movement, it is clearly in the interests of public safety for a defendant's previous criminality to be taken account of, regardless of the Member State in which it occurred.

Paragraphs 178 and 179
We note the Government's emphasis on the prospective benefits of this instrument, which was described by the Secretary of State for Justice in his recent evidence session with us as a "no-brainer":

> **There are some measures here that are just no-brainers. The Prisoner Transfer Agreement, as I said a moment ago, is just something that we clearly want to have. We have a very large number of overseas prisoners, Eastern European prisoners in particular, in our gaols. I am keen to see that implemented across Europe as quickly as possible and to have those people going back to their home countries.**

We ask the Minister to explain the extent to which it has been implemented, and is being used, by all other Member States. As part of this, we ask whether the UK and other Member States (and if so, which ones) maintain a declaration under Article 7(4) of the Framework Decision, requiring dual criminality for the offence committed by the prisoner before accepting a transfer.

Fifteen Member States including the UK have now implemented the Prisoner Transfer Framework Decision (PTFD). They are; the UK, Austria, Belgium, Croatia, Denmark, Finland, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Slovakia, Slovenia and Poland (Poland for voluntary transfers only until December 2016).

The PTFD provides a mechanism for transfer but does not require a Member State to seek the transfer of individual prisoners. It is therefore a matter for each Member State to determine the extent of its use in relation to persons sentenced in their jurisdiction.

The UK has not entered a declaration in relation to dual criminality. That means that dual criminality is not required for the offences listed in Article 7. The Repatriation of Prisoners Act 1984 which governs the transfer of prisoners into and out of the UK does not require dual criminality to be established in relation to the transfer of prisoners. We

understand that as of October 2012, Ireland Hungary, the Netherlands, Austria and Poland have made declarations under Article 7(4).

Paragraph 180

We also ask the Government how many foreign national prisoners it estimates will be transferred from the UK each year under this instrument, assuming it is widely implemented in the EU. In this regard we note that, under the Framework Decision, a prisoner can only be transferred to their country of nationality without their consent or the consent of the receiving Member State if that is the country in which they live, or if they would be deported there after serving their sentence. We ask the Government whether this qualifies EU free movement rules, which in many circumstances bar the deportation of offenders who are nationals of another EU country.

There are still some uncertainties about how long the process will take and when other Member States which have not implemented so far will fully implement (we expect most to do so in 2014). However, our estimates are set out in the table below.

Year	Expected Number of successful Prisoner Transfers per year to EU Countries
2014	210
2015	425
2016	455
2017	375
2018	395
2019	410
2020	430
2021	455
2022	460
2023	480

The Government's current estimate for the potential net benefit over 10 years for the PTFD is approximately £100 million (to the nearest million). This is based on the current estimate of there being approximately 4100 EU prisoners transferred from the UK in the corresponding period.

The PTFD does not qualify free movement. It simply enables the compulsory transfer of prisoners where they are being deported where this is in accordance with the free movement rules. Government policy is not to seek to transfer a prisoner (although transfer will be considered should the prisoner request it) unless we are successful in obtaining a deportation order. A Deportation Order will be considered for a foreign national offender regardless of the length of sentence.

Paragraph 181

We also note that the Framework Decision appears to be premised on a prisoner's transfer "facilitating the social rehabilitation of the sentenced person" (Article 3 of

the Framework Decision). We ask the Government if a prisoner would be able to take court action against their transfer on the grounds that it would not facilitate their rehabilitation; and whether, with full Court of Justice jurisdiction, UK courts would be able to refer questions of how to apply this rule to the CJEU for determination.

It is the position of the Government that it will almost always be in the best interest of a prisoner, who would normally be removed from the United Kingdom at the end of his sentence, to serve that sentence in his own country where he can re-establish links with the community and be properly prepared for release into that community.

Although the PTFD is intended to facilitate social rehabilitation it does not provide for a transfer to be refused on rehabilitation grounds. If a prisoner believes correct process has not been followed they can always challenge a decision to transfer him in the UK domestic courts by way of judicial review.

Paragraphs 188 and 189
We note the relevance of this measure for the operation of other mutual recognition measures such as the EAW and prisoner transfers. To be fully implemented, however, it may require the UK to implement the Framework Decisions on confiscation orders and judgments and probation decisions, which the UK has not implemented. We ask the Government to assess the risk that this might lead to infringement proceedings being brought by the Commission.

We also note that the Government does not propose to opt back into the Framework Decision on judgments and probation decisions. This seems incoherent with the decision to opt back into this measure on trials in absentia, as the latter regulates the former. We ask the Government to explain this.

The Trials in Absentia Framework Decision amends five other third pillar acts by inserting textual amendments into each of those five acts separately. Out of those five amended Framework Decisions the Government has set out that it intends to seek to rejoin the following four: the European Arrest Warrant Framework Decision; the Mutual Recognition of Confiscation Orders Framework Decision; the Mutual Recognition of Financial Penalties Framework Decision and the Prisoner Transfer Framework Decision. By rejoining the Trials in Absentia Framework Decision it will therefore be seeking to rejoin those four measures as amended by the Trials in Absentia Framework Decision.

As noted above in relation to paragraph 150, the Government acknowledges the need to bring forward legislation to implement the measure related to the mutual recognition of confiscation orders. That will take full account of our obligations under this related measure.

As the Government will not be seeking to rejoin the Probation FD there will essentially be no instrument binding the UK for the Trials in Absentia Framework Decision to amend. As such, the provisions in the Trials in Absentia FD relating to the Probation FD will effectively be severed from those amending the other four.

Paragraphs 197 and 198
Together with the Framework Decision on prison transfers, this is the mutual legal instrument upon which the Government has the greatest expectations, particularly as a replacement to using an EAW. This enthusiasm appears recent, however, as the Government has not begun to implement it almost a year after the implementation date. In this regard the Secretary of State for Justice told us in evidence that the Government's position on the ESO had developed over time. We ask the Government to provide considerably more information on when and how it proposes to implement the ESO, and on the implementation of it by all other Member States.

As part of this, we ask the Government what its estimate is of the absolute numbers of people currently in the UK who could be bailed to another Member State under the Framework Decision, and of the absolute numbers of both British and foreign nationals who could be bailed back to the UK. If the Government believes the ESO would make it more likely that eligible individuals in both the UK and other Member States would be granted bail, we ask on what basis it holds this belief.

The Government intends to implement this measure as soon as practicable. To this end we have been having initial discussions with the Devolved Administrations and attending Commission led working groups on implementation with other Member States.

As of 1 November 2013 seven Member States have implemented the ESO. They are Slovakia, Poland, The Netherlands, Latvia, Finland, Denmark, and Croatia. We expect other Member States to move forward with implementation in 2014.

The Government currently estimates that approximately 80 prison places could be saved by people in England and Wales being bailed to their home Member States. This would be offset by around 70 bail places being taken up by UK nationals returning to the UK.

Suspects and defendants who are considered suitable for unconditional bail will continue to be granted such bail and will therefore usually be free to return home. Likewise those suspects where remand in custody is considered appropriate, due perhaps to reasons such as public safety, will continue to be held on remand and will not be subject to an ESO.

The group of suspects where an ESO may offer an alternative will be those where bail needs to be conditional, for example with some restrictions on the person in place, and those conditions need to be monitored. Without the ESO the only option in these

circumstances is to monitor those conditions locally so the suspect must remain in the prosecuting jurisdiction to facilitate that. The ESO will allow the person to return home and be monitored there. There is also a possibility that this could apply to some suspects who are currently remanded in custody, primarily due to the risk of flight if they were released on bail. This may particularly affect suspects arrested in a Member State different to their usual home Member State, since it is clear they have roots in a different jurisdiction and they may be considered to have greater likelihood of flight. The ESO may allow some of these suspects to be allowed to return home and have their bail supervised there rather than being held on remand or supervised locally.

Paragraph 199

We ask the Government whether opting back in to this Framework Decision would create a risk of the CJEU reviewing the principles applied in the UK when deciding whether to grant bail to persons eligible for an ESO, including on the basis of that Court's human rights jurisprudence.

Decisions on whether to grant bail continue to be governed by the law and procedures of the Member State where the criminal proceedings are taking place. This is made clear in Article 2(2) of the Framework Decision. The Framework Decision does not confer any right on a person to elect non-custodial measures as an alternative to custody in the context of criminal proceedings. The Government considers that opting back in to this Framework Decision does not, therefore, create additional risks of the ECJ reviewing the principles applied by courts in the UK in relation to the granting of bail.

Paragraph 200

We ask the Government if it believes alternative arrangements could be made, where desirable, to enable transfer of bail between the UK and other EU countries, rather than opting back in to this EU measure.

In theory the UK Government could seek to open talks with other EU Member States to provide for bilateral or multilateral agreements but we are clear that rejoining this measure has clear benefits for British Citizens facing trial in other Member States.

Paragraphs 211, 212 and 213

As with most mechanisms for exchange of information between EU Member States this is an administrative measure which does not interfere with procedural or legal rules — there has been no need for implementing legislation. The Government's evidence suggests that the measure has increased the UK's ability to combat money laundering, which is often a transnational crime; that although alternative arrangements exist, these are likely to require further bilateral cooperation measures to be effective, which might reduce law enforcement capacity unless put in place quickly; and that relying on alternative arrangements may incur reputational risk and further financial expense.

However, we note that in evidence on the block opt out given to the House of Lords European Union Committee, the Association of Chief Police Officers said the following about the information exchange covered by this Council Decision if the UK were to opt out of the measure: "It is likely that this could maintained [sic] on a police to police basis or via the Swedish Framework Decision [Council Decision 2006/960/JHA]. We share this kind of information with many other non-EU states without any problem".

We ask the Government to confirm that opting back in to this EU measure could put at least some activities of the UK FIU under the full jurisdiction of the Court of Justice, given Article 2 of the Decision in particular defining the tasks of an FIU.

The UK FIU plays an important role in gathering, analysing and disseminating information on money laundering. Its intelligence products are widely used by UK law enforcement agencies. The transnational nature of crime requires UK FIU to cooperate effectively with other FIUs.

Framework Decision 2000/642/JHA encourages cooperation between FIUs by setting standards on information sharing, and limiting the reasons under which an FIU may refuse to share information. We already have gateway provisions to allow the UK FIU to share intelligence with FIUs in other Member States. However, if we do not rejoin this measure, we may encounter greater difficulties in obtaining information from the FIUs of other Member States which do not possess such comprehensive domestic legislation.

The Government notes the view of the Association of Chief Police Officers and agrees that it may be possible for information sharing to continue on a police-to-police basis. However, taking that approach would leave the risk that some of the 27 Member States lack legislation to allow information sharing, would not limit the reasons other Member States could use to refuse to share information that the UK FIU seeks, and may entail the administrative costs and burdens mentioned above, because of the need to negotiate bilateral memoranda of understanding to replicate the provisions of the Framework Decision.

Relying on police-to-police cooperation would also risk depriving the UK of access to FIU.net, the ICT service that enables secure sharing of intelligence between participating FIUs in the EU. The UK FIU routinely uses FIU.net. Ceasing to use it would add to administrative burdens as administrative practices would have to be changed and other methods for the secure exchange of information relied upon.

The Government does not consider the Swedish Initiative to be a suitable substitute for Framework Decision 2000/642/JHA. Firstly, the Swedish Initiative does not contain the same provisions, setting different conditions under which Member States may refuse to share requested information.

Secondly, the Swedish Initiative applies to law enforcement authorities only. Whilst the UK FIU would fit within this definition, the FIUs of some other Member States may not. Framework Decision 2000/642/JHA applies to all FIUs regardless of whether they are administrative, law enforcement or judicial authorities. Relying on the Swedish Initiative may lead to some other Member States refusing to share information on the grounds that their FIUs are administrative or judicial authorities.
Attempting to rely on the Swedish Initiative would also risk depriving the UK of access to FIU.net. For these reasons, relying on the Swedish Initiative would risk the effectiveness of our information exchange with other Member States.

The Third Anti-Money Laundering Directive contains provisions obliging Member States to establish an FIU, and ensure that suspicions of money laundering or terrorist financing are reported to the FIU. The Framework Decision governs information sharing between FIUs. The Third Anti-Money Laundering Directive is already subject to ECJ jurisdiction.

Paragraphs 229 and 230
We consider measures 69 and 73 together, as it is clear that the Swedish initiative is used in the UK primarily by the Asset Recovery Office for outgoing requests. The Government says that, should the UK not participate in this measure and push to use CARIN, other Member States may face difficulties as they prefer the Swedish Initiative. But in relation to this Decision the Government says that, were it to exercise the opt-out and not rejoin the measure, Member States would continue to exchange information and intelligence and cooperate with the UK in the pursuit of criminal finances. Without the benefit of further information these two statements appear contradictory. We ask the Government to provide a clearer and more detailed explanation of why it is in the national interest to opt into these two measures.

Any determination of whether it is in the national interest to opt back into the Swedish initiative (upon which the ARO Decision largely relies) should pay special attention to the fact that that measure obliges the provision of information and intelligence to the law enforcement authority of another Member State, upon that authority's request, for the purposes of a criminal investigation that authority is carrying out. This obligation is subject, under Article 10 of the Framework Decision, to a right to refuse to provide information where there are "factual reasons" to assume that it would "harm the essential national security interests of the requested Member State". If the UK opts back into the Swedish initiative, the extent of this obligation to provide information, and the protection afforded by Article 10, will ultimately be for the CJEU to determine.

The ARO measure (2007/845/JHA) sets time limits for the exchange of information between AROs, based on the provisions found in Article 4 of the Swedish Initiative. In cases where AROs in other Member States hold the requested information they must respond within just eight hours. The ability to secure information quickly from AROs to enable the prompt identification and tracing of the proceeds of crime can help UK law

enforcement and prosecutorial agencies both in the investigation of crime and in efforts to prevent the flight or dissipation of the proceeds of crime.

If the UK chooses not to rejoin this measure, we expect it would be possible to share information through other channels, for example, through police-to-police cooperation. However, in order to create mutual obligations to share information according to the timetable set by the Swedish Initiative, we would have to secure bilateral memoranda of understanding replicating its provisions with all 27 Member States. Taking this approach would create unnecessary administrative burdens and may harm the UK's reputation for cooperation to tackle cross-border crime. In addition, there is no guarantee that all Member States would agree to share information according to the timetable set out in the Swedish Initiative if the UK chose not to re-join the ARO measure.

Article 10 of the Swedish Initiative must be read in its entirety, together with Article 3. There are considerable safeguards contained in these provisions which give Member States and the relevant authorities a considerable margin of discretion as to when and what information can be withheld.

Firstly, the safeguards are as strict as those which apply internally within the UK, including any judicial controls (Articles 3(3) and (4) and 10(1) and (3). Secondly, investigations, operations and the safety of individuals are reasons to withhold information alongside national security interests (Article 10(1)(b)). Thirdly, disproportionate or irrelevant requests along with requests which relate to offences punishable by prison sentences of one year or less can be refused (Article 10(1)(c) and (2)). Fourthly, the rights of third parties are respected under the rule of specialty (Article 3(5)). Fifthly, as the Committee points out elsewhere in your report, Member States exclusive competence in relation to maintaining law and order and safeguarding national and internal security is clear from Article 4(2) TEU and Articles 72 TFEU. Sixthly, Article 346(a) TFEU states that '*no Member State shall be obliged to supply information the disclosure of which it considers contrary to the essential interests of its security*'. Finally, under Article 276 TFEU, the ECJ expressly has no jurisdiction to review (amongst other things) '*...the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security*'.

Paragraph 238

From the Government's evidence we conclude that the European Image Archiving System database is a useful tool used regularly by UK agencies for the detection of falsified documents; that alternative arrangements would allow the UK to exchange documents with other Member States; but that without an equivalent database such arrangements would be time-consuming to establish and less comprehensive in scope.

The Government agrees with the Committee that the European Image Archiving System is a useful tool and welcomes the support of the Committee for rejoining this measure.

Paragraphs 256 and 257

From the Government's evidence, and the evidence given by enforcement and prosecution authorities to the House of Lords opt-out inquiry, we conclude that these measures have allowed more information to be obtained on EU offenders in the UK and on UK nationals convicted elsewhere in the EU, which has obvious benefits for bail hearings, prosecutions and probation and prison services. But we ask the Government to say whether, were Member States to comply with Article 22 of the 1959 Council of Europe Convention by sending an annual list to concerned Member States of non-nationals who had been convicted, and by responding to information requests, the previous regime would have provided an effective mechanism to achieve the same ends as these EU measures.

We note the Government says the UK "expects to designate" the existing Central Authority as the competent authority under the Framework Decision. We ask the Government to clarify whether both measures are fully implemented in the UK; and if not, when they will be.

We do not think that full implementation of the regime in the 1959 convention would achieve the same aims as are met by the ECRIS regime set out in 2009/315/JHA and 2009/316/JHA. We think that a return to the regime in the 1959 Convention would lead to fewer notifications being sent by Member States and many fewer requests being made by Member States, including the UK.

It would also mean a substantially slower system. A conviction notification concerning a British national now reaches the UK shortly after conviction. Providing a list up to a year in arrears would mean that the authorities in the UK would not have the foreign conviction available to them, and so would not be able to take it into account in bail, bad character and sentencing decisions. The information would also not be available for disclosures issued by any of the three Disclosure Agencies.

While the 1959 Convention did produce a number of notifications from some countries there were hardly any requests made. This suggests that the regime did not work and so needed reform. Using a reconstituted 1959 Convention to increase the number of requests would be very difficult. Letters of Requests would still have to be made by Judicial Authorities - in England and Wales by the Crown Prosecution Service, by a small number of other state prosecutors or by a court. They are printed, translated, documents sent by post to other Prosecutors or to courts. There is no timescale by which replies should be sent. In contrast the current regime involves short messages being sent electronically between central authorities which hold the necessary information and must reply in ten days. We make about 15,000 outgoing requests a year, transferring this to the CPS would be a huge burden on them. In practice, we would expect many fewer requests to be made.

The current Central Authority sits within the ACPO (Association of Chief Police Officers) Criminal Records Office. The Government is currently reviewing the activities of the ACPO Criminal Records Office. Thus it is possible that, in future, the Central Authority will remain doing its current work while sitting within a different organisation.

The UK operates both instruments using Common Law powers to exchange information if doing so is necessary for the prevention and detection of crime. We are examining whether there is a legislative need to provide additional legal certainty in this area.

Paragraph 265
The Lisbon Treaty brought data processing in what was the Third Pillar into the scope of the Community method (QMV, co-decision and the jurisdiction of the Commission and Court of Justice.) Accordingly, the draft Directive which will replace this measure is based on Article 16 TFEU, rather than within the JHA provisions of Title V TFEU. The UK no longer has a right to opt out of the replacement Directive. Pending the conclusion of the negotiations on the draft Directive it would lead to legal uncertainty in the processing of personal data were the UK to opt-out of this Framework Decision. We ask the Government to provide a specific assessment of the potential effects of full Court of Justice jurisdiction on the Framework Decision.

A fully functional law enforcement and criminal justice system within the EU needs to share data in an appropriate manner to protect the public and the rights of individuals. The Data Protection Framework Decision 2008 ensures UK citizens' data is protected while simultaneously allowing for the necessary data sharing on criminal matters with EU partners. In evidence given by the Association of Chief Police Officers at the inquiry undertaken by the House of Lords European Union Committee they said that "*the UK needs to remain a part of this measure. The reason is that other states may not agree to share such data with any other state under these provisions unless they remain within it*".

On 25 January 2012 the Commission published a proposal for a new Directive that will repeal and replace the Framework Decision. Negotiations on the Directive are ongoing. The Commission is aiming for the Directive to be adopted by May 2014. The Directive will be subject to ECJ jurisdiction

The Government concluded that it was in the UK interest to participate in the proposed Directive in order to ensure that vital data sharing for law enforcement purposes with EU partners would not be compromised. Moreover, the effect of Article 6a of the UK's opt-in Protocol (Protocol 21) means that the Directive will not apply to internal processing of data as far as the UK is concerned (e.g. processing between the Metropolitan Police and West Midlands Police). It will only apply to cross-border data processing. In that sense the application of the Directive will mirror the application of the Framework Decision, as far as the UK is concerned, because the Framework

Decision only applies to cross-border processing. The UK is also negotiating to remove internal processing from the scope of the Directive for all Member States. The Government does not consider that the Commission has provided sufficient evidence to justify including internal processing in the scope of the Directive.

Paragraph 274
From the Government's evidence, it concludes that CIS plays a valuable role in combating customs offences and that there is no alternative that is as effective. We ask the Government to say what mechanisms UK customs law enforcement services use to share information with their counterparts in non-EU States, and how well these mechanisms work.

Electronic sharing of sensitive customs criminal data outside the EU is not commonplace. Information-sharing on specific cases with non-EU states is generally through letters of request or Interpol. Interpol have their own information-sharing arrangements and some customs information is shared via these routes, facilitated by the NCA. These are not as effective as CIS.

The World Customs Organisation (WCO) also collects and analyses data on smuggling and fraud trends. As part of this the UK supplies the WCO with trend data (not personal data) such as seizure statistics on drugs smuggling. Whilst the WCO data on customs smuggling and fraud trends is a helpful input to understanding the bigger picture on these issues it cannot be compared in operational terms to CIS.

Paragraph 281
The Government has provided no evidence of why it is in the national interest to opt back into this measure, particularly because the objectives appear to be achievable without it, and because the Government has decided not to opt back into the Council Decision on investigation and prosecution of genocide, crimes against humanity and war crimes (measure 51).

Unlike the wide-ranging nature of the European Judicial Network (EJN) the Genocide Network has a focused remit and brings together Contact Points with specific expertise in an important and specialised area of law. Our decision to remain part of it is an example of the UK's commitment to investigating the most heinous crimes of genocide, crimes against humanity and war crimes without placing any burdensome obligations on the UK in regard to how such crimes should be investigated or prosecuted.

In contrast the Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes has very little practical value to those investigating and prosecuting these crimes and places burdensome and impractical obligations on Member States in terms of information sharing.

Paragraph 291
It is unclear from the Government's evidence how necessary it considers these measures to be, and what the impact would be for controlling football match violence of not opting back into these measures. We ask it to provide this information.

Controlling the impact of violence and disorder at football matches with an international dimension would be more difficult if the UK did not rejoin this measure. This is because, as Command Paper 8671 notes, the measure *'establishes a dedicated channel to facilitate policy cooperation and share intelligence on football supporters so that travelling fans are policed on their behaviour not their reputation'*.

Command Paper 8671 also noted that, *'the measure has improved the functioning and effectiveness of the National Football Information Points'* (NFIP). Not opting back in would make things more difficult at an operational level because we would be reliant on the goodwill of the other Member States to continue to share information with us, and to accept our information. Our relationships with Russia and Ukraine serve as good examples of the increased difficulty when reliant solely on goodwill. Whilst the UK continues to share information with their authorities when UK clubs (or national teams) participate in UEFA or FIFA competitions against their teams the lack of structures and obligations makes it more difficult to identify the correct agency with which to engage and means that, generally, less information of a poorer quality is exchanged.

For example, when Swansea City recently played Kuban Krasnodor in the Europa League the Russian police did not make the relevant invitation for a UK police deployment. This meant that South Wales Police could not travel to Russia to support the local policing operation and, crucially, provide reassurance to UK citizens travelling in support of their team.

Not rejoining these measures could also undermine the UK's ability to influence both the operational and strategic direction of a European-wide policy on tackling football disorder. For example, we would lose influence over the future development of the Europe-wide NFIP website for sharing information. This is essential for planning football policing operations to ensure an appropriate level and style of policing is adopted. This is in the interests of the over 100,000 UK citizens who travel overseas to support their teams each season.

Paragraph 300
Although this is an administrative measure with little national impact, we nonetheless would have expected the Government to provide far more evidence on why it thinks the UK should opt back into this measure, and what it thinks would happen if it did not. We look forward to receiving this information.

The peer evaluation mechanism enables Member States to evaluate the application and implementation, by each other, of instruments designed to combat international organised crime.

The Government have always stressed that there should be a proper evaluation before any consideration of future legislative proposals. Indeed the Security Minister has articulated the UK Government position on evaluation at JHA Council meetings and on 29 October during the Eurojust Regulation opt-in debate on the floor of the House said:

> *"Fundamentally, we do not consider that the new Eurojust proposal is even needed at this time. The current legislation is still undergoing a peer evaluation which will not complete until next year, and the Commission has not put forward a convincing case as to why the new proposal is needed".*

The outcomes of such peer reviews have resulted in measures that have attempted to improve the operation of the EAW. For example, the fourth round of mutual evaluations[12] considered the use of the EAW for trivial offences. This directly led to the development and publication of the revised EAW handbook in 2010/11 which sought to address the proportionality problem. The UK was central to the development of the revised handbook, and although the impact has not been as desired, these are issues the UK continues to lead on at the EU level, for example in the context of the European Parliament's 'own initiative' report.

Paragraph 308
We ask the Government to provide an evaluation of the usefulness of CEPOL to date for national police forces, without which we are unable to assess the validity of the Government's reasons for opting back into this Decision. We also ask for an update on the negotiations on the future structure and location of CEPOL.

The Government believes that in its current form the UK benefits from its participation in CEPOL. ACPO agrees with the Government and has stated publically that:

> *"Given the global nature of crime any facility that assists in training and the sharing of experiences and ideas across the EU is intrinsically a good thing and a positive force in UK policing."*

We would also note the high level of attendance by UK officers at courses run by CEPOL over the last six years;

2007: 90
2008: 111
2009: 115
2010: 105
2011: 71

12 8302/4/09.

2012: 108

The UK has played an important role in focusing CEPOL on areas that meet our national interests. Training covers areas such as Security Sector Reform, European Action Service, and Capability and Capacity Building in West Africa to tackle organised criminality aligned to the Serious Organised Crime Threat Assessment and EU Policy Cycle.

CEPOL activity is relevant for strengthening operational and managerial knowledge but also very relevant for strengthening police cooperation. Police officers and trainers from Member States have access to a CEPOL run Exchange Programme, which is entirely free for the UK at point of access. It allows senior officers from across the EU a chance to spend time with colleagues in other Member States to try jointly to solve common issues. There is an operational focus to tackling cross border issues and in EU immigrant communities that have settled in the UK.

At the Justice and Home Affairs Council on 8 October Member States agreed by common accord to support Hungary's bid to host the European Police College (CEPOL). On 13 November a Member State Initiative (MSI) was submitted to the Council formally proposing the change. It is sponsored by all the EU Member States except the UK, Ireland and Denmark.

Paragraph 315
The Government's evidence gives reasons for both opting back in and opting out, without expressing a preference. This again is an example of the deficiency of reasoning that characterises much of Command Paper 8671. We expect the Government to provide persuasive evidence of why the UK should opt back into this Decision, given that the consequences of not doing so seem of little practical effect. We also ask the Government to explain the relationship between this Decision and Directive 2011/92/EU on combating the sexual abuse and sexual exploitation of children and child pornography, to which the Government opted in post-Lisbon.

Tackling child pornography is a priority for the Government. Child pornography is a uniquely horrific crime, in that not only is the victim abused, but that abuse is reinforced and perpetuated by the sharing of the images of it. The Prime Minister's speech on 22 July made clear that it is essential that we are more active in tackling online images of child sexual abuse, and that every sector has a part to play in this.

Following this speech, the Government has initiated a major programme of work, both itself and with the internet industry, to prevent access to these images, to remove those images, and to identify the offenders who create and share them. The internet summit on 18 November, led by the Prime Minister, set out the work that has been done so far, including search engines changing their algorithms to make it harder for these images to be accessed. The Government reiterated its commitment to use the new National Crime

Agency – with over 4,000 dedicated staff – to provide a step-change in our enforcement action to bring paedophiles to justice.

The Council Decision supports this work through driving Member States to have appropriate mechanisms in place to allow the public and industry to report these images; to provide specialist law enforcement units to tackle the perpetrators and safeguard the victims; and to work with industry to restrict access to the images online. In particular, the ability for law enforcement to operate quickly at international level is essential. In this regard we would note the duty placed on Member States by Article 2(1) of this Council Decision to ensure that 'the speediest possible cooperation' happens in relation to cooperation on such crimes.

The Council Decision focuses on ensuring that where child pornography is identified online there are structures in place for it to be reported, that there are law enforcement units capable of investigating such offences, that national units work with Europol and with international counterparts, and that there is cooperation with industry to eliminate child pornography from the internet. The Directive focuses on ensuring that Member States treat certain activities associated with child pornography as criminal offences and that they have the legal capability to provide for the removal of criminal content at source where hosted in their jurisdiction, and to endeavour to block content hosted outside if it cannot be removed.

Paragraphs 323 and 324
As with our comments above, the Government's reasons for wishing to opt back into this Decision are lacking. In the absence of providing them, we conclude there is little evidence to recommend the Government's approach.

This Decision makes reference to the Prüm Decisions, which the Government does not intend to rejoin. We ask the Government whether this raises a doubt about the coherence of the measures it seeks to rejoin with the measures it does not.

As part of the Police Chiefs Task Force in 2001 the UK was a founding member of the ATLAS network of special interventions units. Currently, the ATLAS network helps to coordinate the meetings, training, exchange visits and sharing of tactical information foreseen by this measure. Membership of ATLAS allows the UK Counter Terrorism Specialist Firearms Officer network the chance to benchmark and peer compare capability, tactics, kit and training with EU police counterparts. The police have made it clear to us that they very much value ATLAS and the Government would not wish to put at risk its membership of this important network.

The Government does not believe that there is an inconsistency in rejoining this measure and not rejoining Prüm. Recital 5 in the *chapeau* of the Decision specifically states that it does not apply to the same situations as the Prüm decision.

Paragraph 330
We conclude the Secretariat is necessary if the UK is to continue to be bound by the Europol Convention MoJ measure Data Protection secretariat

The Government agrees with the Committee that we should rejoin the Data Protection Secretariat.

Paragraphs 353 and 361
We note from the evidence provided by the Government, and by the investigation agencies to the House of Lords opt-out inquiry, that in their view Article 40 of the Schengen Convention is a useful instrument for the UK's investigation of serious international crime. Although Article 40 is not the only way for UK requests for continued cross-border surveillance to be made, it appears to be the most effective. The ILOR route is often slow with significant time delays and the process does not cater well for ongoing surveillance, which is why Article 40 was introduced. There is a risk that if the UK opts out of Article 40, its ILOR requests will be deemed a lower priority than other Member States' requests. But we ask the Government to put the figure of 154 outbound requests and five inbound, which seems relatively few, in the context of the number of requests made or received between the UK and non-EU Member States in relation to cross-border surveillance over the same period. We also ask that it provides us with a general assessment of how effectively such non-EU requests have operated.

Our comments on the previous measures apply equally to the Schengen handbook

Article 40 is a mechanism for police to police cooperation between Schengen States. There is no other international equivalent and we are not aware of any similar request being made to non-Schengen States.

If such a request were to be made to another State it would, most likely, need to be done by way of an International Letter of Request (ILOR). Generally speaking a UK – EU operation under Article 40 lasts less than 24 hours and certainly not more than 48 hours, so speed is of the essence. This is why it works well on a police to police basis.

However, an ILOR requires the involvement of a prosecutor in order to prepare a report briefing and compose the ILOR. This is a time consuming process and there is limited availability out of hours. The ILOR then needs to be properly transmitted with many States only accepting a hard copy. Consequently, this is not an attractive alternative and may explain the lack of non-Schengen requests.

Paragraph 369
From the evidence provided by the Government, and by the investigative agencies to the House of Lords inquiry, we conclude that the alerts generated by SIS II enable national authorities to locate missing or wanted persons considerably more quickly

than through bilateral requests. We also note the total spend on the UK joining SIS II to date is £83 million, with a further £24 million forecast.

The Government agrees that there will be considerable benefits to rejoining and connecting to SIS II.

Paragraphs 402, 403 and 404
We conclude from the evidence provided by the Government, and by investigation agencies to the House of Lords opt-out inquiry, that Europol makes a contribution to more effective police cooperation in the fight against cross border crime in the EU. We comment later in the Report on the Government's proposal not to rejoin seven associated measures on the grounds that UK participation is not necessary.

The existing Europol Decision contains various obligations on Member States, such as a requirement to "supply Europol on their own initiative with the information and intelligence necessary for it to carry out its tasks". The practical meaning of this obligation, and others, is open to interpretation, and if the UK opts back into the Europol Decision the CJEU will be the final arbiter of what the UK is required to do.

We have in mind that EU justice and home affairs measures "shall not affect the exercise of the responsibilities incumbent upon Member States with regard to the maintenance of law and order and the safeguarding of internal security" and that the Court of Justice has no jurisdiction to review the exercise of those responsibilities or "the validity or proportionality of operations carried out by the police or other law enforcement services of a Member State". We ask the Government to say whether it considers these Treaty safeguards to be a cast-iron guarantee that the Court of Justice will not adjudicate on any operations conducted by UK law enforcement agencies, or the laws governing such operations. We ask this in the context not just of Europol but also of all other cross-border cooperation measures which the Government is intending to rejoin; or, conversely, to explain where it thinks the Court's new jurisdiction might affect such operations.

The Government agrees with the Committee that Articles 4(2) TEU and 72 and 276 TFEU are important safeguards which provide that that the ECJ has no jurisdiction to review the validity or proportionality of operations carried out by the UK police or other law enforcement services. Should this ever come into question, the Government will rely on its Treaty rights. We have no reason to doubt that the ECJ will not respect the position of Member States under the Treaties.

Paragraphs 405 and 406
We ask the Government what assessment it has made of possibilities for maintaining cooperation with Europol without opting back into the Europol Decision. Europol has, for instance, cooperation agreements with various non-EU countries. The UK may, for example, be able to negotiate provisions in the new Europol Regulation that enable satisfactory cooperation with Europol, without the UK having to opt in to the

EU legislation founding that body and thereby subject itself to full CJEU jurisdiction with no ability to opt out again. Other Member States would have an interest in maintaining cooperation with the UK. If the Government has not made any such assessment, we ask it to do so as a matter of urgency and to provide the results to

We note that if the Government decides to opt into the revised Europol Regulation, the opt-in decision will be subject to the House's enhanced scrutiny procedures, which will include the House agreeing a Government motion in favour of opting in before the EU institutions are formally notified of the Government's decision

The Government has considered fully the possibility and feasibility of attempting to maintain existing co-operation with Europol without rejoining the current Council Decision. This includes consideration of whether or not limited participation with Europol along the lines of the operational cooperation which is permitted between the UK and Member States as a result of the Frontex Regulation would be appropriate.

The Government has concluded that there are clear benefits to maintaining full participation in the current Council Decision and that pursuing an alternative model would have a detrimental impact on our ability to tackle cross-border crime.

The UK's exclusion from having full participation with Frontex flows from its decision not to opt into the external borders part of Schengen acquis. The Frontex Regulation was nevertheless drafted in such a way to require Frontex to facilitate operational cooperation between the UK and Member States on a case by case basis (Article 12(1) of the Frontex Regulation).

The position in relation to Europol is different. The biggest difference is that the current Europol Decision does not contain an equivalent to Article 12(1) of the Frontex Regulation. Furthermore, the nature of Frontex lends itself much better to UK involvement on a case by case basis than the current Europol Decision does. Europol's role in facilitating information exchange requires Member States to be engaged with it constantly, uploading and receiving information on a day to day basis which Europol then draws together. It would not currently be practical for us to dip in and out of cooperation as we can with Frontex. Police forces have also been very clear that they would be very concerned if this, as is likely, led to a reduction in the flow of intelligence to the UK.

Equally, we do not consider that it is feasible to negotiate such a deal at this time. Member States have made it clear to us that if we wish to continue cooperating with them through Europol we must rejoin the current Council Decision. However, negotiations on the new Europol Regulation will require this issue to be considered further. This is because of the special position of Denmark under the Treaties. The Government has not opted in to the new Europol Regulation, but has committed to do so post-adoption provided Europol is not given the power to direct national law enforcement agencies to: initiate investigations; or share data that conflicts with national

security. Whilst we remain fully committed to achieving a successful outcome to negotiations we will, of course, need to identify possible alternative arrangements in the case that the final text remains unacceptable.

Parliament will be consulted in the usual way as regards any future opt-in decision.

Paragraph 422
We conclude from the evidence provided by the Government, and by prosecution authorities and the former President of Eurojust to the House of Lords opt-out inquiry, that Eurojust makes a contribution to more effective cooperation between Member State investigative authorities in the fight against cross border crime in the EU.

We agree that Eurojust, in its current form, allows for more effective cooperation between Member States.

Paragraphs 423–425
The current Eurojust Decision contains various obligations on Member States; they must, for instance, "ensure continuous and effective contribution to the achievement by Eurojust of its objectives". The practical meaning of this obligation, and others, is open to interpretation, and if the UK opts back in to the Eurojust Decision the Court of Justice will be the final arbiter of the requirements the UK must meet.

As with Europol, we ask the Government what assessment it has made of possibilities for maintaining cooperation with Eurojust without opting back in to the Eurojust Decision. Eurojust has, for instance, cooperation agreements with several non-EU countries. The UK may, for example, be able to negotiate provisions in the new Eurojust Regulation that enable satisfactory cooperation with Eurojust, without the UK having to opt in to the EU legislation founding that body and thereby subject itself to full CJEU jurisdiction with no ability to opt out again. Other Member States would have an interest in maintaining cooperation with the UK. If the Government has not made any such assessment, we ask it to do so as a matter of urgency and to provide the results to Parliament.

We note that the Government has decided not to opt into the revised Eurojust proposal, but will consider opting in after adoption.

The Government considers that its response provided on this issue in relation to Europol is equally valid here.

Paragraph 437
We conclude from the evidence provided by the Government, and by investigative authorities to the House of Lords opt-out inquiry, that Joint Investigation Teams can make a contribution to the fight against cross border crime in the EU.

The Government agrees that Joint Investigation Teams are a valuable tool in the fight against crime.

Paragraph 447

Naples II is used by HM Revenue and Customs and Border Force to share information about serious international customs offences on a daily basis. Some alternative options for co-operation exist, but these are less effective. We therefore conclude that this Convention is a useful instrument in the fight against these crimes. However, we ask the Government to explain in more detail how UK customs authorities cooperate with non-EU Member State authorities with the same intentions, and to provide us with an assessment of how effectively such exchanges of information work.

The Government agrees that Naples II is a useful instrument and that is why it is seeking to rejoin it.

There is no real multilateral equivalent of the Naples II Convention in force that allows for the same level of cooperation with non-EU States. Instead the UK must rely mainly on bilateral arrangements – the terms of which will vary - or EU Agreements with third countries, although most of the latter cover only non-criminal matters.

The other main method of information-sharing available for use with non-EU States is MLA. MLA requests are undertaken by issuing formal Letters of Request. It is not unusual for a request for evidence to take many months to gather and in some instances it has taken 18 months for information to be provided. A request under MLA can cover a request for any type of information, including criminal matters. The MLA mechanism is not designed for urgent requests- and intelligence-building exercises in the way that the Naples II Convention is used for customs cooperation between EU States. Cooperation with non-EU States is, therefore, less swift and less comprehensive than our cooperation with EU States.

Paragraph 451

The Government describes these measures variously as not in force (No. 119), defunct (Nos. 6 and 22), or no longer valid (No. 131). Whilst it is clear that the instruments remain part of the EU's justice and home affairs acquis until such time as they are formally repealed, we accept that none appears to be in use and that there is no reason for the UK to remain bound by them.

We agree that there is no need for the UK to remain bound by these measures.

Paragraph 456

Even if the Government is correct in its assessment that opting back into these measures is not necessary, we note that the substance of the commitments accepted by the UK by virtue of its participation in the original Accession Agreements would simply be carried over to a new Council Decision and so remain unaltered. We

conclude, therefore, that this could be described as an opt-out on a technicality and does not signify any lessening in the current level of UK participation in the Schengen acquis.

The Government notes the Committees finding in this respect and remains committed to rejoining the Schengen Convention and associated measures in a way that allows for cooperation with all participating States.

Paragraph 457
Given the technical nature of these measures, and their importance in paving the way to the establishment of the second generation Schengen Information System (SIS II), it is difficult to determine whether or not UK participation in some or all of them may be required until such time as SIS II becomes operational in the UK. It is clear, however, that these measures are ancillary to the Government's recommendation to opt back into Council Decision 2007/533/JHA establishing SIS II (No. 128) and, as a consequence, to participate in SIS II from the end of 2014. As indicated above, non-participation in these measures would not, in any event, signify any lessening in the current level of UK participation in the Schengen acquis.

The Government believes that it is only necessary to rejoin Council Decision 2007/533/JHA in order to be able to operate SIS II effectively.

Paragraph 458
The Schengen acquis on telecommunications (No. 116) is intended to establish the technical standards required to develop an interoperable cross-border digital radio system for police and customs services. As the UK has adopted the relevant standards, the Government considers that non-participation would have no operational impact, not least because "no equipment manufacturer has put in place the interfaces and technologies" to allow for seamless cross-border operations. We note the possible loss of UK influence in developing future technical standards but accept that the consequences of non-participation for the UK, at present, would appear to be minimal.

The Government agrees that it is not necessary to rejoin this measure. We would also note, in line with Command Paper 8671, that we have adopted the standards of Tetra and ETSI referred to in the Decision and that we have made as much progress as possible within the existing technology constraints to meet the requirements of the Decision. Work to develop the necessary technology will continue irrespective of the UK's participation in this measure.

Paragraph 459
The Schengen acquis on the payment of police informers (No. 118) takes the form of a set of common principles establishing non-binding guidelines for the payment of informers which are intended to serve as a benchmark for the development of similar national provisions, enhance cooperation between police forces and customs

authorities, and discourage "informer tourism" amongst those seeking the most favourable financial return. The guidelines are stated to be without prejudice to national provisions. The regulatory framework in the UK is set out in the Regulation of Investigatory Powers Act 2000 and the Regulation of Investigatory Powers (Scotland) Act 2000, with practical aspects concerning the management and payment of informers set out in ACPO guidelines. The Government considers that the existing national framework is adequate. As this measure takes the form of non-binding guidelines, we accept that the consequences of non-participation for the UK would appear to be minimal.

The Government continues to consider that the existing national framework is more than adequate and that we do not need to participate in this measure.

Paragraph 460

The final Schengen measure within this category concerns the secondment of police liaison officers to other Schengen States to provide advice and assistance on security matters at the external borders (No. 117). Each secondment must be based on a bilateral agreement. The Government notes that the measure establishes a non-binding framework for the reciprocal secondment of police liaison officers, but adds that "due to its nature and legal base, the UK does not actually participate." We note that this measure is not listed in the 2000 Council Decision establishing the elements of the Schengen acquis in which the UK participates and ask the Government to explain why it is included in the list of measures subject to the block opt-out.

This measure is included in the block opt-out because, under Article 10(1) of Protocol 36, all 'acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon' are subject to the transitional provisions on the powers of the Commission and the ECJ. The UK's rights under Article 10(4) of Protocol 36 bite on all those measures referred to in Article 10(1).

Paragraphs 464 and 465

However, this still leaves Council Decision 2009/968/JHA which sets out rules for the handling and protection of Europol information by Member States, requires them to use agreed classification levels, and to report any security breaches. The Council Decision also establishes a Security Committee, composed of representatives of Member States and Europol, to provide advice to Europol's Director and Management Board on security policy, including the application of Europol's Security Manual. Whilst it may be possible for the UK to comply with the requirements set out in Council Decision 2009/968/JHA without formally participating in it, not least because Article 10(2) of the Decision envisages that the protection of Europol information may be secured "by a variety of measures in accordance with national legislation and regulations", it is difficult to see how the UK could continue to be represented on the Security Committee. We therefore ask the Government to confirm that non-participation in this measure would remove

the legal base for UK representation on the Security Committee and to explain the legal, policy and operational implications of UK exclusion from the work of this Committee.

We raise two further concerns. First, the Government's Explanatory Memorandum does not consider whether UK participation in the 2009 Council Decision establishing Europol, but not in the seven associated measures, would satisfy the conditions set out in Article 10(5) of Protocol No. 36 on coherence and practical operability, particularly as the measures are integral to the way in which Europol operates. Nor does it consider the feasibility — political as well as legal — of the UK continuing to participate in Europol without being subject to the same obligations as other participating Member States. Greater clarity on these issues is essential, not least to safeguard against the possibility that participation in some or all of the measures could be imposed as a prior condition for UK participation in Europol itself.

We are clear that we support Europol on its current terms and will seek to rejoin the main Europol measure (2009/371/JHA).

We do not believe that we need to rejoin the associated measures to participate in Europol. These measures have no material impact on UK participation, or that of any other State, and they have no impact on our ability to cooperate with others through Europol. That will be the basis for our discussions with the Commission.

However, we have repeatedly acknowledged, including at the evidence session with the House of Lords European Union Committee, that the final package of measures will be subject to negotiations with the Commission Indeed the Home Secretary stated to that Committee that '*this is going to be a process of negotiation*' and '*of course we have yet to sit down with the European Commission and discuss the list of 35 measures*'.

The Security Committee is advisory. The key issue is for UK nationals to be on the Management Board and staff of Europol to ensure that UK best practice is already at the heart of the organisation. There would be nothing to prevent the Security Committee inviting a representative of the UK to participate in its meeting.

Paragraph 466

Second, we note that a new draft Europol Regulation has been proposed which, if adopted, would repeal and replace the 2009 Decision establishing Europol and many, if not all, of the seven associated measures which the Government does not propose to rejoin. The Government has expressed its intention to opt in once the draft Regulation has been adopted, provided it has been amended to reflect the UK's negotiating objectives. It is generally accepted that the new Regulation will not have been adopted or entered into force by 1 December 2014 when the UK's block opt-out will take effect. As a result, the 2009 Council Decision will continue to apply after 1 December 2014, as will, for Member States other than the UK, the seven associated

measures. Given that the Government has made clear that it does not intend to rejoin these measures, we seek an assurance that they will not be re-introduced "by the back door" in the form of transitional measures to bridge the gap between the block opt-out taking effect and the new Europol Regulation entering into force.

Article 78 of the draft Europol Regulation provides that, "*all legislative measures implementing [the Europol Council Decision] are repealed from the date of application of this Regulation*".

This does not make entirely clear which of the seven Europol implementing measures are considered "legislative", and thus subject to repeal. We are pressing for this to be made clear on the face of the Europol Regulation itself.

Paragraph 467
Joint Action 96/698/JHA (No. 4) establishes guidelines for the development of national Memoranda of Understanding (MoUs) between customs authorities and businesses to combat drug trafficking. These are intended to strengthen cooperation and may include, for example, the provision of advance cargo or passenger data. The Government considers that the UK is compliant with the Joint Action, even though it does not require any domestic implementing legislation. It notes that MoUs have been used to support customs controls in the UK for an extended period of time and would continue, whether or not the UK participates in the Joint Action. The Joint Action is intended to encourage all Member States to establish Memoranda of Understanding in line with best practice at international level. We accept that the consequences of non-participation for the UK would appear to be minimal.

The Government agrees that there is no need to rejoin this measure.

Paragraph 475
Until replacement measures have been formally adopted, it is impossible to determine with certainty whether they will repeal and replace all, or part, of the pre-Lisbon measures. We note that the European Investigation Order is expected to replace in its entirety the European Evidence Warrant (No. 91) but it is still unclear whether it will replace all, or only part, of the EU Convention and Protocol on Mutual Legal Assistance in criminal matters (Nos. 25 and 32). Similar uncertainty attaches to the Joint Action on good practice in mutual legal assistance (No. 16) and the Schengen measure on judicial cooperation in combating drug trafficking (No. 112), which both concern the handling of requests for mutual legal assistance, and to the Council Decision on the transmission of samples of controlled substances (No. 30). It is essential that Parliament's assessment of the measures which the UK should seek to rejoin is based on a full understanding of the impact that significant post-Lisbon measures, such as the European Investigation Order, will have on pre-Lisbon measures subject to the block opt-out. We ask the Government to clarify at the earliest opportunity the scope of the European Investigation Order, particularly in

relation to existing mutual legal assistance instruments, in light of ongoing negotiations between the Council, Commission and European Parliament.

According to Article 29 of the EIO the following five pre-Lisbon measures will be replaced, either in full or in part, as between participating Member States:

- MLAC;
- Protocol to the MLAC;
- Freezing Orders Framework Decision;
- European Evidence Warrant; and
- Articles 48-52 of the Schengen Convention.

All the measures listed are currently subject to the 2014 decision. Mark Harper's letter of 16 December 2013 said;

> *"You also requested an explanation of how the adoption of the EIO will affect the MLA measures which are subject to the 2014 decision. At this time it is not possible to give a definitive answer as discussions on this technical issue are still ongoing. This is primarily due to the position of Denmark and Ireland, and we hope to provide a more detailed explanation–in response to your report of 6 November on the 2014 decision, when the situation should be clearer."*

Although the text of Article 29 has been agreed, there still remains uncertainty about the extent that the EIO will repeal or replace the listed measures as between participating States (i.e. including the UK) and Denmark and Ireland. We are actively participating in the ongoing discussions on this complex issue, but do not now expect it be resolved until early next year. As soon as there is a common understanding of this matter we will update you.

Paragraph 476

Even where a replacement measure has already been adopted, Member States may not be required to transpose it into national law until after 1 December 2014. For example, the Directive on attacks against information systems, although formally adopted in July 2013, envisages that transposition will be completed by September 2015. For those replacement measures which have not yet been adopted, notably the European Investigation Order, there is even greater uncertainty, not least because European Parliament elections in May 2014 may delay the legislative process, potentially creating an even greater risk of a legislative or operational gap arising between an existing measure ceasing to apply to the UK and the replacement measure being fully implemented. The Government's response to our Report should set out the action that the Government intends to take to avoid or mitigate the risk of a legislative or operational gap arising between an existing measure ceasing to apply to the UK on 1 December 2014 and a replacement measure taking effect.

The Government is cognisant of the need to avoid an operational gap developing between an old measure ceasing to apply to the UK and a new measure becoming

operational. Where such risks arise the Government conducts a full assessment of the risks and looks at how best these can be mitigated. In the case of the EIO we believe that falling back on the 1959 Convention will allow such risk to be mitigated.

In future cases, including after 1 December 2014, the Government will prioritise the negotiation of the Articles in the new measure that look at the transitional period and aim to secure drafting that provides legal clarity for practitioners.

Paragraph 480
The Government's recommendation to opt out of 10 measures which it expects will be repealed and replaced by new post-Lisbon measures in which the UK has chosen to participate will have a particular impact on Denmark, since its cooperation with other Member States in the police and criminal justice field will continue to be based on existing pre-Lisbon measures. We are disappointed that the Government's Explanatory Memorandum does not provide a fuller, comparative assessment of the differences in the Mutual Legal Assistance arrangements under the existing EU Convention and Protocol and the Council of Europe alternative, given the importance of cooperation in this area. We ask the Government to do so in its Response to our Report.

From 1 December 2014 the UK basis for MLA with Denmark will be the relevant Council of Europe instruments and any Schengen or EU measures we have opted back into.

All Member States have ratified and brought into force the 1959 Convention and the 1st Additional Protocol. Croatia, Greece, Italy and Ireland have not implemented the MLAC and these four (plus Estonia) have not fully implemented the Protocol to the MLAC. Our current MLA relationship with these countries is based on the 1959 Convention (and it's Protocols as appropriate). This has posed no practical difficulties and there is no evidence of the UK providing or receiving a different level of service, in MLA terms, with these countries.

The principal benefit of the MLAC over the 1959 Convention (and the 1st Additional Protocol) is the provision for Joint Investigations Teams (JITs; Article 13). There is an almost identical provision for JITs in the 2nd Additional Protocol to the 1959 Convention (Article 20), although to date, only 17 EU Member States have brought the 2nd Additional Protocol into force (including UK and Denmark). The importance of being able to form JITs with other Member States is recognised and that is why the Government is seeking to rejoin the JIT measure (number 38 on the list). This measure is applicable in all Member States and provides the broadest coverage in this respect.

The MLAC includes specific provisions on the interception of telecommunications (Articles 17-22) and the Protocol includes a specific provision on account monitoring (Article 3) of the Protocol. There are no equivalent specific provisions in the 1959 Convention or its Protocols. However, these provisions are rarely used (for instance,

according to UK Central Authority records, there have been fewer than 10 incoming requests for account monitoring orders and fewer than 10 requests for intercept of communications). Article 1 of the 1959 Convention states that the contracting parties undertake to afford 'the widest measure of mutual assistance'. It is therefore a wide ranging instrument which provides, and will continue to provide, a basis for MLA even, in some cases, where there is no explicit provision for a particular type of investigative measure.

Paragraph 484

We accept that the risk of infraction is particularly acute in relation to the Prüm Decisions, given the significant delay before the UK would be in a position to implement them in full, and that the Government's pragmatic approach is justified in this case. The Government's decision not to rejoin the Prüm Decisions with effect from 1 December 2014 does not, however, prevent the Government from doing so at a later stage. We note that significant investment will be required to implement Prüm in full, and that the Government has succeeded in securing EU funding to take forward work on the DNA elements. Although the Government has stated that its acceptance of funding should not be taken as an indication that it intends to opt back into Prüm, we think that a clearer statement of its intentions regarding future UK participation in Prüm is warranted.

The EU funded work on the DNA elements of Prüm, and other considerations by the Government, is designed to give the next Government a clear set of options on whether or not it should seek to rejoin Prüm. The work will look at the cost of implementing Prüm as well as the operational benefits that would result from being able to check the DNA and fingerprint databases of other EU countries and whether they would benefit from accessing DNA and fingerprints held in the UK, which will include DNA and fingerprints of foreign nationals. It will also look at whether there is operational benefit to the UK being made aware, virtually instantly, of vehicle registration details of EU registered cars being driven on UK roads. Our work will also consider the civil liberties implications of such data sharing in all three Prüm categories.

Paragraphs 494, 495, 496, 497 and 550

The Government's Explanatory Memoranda on all of the minimum standards measures indicate that UK law meets or exceeds the minimum requirements and would remain in place, even if the Government were to decide not to opt back into them. In some cases, they highlight a "reputational risk" if the UK were to opt out, on the grounds that opting-out might be perceived as a lessening of the UK's commitment to combat serious and organised crime or to tackle hate crime. Given the serious nature of the criminal offences covered by these measures, it is unclear why the reputational risk associated with opting-out is considered more significant for some than others.

We infer from the statements made by the Home and Justice Secretaries to Parliament in July, and their oral evidence to this Committee on 10 October, that the

Government's recommendation to opt out en masse of all of these minimum standards measures is based on the principle that substantive criminal laws and penalties should not be "imposed" by Brussels but should be determined by the UK. The Explanatory Memoranda also suggest that opting out offers a pragmatic solution, given that the Government does not intend to depart from EU minimum standards by repealing existing domestic legislation, that other Member States will continue to remain bound by the measures, and that the deterrent effect should therefore remain broadly the same in all criminal jurisdictions across the European Union.

Whilst we accept that the practical impact of opting out of this set of pre-Lisbon measures is likely to be minimal, the Government's approach raises a broader issue about the basis for future UK cooperation with EU partners on criminal law matters. Opting out might suggest that the Government intends voluntarily to comply with minimum standards in EU criminal law without being bound to do so or to accept the jurisdiction of the Court of Justice. Yet this is difficult to reconcile with the Government's decision to opt into post-Lisbon Directives establishing minimum standards and penalties on cybercrime and trafficking in human beings, presumably because it perceives some benefit in shaping the content of EU criminal law or, as the Government's Explanatory Memorandum on one of the pre-Lisbon measures indicates, using EU law as a means of assisting with "EU-wide enforcement of UK law".

We raised this issue with the Home and Justice Secretaries during their evidence session, in an attempt to establish whether the Government draws a distinction, as a matter of principle, between retrospectively opting out of measures which have already been implemented by the UK, but opting in prospectively to draft EU legislation establishing minimum standards for substantive criminal law matters. Both suggested, in the case of human trafficking, that it was "such a transnational issue" as to warrant UK participation. We trust that the Government's response to our Report will provide a more detailed explanation of how the decision of principle taken by the Government in relation to these pre-Lisbon minimum standards measures will affect its approach to similar post-Lisbon measures.

The Home Secretary's Statement to the House on 9 July indicated that the Government's block opt-out decision would be based on "reasons of principle, policy and pragmatism" but these concepts can be slippery and difficult to apply in practice. Should the Government's decision to opt out of pre-Lisbon EU measures establishing minimum standards and penalties in criminal law, or EU-wide control measures for certain psychoactive substances, be considered a matter of principle or an example of pragmatism? The statement by the Justice Secretary that "we do not want courts across Europe to be told by Brussels the minimum standards that should apply to the sentences they impose", or by the Home Secretary that it is "not for Europe to impose minimum standards on our police and criminal justice system", would suggest that a question of principle is at stake. Yet this principle is difficult to

reconcile with the Government's decision to opt into post-Lisbon EU measures on human trafficking, cybercrime, sexual exploitation of children and child pornography, and victims' rights which establish minimum standards and penalties, or to participate in post-Lisbon EU drug control measures on new psychoactive substances which are already subject to control under domestic UK legislation. If the block opt-out decision is indeed intended to draw a line in the sand, demarcating areas in which the UK will no longer be bound by EU norms and controls, it is a difficult line to discern (see paragraphs 495 to 497 and 508).

We are very clear that there is no need to remain bound by minimum standard measures and that, in general, Parliament should have the final say on the criminal law of this country. That continues to be our starting position.

Every post-Lisbon measure is considered on a case-by-case basis with a collective Government decision made on whether or not to participate in individual measures. This follows consultation with Parliament. We would note that the House of Commons voted to support the Government decision to opt in post-adoption to the human trafficking measure.

Paragraph 500

Opting out of the Convention would remove the existing legal base for mutual recognition arrangements with Ireland, necessitate the negotiation of a new bilateral agreement, and require changes to domestic legislation. Rejoining the Convention would have cost implications, which the Government estimates at £31 million over ten years, if all Member States were to ratify it, but there would also be potential road safety benefits. We assume that the Government sees some value in establishing alternative bilateral arrangements with Ireland to give effect to the mutual recognition of driving disqualifications, given the flow of people and traffic between the UK and Ireland. We would welcome a clearer indication of the feasibility of establishing such arrangements by 1 December 2014.

We note the comments from the Committee about the potential benefits of this measure in supporting cooperation with the Republic of Ireland. As we have said throughout, the impact of the common land border has been an important consideration in coming to a view on the measures we will seek to rejoin. We agree with the Committee that the Government should continue to take account of the common land border and can confirm we are doing so.

Nevertheless, the Government does not accept that there is a need for us to rejoin this measure, with the accompanying risk of it becoming subject to full ECJ jurisdiction in the future. The Government notes that Command Paper 8671 states that rejoining this measure, should it be fully implemented, carries the risk of *'ten-year costs of £31 million'* but notes that the benefits are *'not easily quantifiable'*.

As your report finds, the Convention's value to the UK is primarily concerned with underpinning cooperation with the Republic of Ireland. Consequently, we believe that this is an example of where a separate bilateral agreement will be a suitable alternative to the current arrangements. We have had initial discussions about establishing a bilateral arrangement with Ireland in this area and hope to conclude a suitable agreement ahead of the expiry of the transitional period on 1 December 2014. Home Office Ministers are liaising closely with Ministerial counterparts in the Department of Transport and we are hopeful that we can make swift progress on this matter. The Government will report back on progress in due course.

Paragraph 503

Whilst we are grateful for the Justice Secretary's oral explanation, at our evidence session on 10 October 2013, of the Government's reasons for not opting into the Framework Decision on the mutual recognition of judgments and probation decisions (No. 88), it serves to underline the inadequacies of the Government's Explanatory Memorandum which merely alludes to "a lack of clear understanding about how this measure will operate in practice." As we have stated earlier in our Report, the basis on which the Government has assessed the national interest in each case must be transparent and open to scrutiny by Parliament. The Explanatory Memoranda constitute the Government's formal evidence to Parliament and should provide sufficient information to enable Parliament to weigh the risks and benefits of participation. Given that the Government does not intend to rejoin the Framework Decision relating to probation orders, we ask whether it considers that a 1964 Council of Europe Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders offers an alternative basis for cooperation and, if so, how likely the UK and other Member States are to sign and ratify it.

The 1964 Council of Europe Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders does not deal with either community sentences or post-custodial licence, but only deferred and suspended sentences. Therefore we do not consider it as an alternative means of achieving the same ends as the Framework Decision and the UK has no plans to sign or ratify it at this stage. We are not aware of this Convention having been widely used to date and we understand that only 13 EU Member States have ratified and that a further four have signed it but not ratified it. We do not know if other EU Member States are planning to sign or ratify this in the future.

Paragraph 504

Framework Decision 2009/905/JHA (No. 99) requires forensic laboratories to be accredited to a common international standard (set out in EN ISO/IEC 17025) in order to ensure the reliability and validity of their activities and establish a legal base for the mutual recognition of the results. It sets a compliance deadline of 30 November 2013 for DNA profiles and 30 November 2015 for dactyloscopic (fingerprint) data. The Government is confident that UK laboratories can meet the standard set out in the Framework Decision without participating in it, whilst acknowledging its broader contribution in driving up standards elsewhere. In its

recent Report on Forensic Science, the Science and Technology Committee underlined the benefit of accreditation as a means of ensuring compliance with quality standards and urged the Government to consider the consequences of not opting back into the Framework Decision. We would add that quality assurance in this area is of particular importance in the context of cross-border police investigations in order to ensure that forensic evidence obtained in one Member State and used in court proceedings in another Member State is recognised as being reliable. We ask the Government to tell us how soon UK forensic laboratories will be in a position to comply with the common international standard set out in the Framework Decision (even though they will no longer be under a legal obligation to do so) and whether it is likely to be within the timescales envisaged.

UK Forensic Labs that produce DNA profiles have been accredited to ISO 17025 for many years now and, indeed, cannot load DNA profiles to the DNA database without such accreditation.

Paragraph 508

As the psychoactive substances subject to EU-wide control measures are already controlled substances under domestic legislation, and are likely to remain so regardless of EU law, we accept that the public health implications of opting out of Council Decisions 1999/615/JHA, 2002/188/JHA, 2003/847/JHA, 2008/206/JHA (Nos. 20, 36, 50 and 76) will be minimal. We note that a decision to opt out of the parent legislation — Council Decision 2005/387/JHA (No. 62) — would, however, remove the possibility for the UK to participate in the existing rapid information exchange mechanism and in any post-Lisbon EU-wide control measures based on the 2005 Decision. Given the prevalence of internet purchasing and the ease with which new psychoactive substances can be marketed and sold across borders, we ask the Government to explain what other channels it intends to use to "influence EU and Member States' legal responses" to the emergence of new psychoactive substances.

The UK has one of the most extensive legal responses to new psychoactive substances (NPS) in the EU. It is our intention to continue to provide information, including information on harms and prevalence as well as the actions the UK takes on drug control, to the European Monitoring Centre for Drug and Drug Addiction and the EU Commission.

As well as bilateral exchanges, there are also a number of channels through which we inform the EU and Member States of the UK's response to new psychoactive substances and look to influence. These include the Horizontal Drugs Group which coordinates EU drugs policy, the network of Member States' legal correspondents and the Synthetic Drugs EMPACT project under the EU Policy Cycle on Organised Crime which is designed to build operational collaboration on Organised Crime priorities amongst EU Member States and other law enforcement agencies.

The UN's Early Warning Advisory, launched this year, is another mechanism through which we share information on NPS.

Paragraph 513
We accept that these are not the most significant instruments subject to the block opt-out, and that there will doubtless be possibilities for information exchange to continue outside of a formal EU framework. We note, however, that Joint Action 96/699/JHA (No. 5) and Council Decision 2005/671/JHA (No. 66) both require Member States to share information with Europol and/or Eurojust. Although the Government indicates that it intends to continue doing so on a voluntary basis, it does not address the possibility that other Member States may object to the UK remaining within Europol and Eurojust, while divesting itself of any obligation to provide information which those other Member States are legally bound to provide. We ask the Government whether it considers that these differences in the degree of compulsion attached to participation in Europol and Eurojust could be regarded as undermining the coherence of the acquis which the UK proposes to rejoin.

The Government does not consider that non-participation in these measures would undermine the coherence of the acquis which it proposes to rejoin.

Paragraph 522
All of these Networks, Contact Points and Directories seek to strengthen practical cross-border cooperation, albeit with varying degrees of engagement by Member States. They appear to impose few obligations on Member States, beyond designating appropriate contact points, and might therefore be considered more consistent with the Government's objective of "cooperation not control", and considerably less susceptible to unexpected or unwelcome Court of Justice rulings, than many of the measures it proposes to rejoin. The knowledge and contacts already acquired within these networks would tend to indicate that the short-term consequences of opting out of these measures are likely to be minimal. We are disappointed that the Government's Explanatory Memoranda do not, however, address the potential longer-term impact of leaving some of the networks, notably the European Judicial Network (No. 89), given its expertise in mutual legal assistance procedures.

The Government, in its letter to your Committee of 7 November 2012, has been clear that it will seek to rejoin a measure where it '*contributes to public safety and security, whether practical cooperation is underpinned by the measure, and whether there would be a detrimental impact on such cooperation if pursued by other mechanisms*'.
It is our view that where we are not seeking to rejoin a measure there is either no operational need, or there are sufficient alternatives in place or that can be put in place.

The Government's decision on which measures to rejoin was based on the evidence before it; this includes the decision not currently to seek to rejoin the European Judicial Network (EJN). Whilst the Government does not believe that the ideas underpinning

EJN are without merit we do not consider that the EJN is a measure that underpins practical cooperation.

Broadly speaking, the EJN is about establishing contact points to enable and facilitate discussion on matters regarding judicial cooperation, maintaining a website with information on judicial cooperation law and practices in European countries, and a means to establish a regular forum (through plenary sessions) for Contact Points to meet and discuss these issues. Whilst the Government recognises that the lists of Contact Points are undoubtedly helpful, the Government believes, as set out in Command Paper 8671 that;

> *"it may be possible to maintain those contacts without formally participating in this Council Decision. 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."*

Furthermore, prosecutors consider that Eurojust offers a more effective mechanism for coordinating and ensuring the right practical tools are employed in complex or difficult cross-border cases. We would also note that that Command Paper 8671 evidences that our, '*experience of the EJN plenary meetings has shown that they add little or no value*',

Paragraph 523
We note that the Government does propose to rejoin Council Decision 2002/494/JHA (No. 40) requiring Member States to designate contact points for the exchange of information on the investigation of crimes against humanity, war crimes and genocide, as well as Council Decisions 2002/348/JHA and 2007/412/JHA (Nos. 37 and 72) requiring Member States to designate national football information points to coordinate and facilitate the exchange of information in connection with football matches with an international dimension. The Explanatory Memoranda provide no clear justification for participating in these measures but not the others included in this category, even though the Government appears to acknowledge in both cases that the UK's non-participation would not significantly impede cooperation (but might increase costs). We ask the Government to address this anomaly in its response to our

The Government has set out its reasoning for joining Council Decisions 2002/348/JHA and 2007/412/JHA above in response to Paragraph 291. Equally the reasoning for not rejoining Council Decision 2002/494/JHA is below in our response to paragraph 538. We have judged the measures on their individual merits.

Paragraph 529
The Government's commentary on these four Joint Actions illustrates the deficiencies and inconsistencies in its Explanatory Memoranda which we alluded to earlier in our Report. No insight is given into the reasons for opting out of the Joint

Action on liaison magistrates (No. 2), even though the Government suggests that there might be some operational impact on the UK's ability to coordinate complex investigations and prosecutions. We expect the Government's response to address the deficiencies in analysis which we have highlighted throughout this Report.

We do not accept that there was a deficiency in our analysis of the measure related to Liaison Magistrates. The Explanatory Memorandum is perfectly clear that, *'[t]he liaison magistrate network provides quick cross-border co-operation and reduces bureaucracy as UK law enforcement officials and prosecutors can use the Liaison Magistrate network to easily identify and co-operate with their EU counterparts'*. It then goes on to note that not having Liaison Magistrates may have an adverse operational impact but clearly states that, *'the Joint Action is not in itself a requirement to allow the Liaison Magistrate network to continue'*.

Consequently, we will continue to be able to post Liaison Magistrates following the opt-out.

Paragraph 531

A number of pre-Lisbon EU instruments deal with the freezing and confiscation of proceeds of crime. The Government proposes to opt back into two Framework Decisions (Nos. 48 and 68) which provide for the mutual recognition of confiscation orders and orders freezing property or evidence, but to opt out of the remaining measures which seek to approximate laws and procedures across the EU. The significance of the Government's decision to opt out of these measures will depend to a large extent on whether or not it opts into a new draft Directive on confiscation (currently under negotiation) after it has been adopted. A clearer indication of the Government's intention in this regard would be helpful. Meanwhile, we ask the Government to explain whether opting out of Framework Decision 2001/500/JHA would remove the current obligation on Member States to give equal priority to freezing or confiscation requests emanating from the UK and, if so, what impact this might have for UK law enforcement bodies.

The Government chose not to opt in to the new draft Directive on freezing and confiscation within the initial three month window. We expect the Directive to be adopted in early 2014. At that point, the Government will consider carefully a post-adoption opt-in. That decision will be subject to Parliamentary scrutiny in the normal way.

Article 4 of Framework Decision 2001/500/JHA obliges Member States to ensure that requests for assistance in asset identification, tracing, freezing or seizing and confiscation are processed with the same priority as the receiving Member State accords to such measures in domestic proceedings.

The Government considers Article 4 of 2001/500/JHA to have been superseded by subsequent European legislation on information exchange between AROs

(2007/845/JHA), and mutual recognition of freezing and confiscation orders (2003/577/JHA and 2006/783/JHA respectively). These more recent instruments provide a legal structure to ensure that UK requests for information for identifying or tracing assets, and freezing or confiscating property, will be processed according to agreed minimum standards.

In the case of the ARO Framework Decision, this means that requests for information will be satisfied within set timescales. In the case of the mutual recognition framework decisions, orders will be recognised without further formality and measures will be taken for '*immediate*' execution (see, for example, Article 5(1) of the Freezing Orders measure). These measures oblige other Member States to provide the UK with a greater degree of cooperation than the provision in 2001/500/JHA, which only requires requests for assistance to be treated with the same priority as domestic proceedings.

The Government's primary concern is the effect of the measures on practical cooperation. The CPS' experience with Spain, as outlined above, suggests that the provision in the 2001/500/JHA measure does not, in practice, lead to effective cooperation. Therefore the Government believes that the decision not to rejoin Framework Decision 2001/500/JHA will not have a negative impact on UK law enforcement agencies.

Paragraph 532

Council Decision 2001/887/JHA (No. 33) requires Member States to share their analyses of suspected counterfeit euro notes or coins with Europol, as well as other information on the investigation and commission of counterfeiting offences involving the euro. The Government notes that few counterfeit euros are detected in the UK and that offences related to counterfeiting of the euro are covered by domestic legislation which would remain in place if the UK were to opt out of the Council Decision. Nonparticipation in this measure would appear to raise issues similar to those we considered earlier in relation to a series of Europol-related instruments (see paragraphs 465 and 466), namely whether it is possible for the UK to continue to participate in Europol without being subject to the same obligations as other participating Member States on such matters as the provision of information. As we indicated previously, clarity on this issue is essential to ensure that Parliament is properly informed of the full implications of the Government's recommendation to rejoin Europol and the substantive obligations that its membership will entail.

As has been made clear in our response to similar points raised above, the Government does not believe that we need to rejoin measures such as this in order to participate in Europol. That will be the starting point for our discussions with the Commission.

Paragraph 533

Framework Decision 2009/948/JHA (No. 107) establishes a framework for determining which Member State should exercise jurisdiction for criminal

proceedings being conducted in two or more Member States which concern the same facts and the same individual. It contemplates that Member States will enter into direct consultations with a view to reaching a consensus and may also refer the matter to Eurojust, although Eurojust has no power to impose a solution. The Government considers that the UK is "largely compliant" as a matter of domestic practice and notes that, if the UK were to opt out, "other Member States would no longer be compelled to try to resolve a conflict of jurisdiction where one was evident", but that they might choose to do so as a matter of domestic policy. The obligations imposed by this instrument only extend so far as to require Member States to seek a resolution where there is a possible conflict of criminal jurisdiction by exchanging information and initiating direct consultations. We accept that the practical consequences of opting out are unlikely to be significant in terms of UK domestic practice, as the procedures for resolving conflicts of jurisdiction are reflected in existing Crown Prosecution Service guidance. The Government does not, however, address the possibility that other Member States may be less willing to cooperate with the UK once the obligation to seek a resolution has been removed.

As the Committee has explained, the practices provided for by the Conflicts of Jurisdiction Framework Decision are already generally established within the UK, and effective cooperation is already commonplace between the competent authorities of the UK and those of other Member States. We see no reason why these practices and that cooperation would not continue even if the UK were not to remain bound by this Framework Decision, which the Government sees as adding no real practical value.

As your Committee notes this instrument only requires Member States to seek a resolution. As such Member States are not compelled to undertake any further action other than to discuss the matter further with Eurojust in the event that they can not resolve the conflict bilaterally. In that event, Eurojust would act as an arbiter and neither party would be bound by its conclusions. As such, the Framework Decision essentially only provides for the ability to compel another Member State to discuss a conflict of jurisdiction with the UK in the event they do not want to.

However, the Government considers that it is difficult to see how the ability to compel another Member State to discuss such an issue would actually increase the chances of a resolution; if the other Member States are unwilling to even discuss the matter, it seems unlikely that they would, if compelled to discuss it, be willing to subsequently change position in order to resolve the conflict of jurisdiction.

Paragraph 534

Council Decision 2002/966/JHA (No. 45) seeks to strengthen counter-terrorism capability across the EU by establishing a mechanism for peer evaluation of Member States' legal systems and arrangements for combating terrorism. The UK has participated in two reviews but the evaluation reports have not resulted in any changes to UK law or practice. The Government suggests that opting out of the Council Decision should not affect the UK's ability to influence other Member States

and share best practice. Whilst proposing to opt out of this measure, the Government does intend to rejoin a Joint Action (No. 13) establishing a similar peer review mechanism concerning Member States' implementation of EU and other international instruments to combat organised crime. As the Government's Explanatory Memorandum indicates, in both cases, that the UK would be able to cooperate with other Member States bilaterally, we asked the Home Secretary to explain, during her oral evidence session, why the Government has recommended opting back into one but not the other. The reason, she indicated, was that the Government does not propose to rejoin any terrorism-related measures which would fall within the scope of the terrorism peer review mechanism. Whilst welcoming this explanation, we again reiterate our concern that it was not included in the Explanatory Memorandum.

The Government continues to believe that it is not necessary to rejoin Council Decision 2002/996/JHA.

Paragraphs 535 and 536
Council Decisions 2003/170/JHA and 2006/650/JHA (Nos. 46 and 65) establish a network of police liaison officers posted by Member States or Europol to a third (non-EU) country or international organisation and seek to strengthen the exchange of information on serious criminal threats. The Government notes that the UK has a large network of overseas liaison officers and that they would be expected to comply with the obligations set out in the Council Decisions "as standard practice", even if the UK ceased to be bound by the measures. We note that these Decisions are Schengen-building measures establishing a framework for the use of police liaison officers, as envisaged in Article 47(4) of the 1990 Schengen Implementing Convention. Although the UK is currently bound by Article 47(4), the Government does not propose to rejoin that provision. We therefore foresee no difficulty in opting out of these Decisions.

We accept that non-participation in these measures would not affect the UK's ability to post police liaison officers overseas or their willingness to cooperate with their counterparts from other Member States and Europol. The Government does not, however, address the issue of reciprocity and the possibility that the UK's nonparticipation may diminish the flow of information to the UK if other Member States are released from their obligation to exchange information. We note also that the Council Decisions include obligations relating to Europol which again call into question the UK's ability to continue to participate in Europol without being subject to the same obligations as other participating Member States.

The Government is confident that not rejoining these measures will not have a detrimental impact on the ability of UK and other EU States' liaison officers to work together or share information. In discussions with other States there has not been any dissent from this view, or concern expressed that we do not wish to rejoin these measures.

The Government intends to rejoin all the Articles of the Schengen Convention to which it is currently bound. The UK is not currently bound by Article 47(4).

Paragraph 538

The Government's Explanatory Memorandum offers no explanation for its decision to recommend opting back into Council Decision 2002/494/JHA (No. 40) establishing a network of contact points responsible for exchanging "any available information that may be relevant in the context of investigations into genocide, crimes against humanity and war crimes", but to opt out of Council Decision 2003/335/JHA (No. 51) which seeks to increase cooperation in the investigation and prosecution of these crimes. The exchange of information envisaged under both Council Decisions is subject to international and domestic data protection legislation so the degree of data protection should be the same in both cases. In her oral evidence, the Home Secretary suggested that there was "a benefit" in remaining within the contact points network, but that cooperation between contact points could take place through mutual legal assistance structures and procedures. We would welcome further information on the benefits of the contact point network and on the mutual legal assistance procedures that will apply, in light of the Government's decision to opt out of the 2000 EU Mutual Legal Assistance Convention and 2001 Protocol (Nos. 25 and 32).

As noted above the Council Decision on the investigation and prosecution of genocide, crimes against humanity and war crimes has very little practical value to those investigating and prosecuting these crimes and places burdensome and impractical obligations on Member States in terms of the information sharing outside criminal investigations and proceedings. Information and evidence relating to the criminal investigations or proceedings into war crimes, crimes against humanity and genocide can continue without rejoining this measure using existing structures (such as MLA or the Genocide Network).

Paragraph 541

We note that all of the Agreements are based on Articles 24 and 38 of the Treaty on European Union which, before they were amended by the Lisbon Treaty, conferred competence on the EU to conclude agreements concerning the EU's Common Foreign and Security Policy (CFSP) and Police and Judicial Cooperation in Criminal Matters. The Government indicates that most EU classified information shared with third countries concerns foreign policy, including Common Security and Defence Policy (CSDP) missions and operations. Academic opinion suggests that opting out of these Agreements would only take effect as regards criminal law and policing issues and that the UK would remain bound as regards CFSP and CDSP matters. We ask the Government to confirm the scope of the block opt-out in relation to these

The Government believes that these measures are properly included within the scope of the opt-out decision. However, we acknowledge their unique position given the joint legal base cited. The position as concerns the CFSP and CSP elements is an area where

we have begun discussing the consequences with the Commission and Council Legal Services but where no agreement has yet been reached on the approach to be taken. We will, of course, keep you updated on those discussions as appropriate.

Paragraph 542
Council Decisions 2003/516/EC, 2009/820/CFSP and 2009/933/CFSP provide for the signature and conclusion of Agreements between the EU and the United States of America on mutual legal assistance (No. 101) and on extradition (Nos. 102 and 103). Both Agreements were proposed as part of a counter-terrorism package of measures in the aftermath of the 9/11 attacks on New York and seek to ensure that all Member States apply similar mutual legal assistance and extradition arrangements in their bilateral relations with the United States. The Government notes that the Agreements required a number of changes to be made to the UK's existing bilateral treaties with the United States on mutual legal assistance and on extradition. These bilateral treaties (as amended) would remain in force if the UK were to opt out of the EU/US Agreements. We note that the Government does not propose to undo the changes to its bilateral treaties with the United States which resulted from the EU/US Agreements, and describes the amendments to the UK's bilateral extradition treaty as "modest improvements so far as wider UK interests are concerned." The Government does not specify the nature of the improvements, nor does it indicate whether the UK would have been able to secure them as readily if it had been negotiating on its own. We ask the Government to address both issues in its response to our Report.

The amendments made to the UK-US MLA and Extradition treaties as required by the EU-US MLA and Extradition Agreements are provided in the Instrument dated 16 December 2004 (available online at:
http://www.official-documents.gov.uk/document/cm76/7613/7613.pdf).

The main change to the extradition treaty is that as a consequence of Article 5(2) of the Agreement, the requirement for requests from the UK to the US to be certified by an official of the US Embassy no longer applies. This has simplified the process of making extradition requests to the US.

In addition, the transmission of additional case information directly between the Home Office and the US Department of Justice was formalised by way of Article 10 of the EU – US Extradition Agreement. Other amendments did not change existing UK practice.

The key change to the UK-US MLA Treaty as a result of the EU-US MLA Agreement was the introduction of the use of video conferencing in the taking of witness evidence (Article 6 of the Agreement). All other changes were of a minor nature.

These amendments were intended to supplement, not replace the pre-existing arrangements contained in the extant bilateral treaties. As the amendments will remain in force even after the opt-out no assessment has been made of whether these changes

could have been negotiated separately. However, it is noted that the UK and US completed negotiation of the amendments in 2004, but had to wait until 2010 (when all other Member States had completed negotiations with the US) for the amended treaties to enter into force.

Paragraphs 545, 546, 547, 548 and 549

A recurring theme of this Report, and our earlier Report, The 2014 block opt-out: engaging with Parliament, has been the reluctance of the Government to provide Parliament with the information it needs, at the time it needs it, in order to gain a proper understanding of the legal, policy and operational implications of the block opt-out, as well as the procedures determining which measures the UK will be able to rejoin. This is essential because the task of determining which measures the UK should rejoin is not for the Government alone. The Government's decision must be informed by the views of Parliament. Given the important role of Parliament, it is all the more disappointing that answers have been given which have little or no bearing on the questions we have asked. For example, when asked to confirm that the UK's formal application to rejoin individual measures subject to the block opt-out could not be submitted before 2 December 2014, we were told:

> **We believe it is in everybody's interests to try to eliminate any gap between our opt-out taking effect and our continued participation in the measures we formally apply to rejoin.**

Similarly, when asked to provide a second Impact Assessment on the measures that the Government does not propose to rejoin, to inform the Reports being prepared by the European Scrutiny, Home and Justice Committees, we were instead told:

> **I am happy to reiterate that the Government is committed to providing an Impact Assessment on the basis of the final package of measures the UK will formally rejoin in good time ahead of the second vote.**

The most significant impediment to Parliamentary scrutiny of the block opt-out decision has been the delay in publishing the Government's Explanatory Memoranda, which were first requested in November 2012, promised by early February, and finally delivered on 9 July 2013 at the same time as the Home Secretary's Statement to the House announcing the Government's intention to exercise the block opt-out and seek to rejoin 35 measures. We might have been willing to concede some justification for the delay if its purpose was to enable the Government to clarify, in its Explanatory Memoranda, the reasons for proposing to rejoin 35 measures and opt out of the rest. To the contrary, the Explanatory Memoranda studiously avoid providing any reasons or insight into how the Government has assessed the national interest in relation to each measure, doubtless because they were prepared before the Government had determined which measures to seek to rejoin. There is no evidence of the careful weighing of the benefits of participation against the risks associated with acceptance of the full jurisdiction of the Court of Justice and the Commission's enforcement powers. Given that the

extension of the Court's jurisdiction is at the heart of the block opt-out decision we consider the lack of analysis on this issue to be a serious omission (see paragraph 84).

The introduction to our reply deals comprehensively with this issue.

Our Report has highlighted a number of apparent anomalies or inconsistencies in the Government's Explanatory Memoranda. Why, for example, would it better serve the UK's national interest to participate in a peer review of national capabilities to tackle organised crime, but not terrorism? Why would the UK wish to remain part of a network of designated contact points for the exchange of information on the investigation of genocide, crimes against humanity and war crimes, but to opt out of a related measure strengthening cross-border cooperation in investigating and prosecuting these crimes? On what evidence does the Government base its assertion that there would be a reputational risk for the UK if it were to opt out of certain measures, or that the risk would be greater for some measures than for others? How would it diminish the UK's international standing in tackling crime and threats to security? Doubtless, the Government has its reasons, but they are not made apparent in its Explanatory Memoranda. Without that information, the task of Parliament in holding the Government to account for its assessment of the national interest is made immeasurably harder (see paragraphs 94 and 95).

The Government believes that it has been open and transparent with Parliament throughout and has replied to the points raised by this report.

Paragraph 552
The Home Secretary has made clear that the block opt-out is "first and foremost [..] about bringing powers back home", a view shared by the Justice Secretary who regards it as "part of a process of bringing powers back to this country." Whilst it is undoubtedly the case that the UK will divest itself of a significant number of obligations arising under the measures that the Government does not propose to rejoin, the block opt-out does not signify any lessening of UK involvement in the key measures governing law enforcement cooperation in the EU. Whilst the full implications of extending the jurisdiction of the Court of Justice and conferring enforcement powers on the Commission in relation to these measures are, as yet, uncertain, it is clear that opting back in will increase the powers of both institutions and diminish the role and function of domestic courts in the UK as well as Parliament. Given this reality, we see little evidence of a genuine and significant repatriation of powers.

We are clear that the UK is exercising a Treaty right which is part of the process of bringing powers back home. We do not accept that the opt-out has resulted in a flow of powers to Brussels.

If we had done nothing with regards to the opt-out, the default position was that the UK would become subject to Commission enforcement powers and the full jurisdiction of

the ECJ. The decision to opt out means that a much smaller set of measures will be subject to ECJ jurisdiction and Commission enforcement powers. The transitional period, which ends on 1 December 2014, may have delayed the effect of this transfer, but we are clear sovereignty passed on the signature of the Lisbon Treaty.

There are also good legal reasons for this assessment. For example, when assessing the competence of the EU to act externally under Article 3(2) TFEU, the extent of internal measures can be relevant in legal terms in deciding the extent of that competence. The Prime Minister's letter to the President of the Council of Ministers on 24 July put beyond doubt that the pre-Lisbon measures cannot be used in relation to the UK when assessing the extent of that competence after 1 December 2014 for over ninety measures that the UK will not seek to rejoin.

The pre-Lisbon measures remain binding on the UK until 1 December 2014 only by virtue of the transitional provisions in Protocol 36. As we have said previously, many of these measures were negotiated without the full enforcement powers of the ECJ in mind and some are poorly drafted. Although they are binding now, we are clear that the reality of those measures will change when they can be enforced before the ECJ. International courts and tribunals sharpen the effect of public international law and the ECJ is a particularly significant international court. By opting out of the measures in question we have considerably reduced the influence of this Court in matters of policing and criminal justice in the UK.

Paragraphs 561–574

In her Statement to the House on 9 July 2013, the Home Secretary made clear that the House would have two opportunities to debate and vote on the UK's block opt-out. In the first debate, which took place on 15 July, the House was asked to endorse the Government's decision to exercise the block opt-out and to enter into negotiations with the Commission, Council and other Member States on the set of measures in Command Paper 8671 which the Government intended to seek to rejoin. Following the intervention of the Chairs of the European Scrutiny, Home Affairs and Justice Committees, the Government accepted an amendment to the motion agreed by the House which, crucially, omitted any reference to Command Paper 8671, thereby ensuring that the vote would not pre-empt further consideration by the House of the measures, if any, which the Government should seek to rejoin. The motion invited the European Scrutiny, Home Affairs and Justice Committees to submit Reports by 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".

Whilst there is a clear commitment by the Government to a second vote, there is considerable uncertainty as to its timing and purpose. There would appear to be two possibilities. The first is that the House should be invited to express a view on the measures which the Government should seek to rejoin before formal negotiations

with the Commission, Council and Member States commence. This is what the Government appeared to intend in July when it asked Parliament to endorse the 35 measures set out in Command Paper 8671. The second is that the House should be invited to express a view on the measures that should form part of the Government's formal application to opt back in. This would most likely be some time after formal negotiations have begun, once there is a clearer indication of what the Commission, Council and other Member States are willing to accept, but before 1 December 2014. Put more starkly, the options are to seek a Parliamentary mandate for negotiations or Parliamentary approval of the outcome of negotiations.

We asked the Home and Justice Secretaries what the Government would be negotiating on after 31 October, given that the motion agreed by the House on 15 July did not express any view on the measures the UK should seek to rejoin. The Home Secretary told us:

> **We will be negotiating on the basis of the Government's position. We will have to look at the information from Parliament that will be produced in relation to the measures, and obviously various Committees will be coming forward with their views on this particular issue.**

In terms of the timing of the vote, she added:

> **Parliament will have an opportunity to have that vote once we are able to put the final package to it, but of course we do have to go through the negotiations before we are able to do that.**

We noted the Home Secretary's observation in the debate on 15 July that:

> **a vote in favour of the Government's motion will send a clear signal to the Commission and the other Member States that Britain is serious about bringing powers back home, and it will strengthen our negotiating position in Brussels.**

We suggested that an early vote could similarly strengthen the Government's hand in negotiations. The Justice Secretary replied:

> **It is a difficult one. It is a negotiation, and in a negotiation you do not necessarily want to lay all of your cards on the table at the very start. There would be a danger that, if Parliament expressed a very firm view about a list, it would constrain us in having the discussions that you would wish us to have in the national interest with the Commission. Therefore, in my judgment, it is better for Parliament to trust us to negotiate on the basis that it will get the final say, rather than to do it the other way around. We will certainly take into account what the different Committees have to say.**

The Home Secretary added:

> **Everybody knows the nature of negotiations, and if it were the position that we were not able to have flexibility within the negotiations, that would put us in a worse position.**

She also made clear that:

> **The decision as to the shape and nature of the vote has not yet been taken.**

We think that there is an evident contradiction in the Government's position on the purpose and timing of the second vote. Under the EU Treaties, the UK has an unconditional right to exercise the block opt-out. The first vote, on 15 July, secured the House's endorsement of the decision in principle to exercise the block opt-out. The House did not, however, endorse the Government's proposal to rejoin the 35 measures listed in Command Paper 8671. The purpose of the second vote, therefore, is to enable Parliament, informed by this Report and the Reports of the Home Affairs and Justice Committees, to determine which measures, if any, the Government should seek to rejoin. As the process of rejoining individual measures is conditional on obtaining the agreement of the Commission and Council, we consider that an early debate (before the Government embarks on formal negotiations) would considerably strengthen the Government's negotiating hand whilst also ensuring full transparency and accountability to Parliament. We can see no reason why the Government, having failed to secure a mandate from the House for the measures it wishes to rejoin in July, should shy away from obtaining one now.

Indeed, we very much agree with the phased approach set out by the Justice Secretary in his oral evidence to us on 10 October:

> **we have been through or are going through three phases. The first is to reach a point of collective agreement within Government, then bring that collective agreement to the House and then take all of our collective agreement to the Commission.**

It is our view that there should also be the option of a third vote: that the Government should make a commitment that it will return to the House at a later stage for approval of the list of measures which the Government intends formally to apply to rejoin after 1 December 2014 if the list has changed in the light of negotiations, or if there are substantive conditions attached to rejoining which merit debate.

The form of the second vote (and, if appropriate, the third) should ensure that there is a genuine opportunity for the House to determine the measures the Government intends to rejoin. To consider the 35 measures as a "block opt-in," subject to one motion, would be seriously to misconceive the individual significance of some of the measures. Once the UK opts in to a pre-Lisbon Framework Decision which it has not already implemented, it will have to be implemented through domestic legislation in order to become legally binding on those that it regulates. And although the initial interpretation of such legislation will be for national courts, in cases of doubt it will be for the Court of Justice in Luxembourg, which has ultimate supervisory jurisdiction over EU legislation. In addition, if the Commission concludes that the UK's existing or future implementation of pre-Lisbon measures fails to fulfil the

obligations of the parent measure, it will bring infringement proceedings against the UK government directly before the Court of Justice.

It is worth bearing in mind that, were each of these 35 measures to have been proposed post the Lisbon Treaty, they would each require an opt-in debate, often on the floor of the House, under the enhanced scrutiny procedures that now apply to EU police and criminal justice measures. These enhanced procedures are not coincidental, for what is at stake is the level at which national criminal justice policy is decided. Equally, when the Maastricht Treaty entered into force, the Government of the time was sufficiently concerned about the domestic effect of Third Pillar (pre-Lisbon) criminal justice measures that it ensured they could only be implemented by primary legislation —an Act of Parliament—with the full rigours of Parliamentary scrutiny which that entailed. This was in contrast to the usual means of implementing EU legislation, which was by secondary legislation under section 2(2) of the European Communities Act 1972. It did so by excluding Title VI TEU from the EU Treaties governed by the ECA 1972.

We ask Members of the House to keep this context in mind — it underlines the importance of having separate motions for each of the police and criminal justice instruments the Government wishes to rejoin.

We ask the Government to reflect this context in the form of the second vote (and, if appropriate, the third) by tabling separate motions for each of the measures in which it wishes to opt back in.

The Government has been clear throughout that it will be negotiating with the Commission and other Member States on the basis of the Government's agreed position. The agreed position (i.e. the set of 35 measures) is set out in Command Paper 8671.

The Government has been clear throughout this process that Parliament should play a full and active role in scrutinising this important matter. We agreed not to commence formal negotiations with the Commission and other Member States until after 31 October 2013 so that yours and the other Parliamentary Committees had sufficient time to scrutinise this matter. We received the reports from the House of Lords EU Committee, the Justice Select Committee and the Home Affairs Committee on 31 October 2013, and from your Committee on 7 November.

We have always been clear that the Government will hold a second vote on the final list of measures we will formally seek to rejoin. That vote will enable Parliament to scrutinise the end result of the Government's negotiations with its European partners and to decide whether or not to support the Government. As we have said elsewhere in our response to your report, we will be producing an Impact Assessment on the final list of measures that we will apply to rejoin and will ensure that this is produced in good time ahead of the vote.

We are happy to engage with you through the usual channels to discuss the precise form and timing of the second vote.

Annex B — Persons returned to the UK from January 2012 — November 2013.

The National Crime Agency (NCA) is the designated authority for the receipt and transmission of EAWs in the UK (with the exception of Scotland, where it is the Crown Office and Procurator Fiscal Service (COPFS)). They are responsible for recording data on the use of the EAW and have provided the details below, Sentence and conviction details are not held by the NCA for management information purposes, and therefore these details were obtained from the Crown Prosecution Service (CPS), the COPFS and the Crown Solicitor's Office Northern Ireland. Some conviction details are not held centrally by these bodies, and are therefore not recorded here. In-line with the Data Protection Act, all personal information has been removed[13].

Principle Offence	Extraditing Country	Convicted	Sentence
Murder	Belgium	No	
Murder	Ireland	Ongoing	
Murder	Ireland	Ongoing	
Murder	Ireland	Yes	Life, minimum of 20 years
Murder	Italy	No	
Murder	Italy	Ongoing	
Murder	Netherlands	Yes	Life, minimum of 22 years
Murder	Netherlands	Ongoing	
Murder	Poland	Yes	Life, minimum of 26 years
Murder	Poland	Ongoing	
Murder	Romania	Yes	Life, minimum of 31 years
Murder (breach of licence)	Spain	Yes	6 months
Murder	Spain	Ongoing	
Murder	Poland	Yes	Life, minimum of 19 years
Rape	Czech Republic	Yes	4 years and 6 months
Rape	France	Yes	7 years
Rape	France	Yes	10 years
Rape	Germany	Yes	6 years
Rape	Germany	No	
Rape	Greece	Ongoing	
Rape	Latvia	N/A (died before trial)	
Rape	Latvia	Yes	20 months
Rape	Poland	Yes	3 years and 9 months
Rape	Poland	Yes	6 years
Rape	Portugal	Ongoing	
Rape	Romania	Yes	10 years
Rape	Romania	Yes	7 years
Rape	Slovakia	Yes	12 years

13 In some incidences the original EAW referred to a more serious crime than the person was finally convicted of. As far as possible, the above reflects what the person was convicted of.

Principle Offence	Extraditing Country	Convicted	Sentence
Rape	Slovakia	Yes	12 years
Rape	Slovakia	Yes	12 years
Rape	Spain	Yes	5 years and 6 months
Rape	Spain	Yes	9 years and 6 months
Rape	Ireland	Yes	16 years
Rape	Spain	Ongoing	
Rape	Spain	Yes	2 years
Rape	Spain	No	
Rape	Lithuania	Ongoing	
Rape	Spain	Ongoing	
Rape	Spain	Yes	Life, minimum of 10 years
Child Sex Offences	Belgium	Yes	Not yet sentenced
Child Sex Offences	Bulgaria	Yes	2 years and 9 months
Child Sex Offences	Cyprus	Ongoing	
Child Sex Offences	Czech Republic	Yes	Returned to serve remainder of sentence
Child Sex Offences	France	Yes	8 years
Child Sex Offences	France	Yes	21 months, £2500 costs
Child Sex Offences	France	Ongoing	
Child Sex Offences	France	Yes	10 months
Child Sex Offences	Germany	Ongoing	
Child Sex Offences	Gibraltar	Yes	6 years
Child Sex Offences	Gibraltar	Yes	9 years
Child Sex Offences	Ireland	Yes	8 years
Child Sex Offences	Ireland	Yes	18 months
Child Sex Offences	Ireland	Ongoing	
Child Sex Offences	Italy	No	
Child Sex Offences	Netherlands	Yes	5 years
Child Sex Offences	Netherlands	Ongoing	
Child Sex Offences	Netherlands	Yes	18 weeks
Child Sex Offences	Netherlands	No	
Child Sex Offences	Portugal	Yes	15 months
Child Sex Offences	Slovakia	No	
Child Sex Offences	Spain	Yes	10 years
Child Sex Offences	Spain	Yes	£360 fine
Child Sex Offences	Spain	Yes	£500 fine, £100 costs, £50 surcharge
Child Sex Offences	Spain	Yes	42 months
Child Sex Offences	Spain	Ongoing	
Child Sex Offences	Spain	No	
Child Sex Offences	Ireland	No	
Drugs Trafficking	Belgium	Yes	12 Years
Drugs Trafficking	Finland	Yes	66 months
Drugs Trafficking	France	Yes	8 years
Drugs Trafficking	France	No	
Drugs Trafficking	Gibraltar	Yes	Not known

Principle Offence	Extraditing Country	Convicted	Sentence
Drugs Trafficking	Greece	Not Known	
Drugs Trafficking	Greece	Ongoing	
Drugs Trafficking	Ireland	Yes	54 months
Drugs Trafficking	Ireland	Not Known	
Drugs Trafficking	Ireland	Ongoing	
Drugs Trafficking	Ireland	Yes	Unlawfully at large – returned to serve sentence
Drugs Trafficking	Ireland	Not Known	
Drugs Trafficking	Italy	Not Known	
Drugs Trafficking	Italy	Yes	8 years
Drugs Trafficking	Malta	Not Known	
Drugs Trafficking	Netherlands	Yes	14 years and 8 months
Drugs Trafficking	Netherlands	Yes	2 years and 6 months
Drugs Trafficking	Netherlands	Not Known	
Drugs Trafficking	Netherlands	Yes	14 years
Drugs Trafficking	Netherlands	Ongoing	
Drugs Trafficking	Netherlands	Yes	12 years
Drugs Trafficking	Netherlands	Yes	18 years
Drugs Trafficking	Netherlands	Ongoing	
Drugs Trafficking	Netherlands	Ongoing	
Drugs Trafficking	Netherlands	Yes	To be sentenced
Drugs Trafficking	Netherlands	Yes	To be sentenced
Drugs Trafficking	Netherlands	Ongoing	
Drugs Trafficking	Netherlands	Yes	23 years and 6 months
Drugs Trafficking	Netherlands	Yes	8 years
Drugs Trafficking	Netherlands	Yes	10 years
Drugs Trafficking	Poland	Yes	3 months
Drugs Trafficking	Poland	Yes	3 months
Drugs Trafficking	Poland	Yes	16 months
Drugs Trafficking	Portugal	Yes	4 years
Drugs Trafficking	Portugal	Not Known	
Drugs Trafficking	Spain	Not Known	
Drugs Trafficking	Spain	Not Known	
Drugs Trafficking	Spain	Yes	Returned to serve sentence
Drugs Trafficking	Spain	Yes	To be sentenced
Drugs Trafficking	Spain	Not Known	
Drugs Trafficking	Spain	Yes	Returned to serve sentence
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Yes	3 years
Drugs Trafficking	Spain	Not Known	
Drugs Trafficking	Spain	Yes	68 months
Drugs Trafficking	Spain	Yes	3 years
Drugs Trafficking	Spain	Yes	7 years and 6 months
Drugs Trafficking	Spain	Yes	22 months
Drugs Trafficking	Spain	Not Known	

Principle Offence	Extraditing Country	Convicted	Sentence
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Not Known	
Drugs Trafficking	Spain	Ongoing	
Drugs Trafficking	Spain	Yes	45 months
Drugs Trafficking	Spain	Yes	16 years
Drugs Trafficking	Spain	Ongoing	
Firearm offences	Netherlands	Yes	Life, minimum of 22 years
Firearm offences	Netherlands	Yes	Life, minimum of 22 years
Armed Robbery	Germany	Yes	11 years and 6 months
Armed Robbery	Spain	No	
Armed Robbery	Germany	Yes	6 years
Armed Robbery	Ireland	No	
Armed Robbery	Portugal	Yes	7 years and 8 months
Armed Robbery	Spain	Not Known	
Armed Robbery	Spain	Yes	6 years and 6 months
Robbery	Germany	Yes	8 years
Robbery	Ireland	Yes	9 years and 6 months
Robbery	Ireland	Yes	To be sentenced
Robbery	Ireland	Ongoing	
Robbery	Ireland	Yes	8 years
Robbery	Ireland	Yes	9 months
Robbery	Spain	Yes	12 months
Robbery	Spain	Ongoing	
Robbery	Lithuania	Yes	3 years and 4 months
Burglary	Ireland	Yes	6 years and 8 months
Burglary	Ireland	Yes	1 year and 3 months
Theft	Spain	Yes	16 months
Theft	Spain	Yes	15 months
Theft	Ireland	Ongoing	
Theft	France	Yes	5 years
Theft	France	Yes	2 years
Theft	France	Yes	3 years
Theft	France	Yes	4 years
Theft	Germany	Yes	19 months
Theft	Ireland	Yes	11 months
Theft	Ireland	Not known	
Theft	Ireland	Yes	3 years and 3 months
Conspiracy to steal	Italy	Ongoing	
Fraud	Belgium	Ongoing	
Fraud	France	Not known	

Principle Offence	Extraditing Country	Convicted	Sentence
Fraud	Germany	Not known	
Fraud	Germany	Yes	11 years
Fraud	Ireland	Yes	10 weeks
Fraud	Ireland	Not known	
Fraud	Ireland	Not known	
Fraud	Ireland	Yes	21 months
Fraud	Italy	Yes	6 years
Fraud	Italy	Yes	7 years
Fraud	Netherlands	Yes	18 months
Fraud	Poland	Yes	2 years and 6 months
Fraud	Poland	Yes	4 years and 6 months
Fraud	Romania	Yes	18 months
Fraud	Spain	No	
Fraud	Spain	Yes	3 years and 6 months
Fraud	Spain	Yes	Not known
Fraud	Spain	Not known	
Fraud	Spain	Not known	
Fraud	Spain	Not known	
Fraud	Spain	Yes	2 years and 3 months
Fraud	Spain	Yes	40 months
Fraud	Spain	Yes	12 months
Fraud	Spain	Not known	
Fraud	Spain	Yes	£30,000 POCA (15 months imprisonment if delfaults)
Fraud	Spain	Yes	18 months
Fraud	Spain	Ongoing	
Fraud	Spain	Not known	
Fraud	Spain	Yes	30 months
Fraud	Spain	Yes	3 years
Serious Assault	France	Yes	187 weeks
GBH	Belgium	Yes	8 years
GBH	France	Yes	40 months
GBH	Germany	Yes	43 months
GBH	Germany	No	
GBH	Ireland	Yes	8 years and 10 months
GBH	Ireland	Yes	6 years
GBH	Ireland	Yes	3 years and 2 months
GBH	Ireland	Yes	12 months
GBH	Italy	Yes	12 months
GBH	Netherlands	Yes	9 years and 5 months
GBH	Romania	Yes	27 months
GBH	Spain	Ongoing	
GBH	Spain	Not known	
GBH	Spain	Yes	8 years and 6 months
GBH	Spain	Yes	20 months
ABH	Germany	Yes	26 months

Principle Offence	Extraditing Country	Convicted	Sentence
ABH	Ireland	Yes	10 weeks
Death by dangerous driving	Cyprus	Yes	7 years and 10 months
Death by Dangerous Driving	Netherlands	Yes	8 years and 5 months, disqualified for 10 years
Death by careless driving	Portugal	Yes	3 years and 10 months, disqualified for 3 years.
Dangerous Driving	Netherlands	Yes	35 months
Driving Offence	Bulgaria	Yes	6 months imprisonment and disqualified for 2 years
Driving Offence	Spain	Yes	22 months, disqualified 2 years
Immigration and Human Trafficking	Belgium	Not known	
Immigration and Human Trafficking	Hungary	Yes	Not known
Immigration and Human Trafficking	Netherlands	Yes	4 years and 9 months
Immigration and Human Trafficking	Poland	Ongoing	
Immigration and Human Trafficking	Romania	Not known	
Immigration and Human Trafficking	Romania	Not known	
Money Laundering	Estonia	Ongoing	
Money Laundering	France	Yes	8 months, 4 years if default of POCA
Money Laundering	Germany	Yes	4 months, suspended for 2 years
Money Laundering	Germany	Yes	10 years
Money Laundering	Spain	Not known	
Money Laundering	Spain	Not known	
Counterfeiting	Ireland	Yes	18 months, suspended for 3 years
Kidnapping	Spain	Yes	6 years and 9 months
Kidnapping	Spain	Yes	2 years and 6 months
Harassment, threats to kill	Italy	Yes	18 months
Harassment	Spain	Yes	2 year Community order and indefinite restraining order
Failure to comply with sex offenders register	Ireland	Yes	8 months
Sex Offences/Assault to injury	Poland	Yes/Yes	80 days/6 months
Sex Offences	Germany	Yes	5 months
Sex Offences	Portugal	Yes	5 months
Affray	Portugal	Yes	18 months
Other[14]	Belgium	Not known	
Other	Belgium	No	

14 The NCA categorise the offences as above. The category "other" is used for all crimes that do not fit into any other category.

Principle Offence	Extraditing Country	Convicted	Sentence
Other	Bulgaria	Not known	
Other	Germany	Not known	
Other	Ireland	Yes	Returned to serve sentence
Other	Ireland	Yes	To be sentenced
Other	Ireland	Yes	Returned to serve sentence
Other	Ireland	Yes	Returned to serve sentence
Other	Netherlands	Not known	
Other	Poland	Not known	
Other	Romania	Yes	3 years
Other	Spain	Not known	
Other	Spain	Ongoing	
Other	Spain	Ongoing	

Annex C — Case Studies: European Arrest Warrant (Jan 2012 — Nov 2013)

The UK, on average, gets back 126 people each year from other EU member states under a European Arrest Warrant (EAW). Many of these people are accused of serious offences. The list below provides examples of serious criminals who have been returned to face justice. Some of these people would have been highly unlikely to have been returned without the EAW.

This data was provided by the Crown Prosecution Service, or was obtained from publically available sources.

- **Constantin Nan,** who was surrendered to the UK from Romania in 2013. He was found guilty of the torture and murder of a retired school teacher in 2010 and was sentenced to life imprisonment to serve a minimum of 31 years.

- **Warwick Spinks,** who was returned to the UK from the Czech Republic in 2012 to serve the remainder of a sentence imposed in 1994 for the sexual assault of young boys. He had evaded capture for 15 years after breaching the terms of his licence in 1997 and his arrest was a result of cooperation between the National Crime Agency, the Metropolitan Police, Child Exploitation and Online Protection Centre and Czech police forces.

- **Joseph Davies,** who was surrendered from the Netherlands in 2012. He was subsequently convicted of killing his girlfriend and sentenced to life imprisonment to serve a minimum of 22 years.

- **Fethi Hammadi** and **Segiu Horvath**, who were surrendered from Spain and Romania respectively in 2012. Mr Horvath pled guilty to the rape of one woman, and the attempted rape of another, and Mr Hammadi pled guilty to the rape of the second woman –these attacks occurred in 2008. Mr Hammadi was sentenced to 5 ½ years and Mr Horvath was sentenced to 10 years.

- **Harry Kelk**, who was surrendered from Spain in 2012 to face charges arising from the rape, kidnap and false imprisonment of a 14 year old girl in 1981. He was sentenced to 9 years and 6 months.

- **Jan Dzudza, Matus Tipan and Miroslav Karicka**, who were extradited from Slovakia in 2012, a fellow accused was arrested in the UK, following which all three men fled the UK. Once returned, all three pled guilty to conspiracy to rape and each were sentenced to 12 years imprisonment. Prior to the adoption of the EAW Framework Decision, Slovakia did not extradite its own nationals and this

bar is still in place for non-EAW extraditions. It is likely that without the EAW these men would not have been returned to face justice.

- **Ireneusz Melaniuk**, who was surrendered from Poland in 2012, pled guilty to the murder of Peter Avis during a robbery and was sentenced to life imprisonment, to serve a minimum of 26 years. Mr Melaniuk was, at that time, on the run from a prison sentence in Poland for robbery. Prior to the adoption of the EAW Framework Decision, Poland did not extradite its own nationals. It is likely that without the EAW Mr Melaniuk would not have been returned to face justice.

- **Rafael Bogusz**, was surrendered from Poland and subsequently pled guilty to the sexual assault of a woman in 2010. Mr Bogusz hit the woman over the head, before assaulting her, she ran from her house naked to escape him. He was sentenced to 3 years and 9 months. Prior to the adoption of the EAW Framework Decision, Poland did not extradite its own nationals and as a result it is unlikely that Mr Bogusz would not have been returned to face justice without the EAW.

- **Ignas Judins**, who was surrendered from Latvia in 2013 and subsequently pled guilty to human trafficking for sexual exploitation. Judins was sentenced to 20 months. Two other people have also been convicted of human trafficking into the UK, and one person for the rape of one of the victims. Prior to the adoption of the EAW Framework Decision, Latvia did not extradite its own nationals and this bar is still in place for non EAW extraditions. It is unlikely that Mr Judins would not have been returned to face justice without the EAW.

- **Hugh McBride**, who was surrendered from Ireland in 2010. McBride pled guilty to the indecent assault of an 8 year old child in 1989. He was sentenced to 18 months imprisonment in line with the law at that time.

- **Thomas Kearney** was surrendered from Ireland in 2013. Kearney was found guilty of the 2012 murder of David Remmer and sentenced to life imprisonment, to serve a minimum of 20 years. He stabbed the victim 54 times.

- **Alan Bridgen**, a former teacher, was surrendered from the Netherlands to face child sex abuse charges. Mr Brigden pled guilty to 14 counts of sexual assault against his former pupils carried out in the 1970s and 1980s and was sentenced to 5 years imprisonment.

- **George Doulat**, was returned from France to serve a 10 year sentence, already imposed for rape, attempted rape and sexual assault. Mr Doulat fled the UK before his trial and was convicted in absentia.

- **David Graham** was surrendered from France in 2013 to face charges of sexual assault against children. Mr Graham had fled to France while on police bail in 2006. The offences occurred in Cambodia but the CPS was able to prosecute under section 7 of the Sexual Offences Act 2003. Mr Graham was sentenced to 21 months imprisonment and ordered to pay costs of £2500.

- **Susan Walters** was extradited from Spain, where she had been living, to face historical charges of child sexual assault. She pled guilty to 25 charges of aiding and abetting the rape of her children in the 1970s and 80s by her former partner. She was sentenced to 10 years imprisonment.

- **Stefan Hornak**, was extradited from the Czech Republic in 2012. Hornak pled guilty to four charges relating to trafficking within and into the UK for sexual exploitation, and controlling prostitution for gain. He was later convicted of three counts of rape of the same woman who he had trafficked to the UK. Hornak was convicted to 4 years and 6 months imprisonment. Prior to the adoption of the EAW Framework Decision, the Czech Republic did not extradite its own nationals and this bar is still in place for non EAW extraditions. It is likely that without the EAW Mr Hornak would not have been returned to face justice.

- **Peter Sidney Scott** was returned from France to face charges of historic child sex offences. He had fled to France to escape investigation when the first complaints were made against him. He pled guilty to a number of offences and was sentenced to 8 years imprisonment.

- **Suleman Babar** was returned from Belgium and charged with attempted murder. Babar offered a plea to wounding with intent to inflict GBH and was sentenced to 8 years. Prior to the adoption of the EAW Framework Decision, Belgium did not extradite its own nationals and this bar is still in place for non EAW extraditions. It is likely that without the EAW Mr Babar would not have been returned to face justice

- **Leslie Day** was extradited from Ireland in February 2013 to face charges relating to the rape and sexual assault of a young child in the 1990s. He pleaded guilty to rape, attempted rape, four counts of indecent assault and gross indecency with a child. Day was sentenced to 8 years.

- **Piotr Skwierczynski** was charged with rape on 13 December 2001 and a trial date was set for April 2002. While on bail, Skwierczynski failed to appear at Court for the trial and a warrant for his arrest was issued. He was returned from Poland in June 2013 and convicted of one count of rape. He was sentenced to 6 years imprisonment. Prior to the adoption of the EAW Framework Decision, Poland did not extradite its own nationals. It is likely that without the EAW Mr Skwierczynski would not have been returned to face justice.

- **Nawaz Cheema Muhammed Shah** was surrendered from Spain in 2012 to face charges of rape. He was convicted of raping his victim while she slept and sentenced to 2 years imprisonment.

- **Richard Carl Williams** who was already a registered sex offender and had a history of forcibly entering properties and committing acts of rape, was surrendered from Spain in 2012 to face similar charges. He was convicted of rape and sentenced to life imprisonment, with a minimum sentence of 10 years.

Annex D — Sentence details of nationals returned from countries which, prior to the operation of the EAW, did not extradite their own nationals.

The NCA and CPS have provided a sample of own national offenders from countries which, prior to the operation of the EAW, did not extradite their own nationals. These countries had entered a reservation to the European Convention on Extradition 1957 stating that they would not extradite their own nationals. Only those cases where the person had been convicted, and the conviction *and* sentence details were recorded by the Crown Prosecition Service, the Crown Office and Procurator Fiscal Service, the Crown Solicitor's Office Northern Ireland, or in publically available sources, have been included. Cases where the person was acquitted, or the charges were dropped, or the conviction details have not been recorded have not been included[15].

Principal Offence	Extraditing Country/Nationality	Sentence details
Murder	France	Life, minimum of 15 years
Murder	Poland	Life, minimum of 19 years
Murder	Poland	Life, minimum of 26 years
Murder	Lithuania	Life, minimum of 20 years
Manslaughter	France	4 years
Manslaughter	Lithuania	10 years
Manslaughter	Lithuania	6 years
Rape	Netherlands	14 years
Rape	Portugal	5 years
Rape	Lithuania	6 years
Rape	Poland	3 years and 9 months
Child Sex Offences	Poland	3 months, and 7 years on sex offenders register
Child Sex Offences	Poland	4 years
Child Sex Offences	France	22 weeks, and 7 years on sex offenders register
Sexual assault	Poland	9 months
Sex offences	Poland	80 days
Death by dangerous driving	Poland	5 years, disqualified for 5 years
Causing death by careless driving	Germany	8 months and 2 years disqualification
Causing death by careless driving	Portugal	3 years 10 months
Driving Offences	Poland	£500 fine, 12 months disqualification
Grievous Bodily Harm	Cyprus	10 months
Grievous Bodily Harm	France	Community order, mental health requirement 3 years.
Grievous Bodily Harm	Netherlands	12 months
Grievous Bodily Harm	Poland	7 years and 11 months

15 In addition, under the ECE, extradition could be barred for own nationals even if a reservation had not been entered, if there is a constitutional bar in place. The following EU countries still have a constitutional bar in place, which we believe could prevent the extradition, to the UK, of their nationals if we no longer operated the EAW. These are; Italy, Slovakia, Austria, Belgium, Sweden, Finland, Latvia, Czech Republic and Ireland. These countries were not included within the initial sample for the purpose of this analysis.

Principal Offence	Extraditing Country/Nationality	Sentence details
Grievous Bodily Harm	France	40 months
Actual Bodily Harm	France	9 months
s.18 wounding	Poland	8 and a half years
s.20 wounding	Lithuania	15 months
Drugs Trafficking	Netherlands	13 years
Drugs Trafficking	Netherlands	18 years
Drugs Trafficking	Poland	12 months
Drugs Trafficking	Netherlands	11 and a half years
Drugs Trafficking	Netherlands	6 years
Drugs Trafficking	Netherlands	4 years
Drugs Trafficking	Poland	3 months
Drugs Trafficking	Poland	3 months
Drugs Trafficking	Netherlands	23 years and 9 months
Drugs Trafficking	Netherlands	8 years
Drugs Trafficking	Netherlands	10 years
Drugs Trafficking	Poland	16 months
Robbery	Portugal	33 months
Burglary	Poland	42 months
Theft	Netherlands	2 years
Theft	France	3 years
Theft	Portugal	8 months
Fraud	Hungary	15 months
Fraud	Poland	18 months
Fraud	Poland	3 months
Fraud	Poland	4 years 6 months
Fraud	Lithuania	5 months
Money Laundering	Netherlands	12 months
Money Laundering	Netherlands	5 years
Immigration & Human Trafficking	Netherlands	18 months
Immigration & Human Trafficking	Netherlands	18 months
Immigration & Human Trafficking	Netherlands	18 months
Immigration & Human Trafficking	Netherlands	18 months
Immigration & Human Trafficking	Netherlands	18 months
Immigration & Human Trafficking	Netherlands	16 months
Other[16]	Poland	30 weeks
Other	Germany	5 years

16 The NCA categorise the offences as above. The category "other" is used for all crimes that do not fit into any other category.