



House of Commons

European Scrutiny Committee

The UK's 2014 block opt-out decision: summary and update Report

**Seventeenth Report of Session
2014–15**



House of Commons
European Scrutiny Committee

The UK's 2014 block opt-out decision: summary and update Report

Seventeenth Report of Session
2014–15

Report, together with formal minutes

*Ordered by the House of Commons
to be printed 29 October 2014*

The European Scrutiny Committee

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

Current membership

Sir 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*)

Committee 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), Arnold Ridout (Legal Adviser) (Counsel for European Legislation), Joanne Dee (Assistant Legal Adviser) (Assistant Counsel for European Legislation), Joanna Welham (Second Clerk), Julie Evans (Senior Committee Assistant), Jane Bliss and Beatrice Woods (Committee Assistants), Paula Saunderson and Ravi Abhayaratne (Office Support Assistants).

Contacts

All correspondence should be addressed to the Clerk of the European Scrutiny Committee, House of Commons, Telford House, 14 Tothill Street, London SW1H 9NB. The telephone number for general enquiries is (020) 7219 3292/5465. The Committee's email address is escom@parliament.uk

Contents

Report	<i>Page</i>
The UK's 2014 block opt-out decision	3
Introduction	3
What is the block opt-out?	3
Which measures are subject to the block opt-out?	4
Opting back into individual measures	5
Changes to the list of measures the UK will seek to rejoin	6
Non-Schengen measures	6
<i>Schengen measures</i>	8
How significant are the changes to the measures the Government proposes to rejoin?	8
Impact Assessments	9
Would opting back into certain measures make a significant practical difference for the UK?	10
Can the benefits of UK participation be readily and reliably quantified?	11
Has equal weight been given to the benefits and drawbacks of UK participation?	11
Would UK participation ensure reciprocal benefits and burdens for the UK and other Member States?	12
Is there sufficient practical experience to demonstrate that participation in a measure will be beneficial for the UK?	13
Have alternative forms of cooperation been assessed?	15
How valid is the Government's assumption that the UK's contribution to the EU budget could not be reduced if the UK were to opt out of certain measures?	16
Are the benefits to the UK dependent on opting into other measures?	17
Conclusion	18
Annex 1 — A timeline for the UK's 2014 block opt-out	20
Annex 2 — Overview of the 35 measures	23
Annex 3 — Relevant Select Committee Reports	34
<i>The European Scrutiny Committee</i>	34
<i>The Home Affairs Committee</i>	34
<i>The Justice Committee</i>	34
<i>Joint Report of the European Scrutiny, Home Affairs and Justice Committees</i>	34
The European Union Committee in the House of Lords	34
Formal Minutes	35

The UK's 2014 block opt-out decision

Introduction

1. On 1 December 2014, the UK will cease to be bound by around 110 EU police and criminal justice measures which are subject to the UK's block opt-out.¹ At the same time, the Government proposes that the UK should rejoin 35 of these measures which it considers to be in the UK's national interest. Both Houses of Parliament have endorsed the Government's decision to exercise the UK's block opt-out. The debate and vote in the House of Commons took place on 15 July 2013. The Government has undertaken to hold a further debate and vote on the 35 measures it proposes to rejoin:

“For the avoidance of doubt, we reaffirm our commitment to hold a second vote in both Houses of Parliament before making a formal application to rejoin any measures. We continue to believe that in order for this debate to be as informed as possible, it should be held after we have reached ‘in principle’ agreement on those measures we will seek to rejoin.”²

2. Should the Government want to avoid a gap in the application of these 35 measures to the UK, proceedings in Parliament and the necessary decisions at EU level to confirm UK participation in the 35 measures must be completed no later than 1 December 2014 or, in the event of delay, necessary transitional measures would have to be agreed by that date.

3. The purpose of this Report is to inform the forthcoming debate and vote in the House of Commons by providing a brief guide to the block opt-out and an update on the latest developments concerning the measures the Government proposes to seek to rejoin. It is intended to complement the more detailed information and analysis contained in our earlier Report, *The UK's block opt-out of pre-Lisbon criminal law and policing measures* and in the Reports produced by the Home Affairs and Justice Select Committees concerning measures within their areas of responsibility. The relevant Reports are listed in Annex 3.³

4. There are two further Annexes to this Report. The first consists of a timeline setting out the steps leading up to the forthcoming debate and vote in Parliament. The second provides a tabular overview of the 35 measures the Government proposes to rejoin.

What is the block opt-out?

5. The block opt-out principally concerns the powers of the Commission and the Court of Justice in relation to EU police and criminal justice measures. From 1 December 2014, the Court of Justice will exercise full jurisdiction over *all* EU police and criminal justice measures, and national courts across the EU will be able to seek preliminary rulings from

1 EU police and criminal justice measures is a shorthand description for “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” (Article 10 of Protocol 36 to the EU Treaties).

2 Letter of 6 April 2014 from the Home and Justice Secretaries (Mrs Theresa May and Chris Grayling) to the Chairs of the European Scrutiny, Home Affairs and Justice Committees.

3 The list also includes two Reports on the 2014 block opt-out published by the EU Select Committee in the House of Lords.

the Court on the validity or interpretation of a particular measure. Although most Member States⁴ already accept the Court's jurisdiction, a significant minority — including the UK — does not. In addition, the Commission will be able to bring infringement proceedings before the Court and request a fine if Member States are deemed not to have implemented the measures correctly.

6. The change in the powers of the Commission and the Court of Justice are particularly significant for the UK. Under transitional provisions agreed during the Lisbon Treaty negotiations (set out in Protocol 36 to the EU Treaties), the enhanced powers of the Court and the Commission only apply to EU police and criminal justice measures amended or newly adopted *after* that Treaty entered into force, on 1 December 2009, but not to the 110-odd measures that pre-date the Treaty. The UK is not bound by any *post*-Lisbon EU police and criminal justice measures unless it chooses to opt in.⁵ The Government therefore has the opportunity, in each case, to weigh the advantages of participation against the risk of ceding greater powers to the Commission or the Court. By contrast, *pre*-Lisbon EU police and criminal justice measures were agreed by unanimity, each Member State had a veto, none was required to accept the jurisdiction of the Court, and the Commission lacked any direct enforcement powers. It is these measures — all still binding on the UK — which will be brought within the full jurisdiction of the Court and subject to the Commission's enforcement powers from 1 December 2014.

7. Successive British Governments have resisted the extension of the powers of the Commission and Court in relation to EU police and criminal justice measures. As a result, the transitional provisions contained in Protocol 36 include a special safeguard for the UK. Article 10(4) of the Protocol gives the UK, alone, the right to decide to opt out *en masse* of all pre-Lisbon EU police and criminal measures. The Prime Minister formally notified the Council of the UK's decision to exercise the block opt-out on 24 July 2013, following a debate and vote in the House of Commons on 15 July. The block opt-out will take effect on 1 December 2014. EU police and criminal justice measures within the scope of the block opt-out will cease to apply to the UK from that date.

Which measures are subject to the block opt-out?

8. A number of significant and contentious police and criminal justice measures are subject to the block opt-out. They include the European Arrest Warrant and the European Supervision Order, as well as measures creating EU Agencies responsible for strengthening cross-border cooperation on, and coordination of, policing (Europol) and judicial cooperation matters (Eurojust). However, not all pre-Lisbon EU police and criminal justice measures remain within the scope of the block opt-out. The right conferred on the UK to opt out *en masse* of such measures does not extend to those which have been amended or repealed and replaced since the Lisbon Treaty took effect on 1 December 2009 by further measures in which the UK has chosen to participate. For example, in 2011 the UK opted into a draft Directive on attacks against information systems which replaces a

4 Member States that already accept the jurisdiction of the Court of Justice are Austria, Belgium, Czech Republic, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Slovenia, Spain and Sweden.

5 The reverse is true for the relatively small number of EU police and criminal justice measures which build on existing Schengen measures in which the UK participates. In such cases, the UK will be bound unless it decides to opt out.

pre-Lisbon Framework Decision agreed in 2005. The UK's decision to opt into the Directive, and its subsequent adoption in August 2013, has removed the 2005 Framework Decision from the scope of the block opt-out. Moreover, as the Directive is a post-Lisbon measure, all Member States participating in it are bound to accept the enhanced powers of the Commission and the Court of Justice. Member States are required to transpose the Directive into their national laws by 4 September 2015. If they fail to do so, the Commission may initiate infringement proceedings.

9. Negotiations on EU police and criminal justice measures which will amend or repeal and replace pre-Lisbon measures will continue up to 1 December 2014. Measures currently under negotiation include draft Regulations on Europol (the European Police Office) and Eurojust (the EU's judicial cooperation agency) which, if adopted, will repeal a number of pre-Lisbon Council Decisions. Although none of these negotiations are expected to conclude before 1 December 2014, and so should not affect the scope of the UK's block opt-out, they illustrate the difficulty of ascertaining how many pre-Lisbon measures will, by then, remain subject to the UK's block opt-out.⁶ Even at this late stage, there remain differences between the list of measures which the Government considers are subject to the UK's block opt-out, and the Commission's list, which will need to be resolved in order to ensure that there is complete clarity as to the measures which will cease to apply to the UK on 1 December 2014.⁷

Opting back into individual measures

10. The UK's block opt-out is accompanied by a right, "at any time afterwards", to seek to rejoin individual measures that have ceased to apply to the UK on 1 December 2014. The procedures for doing so are set out in Article 10(5) of Protocol 36 and depend on whether a measure is linked to the so-called Schengen *acquis* — the body of rules put in place to maintain security within the borderless Schengen free movement area. The UK maintains its own border controls and does not participate in the Schengen free movement area, but has chosen to take part in Schengen rules on cross-border police and criminal judicial cooperation. The UK also intends to connect to the second generation Schengen Information System SIS II — a law enforcement database containing 'real time' information on individuals wanted for extradition, missing persons, and lost or stolen identity documents — by the end of 2014.

11. For Schengen measures, the Council has to agree the UK's request to opt back in by unanimity. For non-Schengen measures, the initial decision rests with the Commission. If, however, the Commission considers that the UK has not fulfilled the conditions for participating in the measures it wishes to rejoin, the UK may refer the matter to the Council for a decision by qualified majority. In both cases, the EU institutions and the UK are required to "seek to establish the widest possible measure of participation", whilst ensuring that selective participation by the UK does not seriously affect the practical

6 The UK has not opted into the draft Regulations concerning Europol and Eurojust, but may consider a post-adoption opt-in.

7 For further details, see Commission staff working document, *Revised preliminary list of the former third pillar acquis*, (36117), 9883/13: Sixteenth Report HC 219-xvi (2014–15), chapter 12 (29 October 2014); Thirteenth Report HC 219-xiii (2014–15), chapter 23 (15 October 2014); Ninth Report HC 219-ix (2014–15), chapter 17 (3 September 2014) and Fifth Report HC 219-v (2014–15), chapter 8 (2 July 2014).

operability of the various parts of the EU's justice and home affairs *acquis* and that it respects the coherence of that *acquis*.⁸

12. If the UK does opt back into measures which are within the scope of its block opt-out, the EU Treaties as they stand do not allow the UK a further opportunity to opt out of them.

13. Command Paper 8671, published in July 2013, included a list of 35 measures — five of them Schengen, the remaining 30 non-Schengen measures — which the Government considered would be in the UK's national interest to rejoin. According to the Home Secretary, the 35 measures would:

“help us to cooperate with our European neighbours to combat cross-border crime and keep our country safe.”⁹

14. She described the “vast majority” of the 35 measures as:

“uncontroversial, and based on the very sensible principle of ‘cooperation not control’.”¹⁰

15. A similar, but not identical, list of 35 measures was included in Command Paper 8897, published on 3 July 2014. This revised list reflects the outcome of “detailed technical level discussions with the Commission and Council” on the measures the UK will seek to rejoin.¹¹ The outcome comprises 35 measures, of which 29 are non-Schengen and 6 are Schengen measures. According to the Home and Justice Secretaries, the Government, “backed by the clear views expressed in Parliament”, has been able to “resist many of the changes demanded by the Commission and other Member States”.¹²

16. The following paragraphs describe the changes made to the original list of 35 measures in Command Paper 8671 as a result of negotiations between the UK, Commission and Council. The explanation for the changes (in italics after each measure) draws on information provided by the Home and Justice Secretaries.¹³

Changes to the list of measures the UK will seek to rejoin

Non-Schengen measures

17. One measure has moved from the non-Schengen to the Schengen list:

- Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

8 See Article 10(5) of Protocol 36.

9 *HC Deb*, 9 July 2013, col. 177

10 *HC Deb*, 15 July 2013, col. 78

11 Cm 8897, p.2

12 Letter of 3 July to the Chair of the European Scrutiny Committee.

13 *Ibid.*

18. In 2012, the UK decided not to opt out of a post-Lisbon Directive that will, when adopted, replace this Framework Decision. This new Directive will be decided by a qualified majority in the Council and co-decision with the European Parliament.¹⁴

19. Four measures have been removed from the list. Two are no longer subject to the block opt-out as they have been amended, or certain provisions replaced, by later measures in which the UK has chosen to participate:

- Council Framework Decision 2003/577/JHA on the execution within the EU of orders freezing property or evidence: *certain provisions of the Framework Decision have been replaced by the Directive on the European Investigation Order*; and
- Council Decision 2005/681/JHA establishing the European Police College (CEPOL): *the Council Decision was amended by a Regulation establishing a new location for CEPOL*.

20. The remaining two measures removed from the list are still subject to the block opt-out and will cease to apply to the UK from 1 December 2014:

- Council Decision 2002/494/JHA setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes: *the Government no longer intends to rejoin the European Genocide Network but will, instead, seek to rejoin the European Judicial Network (see below)*; and
- Council Decision 2008/617/JHA on the improvement of cooperation between the special intervention units of Member States in crisis situations: *the Commission considers that this measure is linked to the Prüm Decisions which the Government does not intend to rejoin (at this stage)*.

21. Four measures have been added to the list of measures the UK will seek to rejoin, three relating to Europol and one to the European Judicial Network:

- Council Decision 2008/976/JHA establishing the European Judicial Network: the Government's decision to rejoin this measure has been influenced by the submission of further evidence from the Lord Advocate, the Crown Prosecution Service and other Member States on its operational benefits in tackling crime;
- Council Decision 2009/934/JHA on implementing rules governing Europol's relations with partners, including the exchange of personal data and classified information: the Government now accepts that rejoining this Europol measure, and the two below, is necessary to continue UK participation in Europol;
- Council Decision 2009/936/JHA on implementing rules for Europol analysis work files; and
- Council Decision 2009/968/JHA adopting rules on the confidentiality of Europol information.

14 See (33646), 5833/12: Twelfth Report HC 219-xii (2014–15), chapter 8 (10 September 2014).

22. As a result of these changes, the UK will seek to rejoin 29 non-Schengen measures, one fewer than listed in Command Paper 8671.

Schengen measures

23. One measure has moved from the non-Schengen to the Schengen list:

- Council Framework Decision 2008/977/JHA on the protection of personal data processed in the framework of police and judicial cooperation in criminal matters.

24. One measure has been removed from the list and will be subject to the UK's block opt-out:

- SCH/Com-ex (98)52 — Handbook on cross-border police cooperation: *this measure is now considered to be obsolete*.

25. One measure has been added to the list:

- Commission Decision 2007/171/EC laying down the network requirements for the second generation Schengen Information System: *this measure is considered by other Member States to be integral to the operation of SIS II*.

26. Another change, not reflected in the total number of Schengen measures the UK will seek to rejoin, concerns UK participation in the Schengen Implementing Convention. Three provisions have been removed (Articles 48, 49(b)-(f) and 51 concerning mutual assistance in criminal matters) and eleven added (Articles 59-66 on extradition, and Articles 67-69 on the transfer of the enforcement of criminal judgments, but only 'to the extent necessary in relation to the associated EFTA States' — Iceland, Norway, Switzerland and Liechtenstein).

27. As a result of these changes, the UK will seek to rejoin 6 Schengen measures, one more than listed in Command Paper 8671.

How significant are the changes to the measures the Government proposes to rejoin?

28. Taken as a whole, the changes do not appear to affect the overall balance of the package of measures that the Government proposes to rejoin. Some changes are a consequence of measures ceasing to be subject to the block opt-out; others, such as the additional measures relating to Europol or SIS II, are ancillary to the Government's decision to participate in Europol and SIS II and may therefore be regarded as necessary on grounds of coherence and practical operability.

29. The total number of measures the Government proposes to rejoin has remained constant, at 35. This net figure should, however, be viewed within a broader context. First, there has been a gradual reduction in the number of measures subject to the block opt-out during the period in which negotiations between the UK and the Commission and Council

have been taking place, without a corresponding reduction in the number the Government proposes to rejoin.¹⁵

30. Second, the Home Secretary has indicated that the Commission and other Member States were keen for the UK to rejoin three additional measures: two so-called “Prüm” Decisions concerning cross-border cooperation on serious crime and terrorism, and a Framework Decision on probation.¹⁶ During the general debate on the UK’s block opt-out on 10 July 2014, the Home Secretary explained that the UK would not rejoin Prüm on 1 December 2014, but added:

“In order for the House to consider the matter carefully, the Government will produce a business and implementation case and run a small-scale pilot with all the necessary safeguards in place. We will publish that by way of a Command Paper and bring the issue back to Parliament so that it can be debated in an informed way. We are working towards doing so by the end of next year. However, the decision on whether to rejoin Prüm would be one for Parliament.”¹⁷

31. As regards the Framework Decision on probation, the Justice Secretary informed the House:

“We have indicated to the Commission [...] that we will take another look at the measure when there is enough evidence of it working and of its impacts to see whether there would be benefits to the UK in taking part. To support that decision, we will publish for Parliament an assessment of the potential impacts. Clearly, we will not agree to join this or any further JHA measure unless it is in our national interest to do so.”¹⁸

32. The timescales foreseen for reviewing the case for UK participation in these three measures suggest that the final decision will be for the next Parliament.

Impact Assessments

33. Command Paper 8897 includes 22 Impact Assessments covering the 35 measures the Government proposes to rejoin. Their purpose is to:

“present the evidence base supporting the rationale for intervention and estimate the likely costs and benefits.”¹⁹

34. The Impact Assessments assume that the UK will have implemented, and be fully compliant with, all of the 35 measures by 1 December 2014 but recognise, in some cases, a

15 This is because the Government has opted into, or is considering opting into post-adoption, a number of post-Lisbon police and criminal justice measures which amend, or repeal and replace, pre-Lisbon measures. Examples include: a 2005 Decision establishing the European Police College (CEPOL) which is no longer subject to the block opt-out, following the Government’s decision to opt into an amending Regulation; and a possible post-adoption opt-in to a 2014 Directive on the freezing and confiscation of proceeds of crime.

16 Council Decisions 2008/615/JHA and 2008/616/JHA and Framework Decision 2008/947/JHA.

17 *HC Deb*, 10 July 2014, col. 492.

18 *HC Deb*, 10 July 2014, col. 549.

19 See p.9 of the Command Paper.

degree of “policy uncertainty about the level of implementation” in other Member States that could affect the calculation of costs and benefits.²⁰

35. We have considered the internal consistency of the Impact Assessments in light of preparatory work undertaken by the House of Commons Scrutiny Unit. To help inform the forthcoming debate and vote on the 35 measures the Government proposes to rejoin, we have found examples which we consider give rise to the questions and comments highlighted in bold italics below.

Would opting back into certain measures make a significant practical difference for the UK?

36. ***The evidence contained in some Impact Assessments does not demonstrate that opting back in to a particular measure would make a significant practical difference for the UK.***

Examples:

Combating child pornography on the internet — Council Decision 2000/375/JHA

The Impact Assessment states that the UK already complies with the Council Decision and would continue to do so even if it were not to opt back into the measure. The UK's existing legislation and law enforcement capability are used both for EU and non-EU work. ***There is little evidence in the Impact Assessment to demonstrate that the Council Decision significantly enhances the UK's law enforcement capability. The Impact Assessment suggests that the measure may help to ensure that UK intelligence made available to other Member States is acted on more quickly. However, in Command Paper 8671, published in July 2013, the Government said this of the scenario in which the UK were to decide not to opt back into the Council Decision:***

There is a risk that it might reduce our influence with other Member States on improving their work in this area, however, it is unlikely that the efforts of other countries would be reduced as a result.

The instrument provides a framework for cooperation but allows this to occur through other channels (for example, Mutual Legal Assistance and Joint Investigation Teams). This is foreseen in Article 2 of the measure. If we did not participate in this measure, we could continue to work with a wide range of international partners to tackle this problem through these cooperation mechanisms.²¹

Organised crime — Joint Action 97/827/JHA

The Impact Assessment notes that, if the UK were to opt out of the Joint Action, it would no longer be able to take part in peer evaluation exercises which enable Member States to identify capability gaps in tackling international organised crime.

20 See, for example, the Impact Assessments on the Prisoner Transfer Framework Decision (p.203 of Cm 8897) and on the European Supervision Order (p.219 of Cm 8897).

21 Cm 8671, p.89, paras 42-43.

The UK could continue to participate in working group meetings to discuss the content of evaluation reports, but would have reduced powers to influence the drafting process and the final report. The Impact Assessment cites a number of non-monetised benefits resulting from UK involvement in the formal peer evaluation process, such as advancing the case for proportionality to be considered in the practical operation of European Arrest Warrant. *Given that continuing participation in working groups would be possible if the UK were to opt out, it is not self-evident that opting back into the Joint Action is necessary to obtain these benefits.*

Can the benefits of UK participation be readily and reliably quantified?

37. *In cases where the benefits of opting back into a measure cannot be easily quantified, the Impact Assessments rely on an assertion that the non-monetised benefits of participation outweigh the quantified costs (which are often relatively small). Analysis could be improved by giving more examples of how a particular measure has been of benefit to the UK.*

Example:

European Image Archiving System (FADO) — Joint Action 98/700/JHA

The Impact Assessment suggests that the costs of running FADO — an online system for identifying false and authentic documents — are modest. If the UK were to opt out of FADO, Government departments and agencies would only be able to access the PRADO system, which has limited information on authentic documents and none on false documents. *The Government's view that the non-monetised benefits of participation in FADO — through increased detection of false documents and identity fraud — outweigh the relatively small costs involved appears reasonable. However, the Impact Assessment makes clear that there is "insufficient evidence to determine the extent of additional detection due solely to FADO".²² This is because FADO activities are not logged separately by officers in the UK's National Document Fraud Unit but are incorporated into day to day work. Practical examples of FADO's contribution to the detection of identify fraud would have helped to make a more convincing case for continuing UK participation. Moreover, the Impact Assessment does not consider the possibility of negotiating alternative access arrangements to the FADO system.*

Has equal weight been given to the benefits and drawbacks of UK participation?

38. *Some Impact Assessments provide robust examples to demonstrate the benefits of participation in a particular measure, but fail to give equal prominence to the negative effects for some individuals.*

Example:

22 Cm 8897, p.18.

European Arrest Warrant (EAW) — Framework Decision 2002/584/JHA

The Impact Assessment states that the EAW provides a system for the surrender by one Member State to another of individuals sought for a criminal trial or service of a custodial sentence. It explains how the EAW has made it easier to bring serious criminals to justice, such as Hussain Osman (the failed 21/7 bomber) who fled to Italy and was returned to the UK within 56 days. ***The Government does not, however, include in its assessment of non-monetised costs the detriment caused to British citizens who have been surrendered to another Member State under the EAW and, in some cases, detained for lengthy periods of time in poor prison conditions, without being tried or convicted. Moreover, of the 5,184 individuals arrested in the UK on the basis of an EAW between April 2009 and April 2013, the Impact Assessment provides no information on the number who were sent for trial and convicted.***

Would UK participation ensure reciprocal benefits and burdens for the UK and other Member States?

39. Rejoining some measures does not appear to ensure reciprocal benefits and burdens for the UK and other Member States — the UK may be giving proportionately more assistance to other Member States than it receives in return.²³ In such cases, analysis in the Impact Assessment could be improved by providing some explanation for the disparity.

Examples:*Eurojust — Council Decisions 2002/187/JHA, 2003/659/JHA and 2009/426/JHA*

The Impact Assessment shows that, in 2013, Eurojust requested assistance from UK authorities in 186 cases, whereas the UK requested assistance from Eurojust in 97 cases. The UK desk is currently working on 349 live operational cases formally “opened” at Eurojust, most of these (256) at the instigation of other Member States rather than the UK (93 cases). This pattern holds true for previous years. ***The Impact Assessment provides no explanation of the reasons for the disparity in the number of requests handled by the UK. Nor does it indicate whether any other Member States experience a similar imbalance.***

European Arrest Warrant (EAW) — Framework Decision 2002/584/JHA

The Impact Assessment states that the number of people arrested in the UK under an EAW issued by another Member State far exceeds the number of people arrested in other Member States under an EAW issued by the UK. Between April 2009 and April 2013, 5,184 people were arrested in the UK under an EAW and 4,005 were surrendered to another EU country. The vast majority of surrenders — 95.5% — concerned foreign nationals. In the same period, 573 people were arrested elsewhere in the EU following an EAW issued by the UK and 507 were

²³ On the other hand, there are examples of measures which the UK proposes to rejoin in which the UK is a net user (e.g. requests for cross-border surveillance under Article 40 of the Schengen Convention).

surrendered to the UK. Most of those surrendered to the UK — 54% — were UK nationals. The Impact Assessment suggests that the introduction of a new proportionality test in domestic legislation, as well as additional safeguards, may lead to a reduction in the number of surrenders from the UK for relatively minor offences. *More detailed information on the proportion of EAWs issued by the UK and other Member States that lead to arrests, surrenders, prosecutions and convictions (or service of a sentence previously imposed) would be useful in assessing how effective different jurisdictions are in enforcing EAWs.*

*Also useful to an evaluation of the costs and benefits of the EAW would be an assessment of the number of extraditions from the UK likely to have been blocked by the new provisions in UK legislation implementing the EAW, had those provisions existed at the relevant time. However, the Government has indicated, in answer to a written Parliamentary question, that no such assessment has taken place, at least with regard to the proportionality test, saying that this is only intended to stop extradition “in the most minor cases”.*²⁴

Is there sufficient practical experience to demonstrate that participation in a measure will be beneficial for the UK?

40. *Some Impact Assessments show that the UK and/or other Member States have not fully implemented a particular measure so there is very little tangible or practical evidence to indicate how it will operate or how effective it will be in the UK. In such cases, evidence and risks may be based on optimistic assumptions. The Impact Assessments could have included more robust analysis of the risks involved in remaining bound by such measures, as well as the impact on the projected costs and benefits for the UK of partial or non-compliance by other Member States.*

Examples:

Transfer of Prisoners — Framework Decision 2008/909/JHA

Although the UK has implemented the Framework Decision, the Impact Assessment notes that there is “policy uncertainty about the level of implementation” in other Member States.²⁵ It also highlights operational or capacity constraints in some Member States which might make it difficult for them to implement the measure effectively, creating delays in the process for transferring foreign national offenders from the UK to their home country. Delays and costs may be compounded by an increase in the number of appeals against transfer on human rights grounds, particularly if the transfer is to a Member State with poor prison conditions. The Government describes the principal monetised benefit of the Framework Decision in terms of saving prison places, adding that the UK’s prison estate could be significantly overhauled if sufficient outward transfers are achieved and sustained.²⁶ It calculates that the benefit from being able to send

24 HC Deb, 9 September 2014, col. 578W

25 Cm 8897, p.204.

26 Cm 8897, p.207.

prisoners back to their home country without their consent would be greater than the combined costs arising from appeals, deportation, and the reception of returning British national offenders. ***It is not evident that a positive net impact on the scale envisaged by the Government is achievable, given the degree of uncertainty about the level of implementation of the measure across the EU and the extent to which prisoners will be able to frustrate their transfer using challenges based on EU law.***

European Supervision Order — Framework Decision 2009/829/JHA

The Impact Assessment assumes that the UK and all other Member States will have implemented the European Supervision Order (ESO) by the beginning of 2015, whilst at the same time acknowledging “policy uncertainty about the level of implementation”.²⁷ Given this uncertainty in assessing the overall net benefits of the Framework Decision for the UK, the Government has applied various “sensitivity tests”. These are intended to ensure that the Impact Assessment is based on a realistic set of assumptions which take account of variations in the volume of suspects at home and abroad who are eligible (and apply) for an ESO, as well as costs associated with imprisonment, bail and absconding opportunities. Significantly, the Impact Assessment states that there is “no operative experience to guide the assessments”.²⁸ ***No consideration appears to have been given to the possibility that suspects awaiting trial in the UK might be at greater risk of absconding if they are allowed to serve their bail conditions in another Member State, or that police authorities in a foreign jurisdiction may not have such strong incentives to supervise them effectively.***

Mutual Recognition of Confiscation Orders — Framework Decision 2006/783/JHA

The Impact Assessment describes the Framework Decision as “a radical measure that attempts to harmonise Member States’ approaches to confiscation so that they can interact easily with each other”.²⁹ Although the Government says that the Framework Decision “puts in place a simplified, effective and quicker approach to confiscating the proceeds of crime in another Member State”, it acknowledges that the UK has not used the measure at all, relying instead on provisions contained in the Proceeds of Crime Act 2002. ***Given the lack of operational experience in applying the Framework Decision, and uncertainty as to the volume of incoming and outgoing requests for enforcement of confiscation orders, there is little evidence in the Impact Assessment to support the Government’s assertion that UK participation will result in the confiscation of more criminal assets.***

The Impact Assessment explains that the Framework Decision requires criminal assets exceeding €10,000 to be divided equally between the Member State issuing the confiscation order and the Member State executing it. This contrasts with current practice whereby all of the criminal assets are retained by the Member State

27 Cm 8897, p.219.

28 Cm 8897, p.219.

29 Cm 8897, p.106.

executing the confiscation order. *The Impact Assessment suggests that this loss of revenue will be off-set by an increase in the volume of criminal assets confiscated under the Framework Decision, but the evidence base to substantiate this claim is lacking. The Impact Assessment does not address the risk that a smaller share of the criminal assets may also reduce the incentive for the executing Member State to enforce a confiscation order, or the possibility that the UK may end up returning 50% of confiscating proceeds to other Member States without obtaining similar cooperation or benefits in return.*

Have alternative forms of cooperation been assessed?

41. *Little consideration has been given in the Government's Impact Assessments to the possibility of establishing alternative forms of cooperation, whether or not legally binding, even though these were envisaged in Command Paper 8671, published in July 2013.*

42. Command Paper 8671 stated that if the UK were to exercise the block opt-out, "cooperation with other Member States could take a number of forms" and that "in some cases it may be possible to negotiate bilateral treaties with each Member State or with the EU that would effectively replace the [EU] instrument in question".

43. The Government went on to explain:

"The position of the other Member States depends on whether the EU has exclusive competence in that area. That requires a measure by measure analysis.

"If there is no exclusive competence in relation to third pillar measures, the other Member States will not require any permission or authorisation from the EU institutions. If there is exclusive competence in a particular third pillar area, while the UK is free to enter into international commitments after the block opt-out, the other Member States will require authorisation and agreement from the EU. But in principle, bilateral or multilateral agreements — either with the Member States individually or collectively — would be legally possible with such authorisation."

44. The Government added:

"In some cases there may simply be no need for any such agreement to be in place in order for there to be cooperation."³⁰

45. The position of the European Commission was explained by the Government in its response to a written question on 9 September 2014:

The Commission has been clear during negotiations that a bilateral treaty between the UK and the EU on any matters falling within the scope of the block opt-out is not feasible.³¹

30 Cm 8671, p.80, paras 271-276.

31 HC Deb, 9 September 2014, col. 578W.

46. *Given the Government's legal analysis in its July 2013 Command Paper and the precedent set by Denmark, this appears to be more of a political rather than a legal objection on the Commission's part. A new College of Commissioners is about to take office, with its President stating: "I will work for a fair deal with Britain. A deal that accepts the specificities of the UK in the EU, while allowing the Eurozone to integrate further" (<http://juncker.epp.eu/my-priorities>). Given this, the Government need not have abandoned the option of a bilateral UK-EU treaty.*

Examples:

European Arrest Warrant (EAW) – Framework Decision 2002/584/JHA

The Impact Assessment only assesses the effect of relying on the 1957 European Convention on Extradition if the UK does not opt back in to the EAW. It does not examine the option of a new UK-EU treaty on extradition, which could omit some of the bars to extradition that exist under the 1957 Convention but include much better safeguards for British citizens than the EAW, such as only requiring extradition for truly serious offences, allowing greater or complete scope for extradition to be blocked where the alleged offence is not a crime under UK law, and allowing British courts to conduct an assessment of the likelihood of a fair trial within a reasonable timeframe in the requesting EU country without the EU Court of Justice able to override their decisions.

Policing international football matches – Decision 2002/348/JHA as amended by Decision 2007/412/JHA

The Impact Assessment says that not opting back in to this EU legislation establishing a network of 'National Football Information Points' (NFIPs), one in each Member State, would risk the exchange of information between the UK and other Member States relevant to the policing of football matches with an international dimension. However, there is no evidence that the Government has assessed the possibility of the UK remaining outside this EU legislation but maintaining its NFIP and continuing to exchange relevant information with the NFIPs of other Member States, under memoranda of understanding if a more structured process is required. This would avoid the possibility of EU Court of Justice intervention in how these football matches are policed in the UK, which would arise if the UK opts back in to this EU legislation.

How valid is the Government's assumption that the UK's contribution to the EU budget could not be reduced if the UK were to opt out of certain measures?

47. *Some Impact Assessments make the assumption that the UK's contribution to the EU budget would not change even if the UK were to opt-out of the measures concerned. This makes the costs of opting out, as well as the relative benefits of opting back in, greater than would have been the case if a decision to opt out was accompanied by a commensurate reduction in the UK's contribution to the EU budget.*

Examples:

Europol — Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/936/JHA and 2009/968/JHA

The Impact Assessment assumes that the UK will have to pay £8.4m per annum on Europol membership up until 2020 as part of the commitments agreed for the EU budget for 2014-20, regardless of whether or not the UK opts back into the Europol measures.

Eurojust — Council Decisions 2002/187/JHA, 2003/659/JHA and 2009/426/JHA

Similarly, the Impact Assessment states that Eurojust receives funding from the EU general budget to which the UK contributes and that “legal advice is that non-participation in this measure will not lead to a return of funds from the EU general budget. It is assumed that the UK funding of this measure will continue whether the UK seeks to rejoin or not”.³²

Neither Impact Assessment indicates whether the Government has sought to question the assumption that it would be unable to negotiate a reduction in its contribution to the EU budget if the UK were to opt out. For instance, Protocol No. 21 to the EU Treaties on the position of the UK and Ireland in respect of the area of freedom, security and justice provides that the UK does not typically bear any financial consequences of EU justice and home affairs measures it does not opt into, other than “administrative costs entailed for the [EU] institutions”. Nor do the Impact Assessments consider how securing a budget reduction would affect the calculation of the costs and benefits of UK participation in the measures.

Are the benefits to the UK dependent on opting into other measures?

48. Some of the benefits referred to in the Impact Assessments are largely derived from UK participation in other related measures.

Examples:

Organised crime — Joint Action 97/827/JHA

One of the non-monetised benefits of participating in the Joint Action is to provide a forum in which the UK has been able to advance the case for proportionality to be considered when deciding whether or not to issue a European Arrest Warrant (EAW). ***The significance of this benefit would be greatly reduced if the UK were to opt out of the EAW.***

European Judicial Network — Council Decision 2008/976/JHA

The principal monetised benefit of participating in the European Judicial Network (EJN) is that funding to attend meetings is provided by Eurojust. ***If the UK were to opt out of Eurojust, continuing participation in the EJN would depend exclusively***

on non-monetised benefits, such as closer legal and judicial cooperation between Member States.

Conclusion

33. During the last 18 months, the European Scrutiny, Home Affairs and Justice Committees in the House of Commons, and the EU Select Committee in the House of Lords, have produced a series of Reports to inform Members of both Houses of the legally complex and politically contentious issues associated with the UK's 2014 block opt-out decision. All of the Committees have been united in a common endeavour: to scrutinise the Government's approach and to place as much information as possible in the public domain. It has, at times, been an uphill battle due to delays and omissions in the Government's provision of information.

34. As we made clear in our earlier Report, *The 2014 block opt-out: engaging with Parliament*, the Government's decision on the block opt-out, and on the measures it proposes to rejoin, will have potentially far-reaching implications.³³ It will affect how and where policies and laws on these matters are formulated, interpreted and enforced. It will affect UK citizens who may be sought for, or involved in, criminal proceedings in another EU Member State and how suspects who have fled abroad are brought to justice in the UK. Above all, it will affect the way in which the Government seeks to ensure public safety and security while protecting its citizens' freedoms.

49. We concluded in our subsequent Report, *The UK's block opt-out of pre-Lisbon criminal law and policing measures*:

“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 non-binding 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.

“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.”³⁴

33 See our Thirty-seventh Report of Session 2012–13, HC 798.

34 See our Twenty-first Report of Session 2013–14, HC 683, paras 551–552.

50. As the final vote approaches (although the date remains uncertain), we trust that our latest Report will help to clarify the main outstanding issues so that Members of the House are better able to hold the Government to account.

51. We take this opportunity to remind the Government that we expect a separate motion to be tabled for each of the 35 measures it proposes to rejoin.

Annex 1 — A timeline for the UK's 2014 block opt-out

Timing	Detail
22 March 2013	Publication of the European Scrutiny Committee's Report, <i>The 2014 block opt-out: engaging with Parliament</i> . The Report set out the information which the Committee considered should be made available by the Government to ensure genuine engagement with Parliament ahead of the Parliamentary vote on the UK's block opt-out (see Annex 3).
23 April 2013	Publication of the Report of the House of Lords EU Committee, <i>EU police and criminal justice measures: The UK's 2014 opt-out decision</i> (see Annex 3).
9 July 2013	Home Secretary's oral statement to Parliament and publication of Command Paper 8671 informing Parliament of the Government's intention to opt out <i>en masse</i> of around 130 pre-Lisbon EU police and criminal justice measures and setting out a list of 35 measures which the Government proposes to seek to rejoin.
15 July 2013	The House of Commons supports an amended motion endorsing the Government's decision to exercise the block opt-out. The motion states that the Government will not open formal discussions with the Commission, Council and other Member States before the end of October 2013 and invites the European Scrutiny, Home Affairs and Justice Committees to submit reports by then.
24 July 2013	The Prime Minister formally notifies the EU institutions of the UK's decision to opt out <i>en masse</i> of pre-Lisbon police and criminal justice measures — the 35 measures the Government intends to seek to rejoin were informally notified on 9 July.
31 October 2013	Publication of the Home Affairs and Justice Committee Reports on the UK's block opt-out (see Annex 3). Publication of the follow-up Report of the House of Lords EU Committee on <i>EU police and criminal justice measures: The UK's 2014 opt-out decision</i> (see Annex 3)
7 November 2013	Publication of the European Scrutiny Committee's Report on the UK's block opt-out (see Annex 3).
January 2014	Publication of the Government's Responses to the Reports of the European Scrutiny, Home Affairs and Justice Committees. They include a commitment by the Government to: <ul style="list-style-type: none"> • "engage with Parliament as appropriate"; • provide a full Impact Assessment on the measures the Government proposes to seek to rejoin "in good time ahead of a second vote"; and • hold a second vote on the final list of measures the Government intends formally to seek to rejoin.
March 2014 onwards	A "Friends of Presidency" Group is created to discuss the application of Article 10 of Protocol 36 to the EU Treaties. Its task is two-fold: to identify pre-Lisbon police and criminal measures which will be

	<p>subject to the full jurisdiction of the Court of Justice and the Commission's enforcement powers from 1 December 2014; and to establish the measures which will cease to apply to the UK from that date.</p> <p>The Friends of Presidency Group is responsible for considering the Schengen measures which the UK will seek to rejoin.</p> <p>The Commission is responsible for agreeing (through bilateral discussions with the UK) the non-Schengen measures which the UK will seek to rejoin.</p> <p>The Friends of Presidency Group has broad political oversight of both sets of negotiations.</p>
26 March 2014	<p>Publication of the First Joint Report of the European Scrutiny, Home Affairs and Justice Committees underlining the importance of Parliament's role in scrutinising the Government's approach to the 2014 block opt-out decision and calling for an early debate and vote on the measures the UK should seek to rejoin <i>before</i> negotiations begin (see Annex 3).</p>
6 April 2014	<p>The Government's Response to the Joint Report states:</p> <p><i>For the avoidance of doubt, we reaffirm our commitment to hold a second vote in both Houses of Parliament before making a formal application to rejoin any measures. We continue to believe that in order for this debate to be as informed as possible, it should be held after we have reached 'in principle' agreement on those measures we will seek to rejoin.</i></p>
7 April 2014	<p>General debate on a motion that "this House has considered the UK's 2014 justice and home affairs opt-out decision".</p>
5/6 June 2014	<p>Justice and Home Affairs Council "took note" of information on the state of play of preparation for the application of Article 10 of Protocol 36.</p>
24 June 2014	<p>General Affairs Council — the press release issued after the Council states:</p> <p><i>The Council noted the conclusion reached between the Commission and the UK on the list of non-Schengen ex-third pillar measures which the UK will seek to rejoin, as well as the solution concerning the Prüm Decisions and the Probation Framework Decision, as explained by the Commission and the UK.</i></p> <p><i>With regard to the Schengen ex-third pillar acquis, the Council had provisionally noted on 5 June 2014 a broad technical agreement on the text of the draft Council Decision on the notification of the UK of its wish to take part in some of the provisions of the ex-third pillar Schengen acquis, until such time as there is a clear picture and a political understanding on the list of ex-third pillar measures which the UK will rejoin, as set out in a report by the Presidency to the Council. However, at this stage, not all reservations could be lifted.</i></p>
30 June 2014	<p>The Minister for Europe's WMS on the General Affairs Council says that the Council discussed the UK's 2014 block opt-out decision:</p> <p><i>The Council noted that the UK Government and the Commission had reached an understanding on the list of non-Schengen pre-Lisbon police and criminal justice measures that the UK Government would seek to rejoin. In respect of the Schengen pre-Lisbon police and</i></p>

	<i>criminal justice measures, the Council recalled that it had previously provisionally noted a broad technical agreement on the draft Council decision although at this stage not all reservations could be lifted.</i>
3 July 2014	Publication of Command Paper 8897 setting out the outcome of “detailed technical level discussions with the Commission and Council” on the measures subject to the block opt-out which the UK will seek to rejoin. The Command Paper contains a revised list of 35 measures, as well as Impact Assessments covering all of the 35 measures.
10 July 2014	General debate in the House of Commons on a motion that “this House has considered the UK’s justice and home affairs opt-outs”.
Oct-end November 2014	<p>Debate and vote in both Houses on the 35 measures the Government intends to seek to rejoin — timing will depend on how quickly a political agreement is reached in Brussels and all remaining reservations are lifted.</p> <p>Following the debate and vote in Parliament, the Government will submit the UK’s formal application to rejoin certain measures. There will then need to be:</p> <ul style="list-style-type: none"> • a Council Decision concerning the Schengen measures the UK will rejoin; and • a Commission Decision on the non-Schengen measures the UK will rejoin. <p>To avoid a legal and operational gap, these Decisions will need to take effect on 1 December 2014.</p> <p>If there is a delay in the adoption of these Decisions, Article 10(4) of Protocol 36 makes provision for the adoption of a Council Decision determining “the necessary consequential and transitional arrangements”. A draft Decision providing for the continuing application of the 35 measures the Government proposes to rejoin until 7 December 2014 was deposited in Parliament on 2 October 2014.³⁵</p> <p>The Council may also adopt a Decision determining whether the UK will be required to bear any direct financial consequences “necessarily and unavoidably incurred” as a result of its decision to exercise the 2014 block opt-out. A draft Decision to this effect was deposited in Parliament on 2 October 2014.³⁶</p> <p>At the time of agreeing this Report, the Government’s Explanatory Memoranda on these draft Decisions were two weeks overdue.</p>

35 (36369), 13683/14 + ADD 1, COM(14) 596.

36 (36368), 13680/14, COM(14) 595.

Annex 2 — Overview of the 35 measures

This Table provides an overview of the 35 measures that the Government proposes to rejoin and includes (in the second column) cross-references to the relevant page numbers of Command Papers 8671 and 8897 and paragraph numbers of our Report, *The UK's block opt-out of pre-Lisbon criminal law and policing measures* (HC 683).³⁷ The fourth column sets out the Government's position based on the information contained in its Impact Assessments. Those produced by the Home Office and Her Majesty's Revenue and Customs include a summary and recommendation which we reproduce in our table. The Ministry of Justice Impact Assessments take a different form so we have reproduced the section setting out the net impact of each measure.

MUTUAL RECOGNITION MEASURES			
Measure	References to Cm 8671, Cm 8897 and HC 683	Purpose and content of measure	Impact Assessment: Government's summary or analysis of net impact
Mutual recognition of confiscation orders <i>Framework Decision 2006/783/JHA</i>	<u>8671</u> p.70 <u>8897</u> p.105 <u>HC 683</u> paras 145-150	Establishes simplified procedures for mutual recognition of confiscation orders for proceeds of crime without verification of dual criminality. Proceeds confiscated are split between the executing and requesting States.	This measure should lead to the confiscation of a greater volume of criminal assets. This has both a criminal justice impact, in that criminals will be deprived of their proceeds, and an economic benefit in that money will be recovered for use for other purposes. Opting-into the measure will also clearly indicate to the international community and individual partners the importance that the UK places on recovering the proceeds of crime (p.111).
Mutual recognition of financial penalties <i>Framework Decision 2005/214/JHA</i>	<u>8671</u> p.127 <u>8897</u> p.183 <u>HC 683</u> paras 151-158	Obliges Member States to collect financial penalties transferred by other Member States, with a proportion of the penalty being allocated to the collecting Member State.	As other Member States have not yet implemented the measure, it has not been possible to determine the overall financial outcome of rejoining. In overall terms we think the financial costs and benefits of opting out or into the measure are fairly evenly balanced and not substantial in magnitude. However, there are public confidence benefits to rejoining that it has not been possible to quantify. The Government is encouraging the use of

37 Twenty-first Report of Session 2013-14.

			financial penalties for minor crimes (<i>in absentia</i> if the offender does not return for trial) and for the financial penalty to be sent to the UK to be enforced (via this measure) rather than requiring the UK to send the person back (under the European Arrest Warrant — EAW). This could in theory lead to fewer EAWs than would be the case if the UK did not participate in the measure, although there is little evidence that this has happened to date (p.188).
European Arrest Warrant <i>Framework Decision 2002/584/JHA</i>	<u>8671</u> p.94 <u>8897</u> p.45 <u>HC 683</u> paras 107-131	Expedites the extradition process between EU Member States using the principle of “mutual recognition” and removing previous barriers to extradition (including, in a wide range of areas, the fact that the alleged offence is not criminal under the law of the extraditing Member State, as well as barriers relating to nationality and limitation periods).	The preferred option is to rejoin the European Arrest Warrant (EAW) and the second generation Schengen Information System (SIS II). Once SIS II and the National Crime Agency's SIRENE Bureau ³⁸ are operational, the UK will have access in ‘real time’ to all EAWs issued by other Member States and information relating to all other law enforcement alerts. This would maximise the UK's ability to identify and arrest people who pose a threat to public safety and security and make sure that they are brought to justice (p.72).
Taking account of previous criminal convictions <i>Framework Decision 2008/675/JHA</i>	<u>8671</u> p.129 <u>8897</u> p.122 <u>HC 683</u> paras 159-166	Requires national courts to take into account a defendant's previous convictions in another Member State in the same manner (and for the same purposes of sentencing and resisting bail applications) as previous national convictions.	It is recommended that the UK seeks to rejoin this measure and ECRIS (see below under measures for the exchange of information). Participation in ECRIS provides the UK with the full offending history of UK nationals and the serious offending history of EU nationals. This information can be used in court to determine sentencing or the granting of bail. It further supports public protection as regards deportation and removals and in determining if individuals should be, or are already on the sex offender register. It allows

38 SIRENE is an acronym for Supplementary Information Request at the National Entry. Each Member State has a SIRENE bureau — the UK's will be in the National Crime Agency. It supports the police and other law enforcement bodies in submitting and acting on “alerts” entered in SIS II.

			employers to run pre-employment checks and to check the history of those working with children and vulnerable adults. This measure (taking account of previous criminal convictions) provides legal certainty that foreign convictions will be used in UK courts and that UK convictions are taken into account in foreign proceedings (p.135).
Transfer of prisoners — mutual recognition of judgments imposing a custodial sentence <i>Framework Decision 2008/909/JHA</i>	<u>8671</u> p.130 <u>8897</u> p.203 <u>HC 683</u> paras 167-181	Enables the transfer of Foreign National Offenders (FNOs) to their home country in the EU to serve their custodial sentence.	The net impact of the measure over a 10-year appraisal period from 2015-24 would range between £20m and £170m, with a main estimate of £110m. The overall impact of full implementation of the measure is therefore likely to be positive because the benefits of being able to send prisoners back to their home country without their consent would outweigh the combined costs incurred (a) from deportation and appeals, and (b) from receiving and imprisoning British national offenders (p.210).
Mutual recognition of judgements given in criminal proceedings where the defendant was absent (<i>in absentia</i> judgments) <i>Framework Decision 2009/299/JHA</i>	<u>8671</u> p.135 <u>8897</u> p.228 <u>HC 683</u> paras 182-189	Requires mutual recognition of judgments given <i>in absentia</i> , enhances procedural safeguards for defendants, and amends various other underlying measures, including the EAW.	If the UK did not participate in this measure, there is a risk that courts in other Member States may refuse to recognise judgments by UK courts where the person was tried in their absence. The measure ensures that fewer criminals will be able to evade justice by arguing that their conviction was unfair, and by preventing Member States from declining to recognise judgments and judicial decisions flowing from instruments of mutual recognition where a person has been tried in absence. It will facilitate security by improving the administration of justice across borders (p.232).
Mutual recognition of pre-trial supervision orders (the European Supervision Order) <i>Framework Decision</i>	<u>8671</u> p.136 <u>8897</u> p.217 <u>HC 683</u> paras 190-	The European Supervision Order (ESO) enables the supervision of a pre-trial non-custodial measure (e.g. supervised bail) to be	The net impact of implementing the ESO over a 10 year appraisal period from 2015-24 is estimated at £28m under a realistic set of assumptions. The overall

2009/829/JHA	200	undertaken in the home Member State rather than in the Member State in which the crime is alleged to have taken place.	impact is subject to a range of assumptions. A range of additional sensitivity tests have been undertaken to account for uncertainty. The non-monetised impacts are also broadly positive. The ESO could lead to an increase in cooperation between Member States. The possibility of suspects returning to their home country while awaiting trial (both in the UK and other Member States) promotes social benefits such as reunion with family and continuing their normal home life, work or study rather than being held on remand or bailed abroad. Thus, ESO offers potential for a positive effect on the civil liberties and rights of those accused (p.225).
--------------	-----	--	--

MEASURES FOR THE EXCHANGE OF INFORMATION			
Measure	References to Cm 8671, Cm 8897 and HC 683	Purpose and content of measure	Impact Assessment: Government's summary or analysis of net impact
<p>Exchange of information between financial intelligence units</p> <p><i>Council Decision 2000/642/JHA</i></p>	<p><u>8671</u> p.55 <u>8897</u> p.26 <u>HC 683</u> paras 202-213</p>	<p>Enables the improved disclosure and exchange of financial information between Member States' Financial Intelligence Units to combat money laundering.</p>	<p>The UK already has, within the National Crime Agency (NCA), a function with existing capacity and capability to collect and assimilate intelligence. Significantly for this measure, the NCA also has the statutory ability and operational capability to liaise with other countries to share and collect financial intelligence. This measure provides a formal process to communicate with Member States and provides a requirement for Member States to comply with our requests which would otherwise not exist. The UK Government recommends opting into this measure as it accords with and further strengthens the UK's own policy relating to financial intelligence and criminal</p>

			finances more generally, in particular relating to money laundering and asset recovery. The UK also supports international efforts at ensuring the right criminal justice outcome of disrupting the flow of criminal money (p.31).
Exchange of information and intelligence between Member States' law enforcement authorities (the "Swedish initiative") <i>Framework Decision 2006/1960/JHA</i>	<u>8671</u> p.70 <u>8897</u> p.97 <u>HC 683</u> paras 214-223	Provides a systematic and time-bound process for the exchange of information between national law enforcement bodies for the purposes of criminal investigation and prosecution.	It is recommended that the UK seeks to rejoin this measure and the Council Decision on cooperation between Asset Recovery Offices (see below). Participation will allow the UK's Asset Recovery Office (ARO) to continue its work to disrupt and isolate the proceeds of crime and recover assets as quickly as possible before they are liquidated or moved out of the UK. The UK's ARO regards the "Swedish initiative" as a highly useful tool to assist them in their duties (p.104).
Cooperation between Asset Recovery Offices <i>Council Decision 2007/1845/JHA</i>	<u>8671</u> p.72 <u>8897</u> p.97 <u>HC 683</u> paras 224-230	Requires Member States to cooperate through a system of national Asset Recovery Offices (AROs) using a time-bound process for the exchange of financial information to trace proceeds of crime and other crime-related assets.	It is recommended that the UK seeks to rejoin this measure and the "Swedish initiative" (see above). Participation will allow the UK's Asset Recovery Office (ARO) to continue its work to disrupt and isolate the proceeds of crime and recover assets as quickly as possible before they are liquidated or moved out of the UK. The UK's ARO regards the "Swedish initiative" as a highly useful tool to assist them in their duties (p.104).
European Image Archiving System (FADO) <i>Joint Action 98/700/JHA</i>	<u>8671</u> p.87 <u>8897</u> p.17 <u>HC 683</u> paras 231-238	Establishes an EU-level computerised image archive of falsified and authentic identity documents.	Opting back into this measure will continue to bring increasing levels of awareness and detections of false documents and identity fraud, both at UK borders and elsewhere. This will increase detection of crime and thus the ability to prevent it. The capital, financial and human resource costs of hardware, software and of data entry have been absorbed, and running and maintenance would continue at a stable

			level. The benefits of opting into this measure are judged to be greater than the costs (p.25).
Exchange of information on criminal records (ECRIS) <i>Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA</i>	<u>8671</u> p.112 <u>8897</u> p.122 <u>HC 683</u> paras 239-257	Establish an electronic system for the exchange of information on criminal convictions. The European Criminal Records Information System (ECRIS) enables Member States to obtain a full offending history for foreign (EU) nationals being prosecuted in their courts. The Council Decision establishes ECRIS; the Framework Decision set out the legal requirements for the transfer of information and the use of the ECRIS database.	It is recommended that the UK seeks to rejoin these measures and the Framework Decision on taking into account previous criminal convictions (see above under mutual recognition measures). Participation in ECRIS provides the UK with the full offending history of UK nationals and the serious offending history of EU nationals. This information can be used in court to determine sentencing or the granting of bail. It further supports public protection as regards deportation and removals and in determining if individuals should be, or are already on the sex offender register. It allows employers to run pre-employment checks and to check the history of those working with children and vulnerable adults. The Framework Decision on taking into account previous criminal convictions provides legal certainty that foreign convictions will be used in UK courts and that UK convictions are taken into account in foreign proceedings (p.135).
Protection of personal data <i>Framework Decision 2008/977/JHA</i>	<u>8671</u> p.133 <u>8897</u> p.196 <u>HC 683</u> paras 258-265	Provides a high level of protection for personal data processed for the purposes of police and judicial cooperation in criminal matters.	Quantification of the net impact is not possible. However, qualitative analysis of the available information suggests the net impact of rejoining this measure is positive. The UK would benefit from avoiding potentially large gaps in data sharing, which could impact heavily on the effective running of the UK justice system. This would outweigh the costs of legislating and continuing to follow the current guidance on the areas not covered in the UK's Data Protection Act 1998 (p.201).
Customs Information	<u>8671</u>	Establishes an electronic	Opting in to the measure

System <i>Council Decision 2009/1917/JHA</i>	p.151 <u>8897</u> p.242 <u>HC 683</u> paras 266-274	Customs Information System (CIS) to be used by national customs authorities to assist them in detecting, investigating and prosecuting customs crimes.	would enable the UK to continue cooperation between Member States. Without it, UK customs authorities would not be able to exchange information or have access to the rich source of EU-wide case data to enhance its own analysis. Therefore the preference is to opt into the CIS (p.248).
---	---	--	--

CROSS-BORDER COOPERATION MEASURES: NETWORKS, CONTACT POINTS, DIRECTORIES

Measure	References to Cm 8671, Cm 8897 and HC 683	Purpose and content of measure	Impact Assessment: Government's summary or analysis of net impact
Security in connection with football matches with an international dimension <i>Council Decisions 2002/348/JHA and 2007/412/JHA</i>	<u>8671</u> p.104 <u>8897</u> p.38 <u>HC 683</u> paras 282-291	Sets up the National Football Information Points to coordinate and facilitate international police cooperation and information exchange regarding football matches with an international dimension.	The Government recommends rejoining both measures. They provide an established and functioning network that helps to reduce large scale football disorder through the provision of intelligence between Member States. The system encourages an effective exchange of appropriate information by simplifying and standardising the processes. This allows police forces, both domestic and international, to effectively and efficiently police football games, thus ensuring the safety of non-risk football supporters (p.44).
European Judicial Network (cooperation in criminal matters) <i>Council Decision 2008/1976/JHA</i>	<u>8671</u> p.73 <u>8897</u> p.112 <u>HC 683</u> paras 521-522	A new addition to the list of 35. Establishes a network of national contact points with expertise in mutual legal assistance to improve judicial cooperation in combating serious crime.	The European Judicial Network seeks to improve judicial cooperation between EU Member States both at the legal and practical level by bringing together experts in mutual legal assistance and judicial process. To opt in would bring a net benefit, through non-monetised benefits, over 10 years; the recommendation is therefore to opt into the measure (p.118).

OTHER CROSS-BORDER COOPERATION MEASURES			
Measure	References to Cm 8671, Cm 8897 and HC 683	Purpose and content of measure	Impact Assessment: Government's summary or analysis of net impact
Evaluation of implementation of EU instruments to combat organised crime <i>Joint Action 97/1827/JHA</i>	8671 p.86 8897 p.11 HC 683 paras 293-300	Establishes a peer evaluation mechanism to assess Member States' implementation of EU measures designed to combat serious organised crime.	To date, the UK has participated in all peer evaluations recommended by the GENVAL working group. ³⁹ By opting back into this measure, the UK will continue to exchange best practice, have influence over the operation of important measures in other Member States, and greater control over peer evaluations and their outcomes (p.16).
Combating child pornography on the internet <i>Council Decision 2000/375/JHA</i>	8671 p.88 8897 p.32 HC 683 paras 309-315	Sets out how Member States should cooperate in combating online child abuse through appropriate law enforcement responses and international and industry cooperation.	The Government recommends seeking to rejoin this measure. There are no costs associated with opting back in, and the UK is already fully compliant with its requirements. The UK would continue to tackle indecent images of children in the same manner as at present. However, participation in this measure helps extend the UK's influence and encourages Member States to act upon UK intelligence. By ensuring that UK intelligence is effectively acted upon in other Member States, the UK is able to better tackle domestic cases of indecent images of children (p.37).
Joint supervisory data protection bodies <i>Council Decision 2000/641/JHA</i>	8671 p.125 8897 p.178 HC 683 paras 325-330	Establishes a single, independent joint secretariat for the joint supervisory data protection bodies set up under the Europol Convention, the Convention on the Use of Information Technology for Customs Purposes and the Schengen Convention.	Quantification of the net impact is not possible. However, the Government's analysis suggests that the net impact of rejoining the measure is positive. The UK would benefit from avoiding the risks of potentially large reductions in data sharing and any costs associated with attempting to mitigate this risk (p.182).

39 GENVAL is the acronym for the Working Party on General Matters including Evaluations.

<p>Schengen instruments</p> <p><i>Schengen Implementing Convention 1990 (specified Articles only) and Council Decisions 2000/586/JHA and 2003/725/JHA</i></p>	<p><u>8671</u> p.14 <u>8897</u> p.166 <u>HC 683</u> paras 331-353</p>	<p>The Schengen Implementing Convention 1990 establishes the framework for cooperation within the Schengen area. The two Council Decisions amend provisions of the Convention in which the UK has elected to participate. These include provisions on cross-border surveillance, the sharing of criminal intelligence, the secondment of liaison officers, the double jeopardy principle, extradition and the enforcement of criminal judgments involving EFTA States (Norway, Switzerland, Iceland and Liechtenstein), the illicit trade in drugs, and data protection.</p>	<p>The Government recommends seeking to rejoin the Schengen Convention, and associated measures. Opting back in brings benefits in the form of Article 40 requests, establishing a quicker and more cost-effective process to request cross-border surveillance, and underpins a host of other police and criminal justice measures, including SIS II (see below). Participation helps the UK effectively tackle serious organised crime and terrorism, which is a priority for the Government (p.174).</p>
<p>Schengen Information System (SIS II)</p> <p><i>Council Decision 2007/533/JHA</i></p>	<p><u>8671</u> p.26 <u>8897</u> p.45 <u>HC 683</u> paras 362-369</p>	<p>SIS II enables the immediate sharing between national law enforcement authorities of "alert" information on missing persons, individuals wanted for extradition or other judicial purposes, stolen vehicles and ID documentation.</p>	<p>The preferred option is to rejoin this measure and the European Arrest Warrant (EAW). Once SIS II and the National Crime Agency's SIRENE Bureau⁴⁰ are operational, the UK will have access in 'real time' to all EAWs issued by other Member States and information relating to all other law enforcement alerts. This would maximise the UK's ability to identify and arrest people who pose a threat to public safety and security and make sure that they are brought to justice (p.72).</p>
<p>Decision relating to the second generation Schengen Information System (SIS II)</p> <p><i>Commission Decision 2007/171/EC</i></p>	<p><u>8671</u> p.25 <u>8897</u> p.45 <u>HC 683</u> paras 453, 454 and 457</p>	<p>A new addition to the list of 35.</p> <p>The Decision sets out detailed technical requirements for SIS II.</p>	<p>The preferred option is to rejoin this measure, the second generation Schengen Information System (SIS II) and the European Arrest Warrant (EAW). Once SIS II and the National Crime Agency's SIRENE Bureau⁴¹</p>

40 SIRENE is an acronym for Supplementary Information Request at the National Entry. Each Member State has a SIRENE bureau — the UK's will be in the National Crime Agency. It supports the police and other law enforcement bodies in submitting and acting on "alerts" entered in SIS II.

41 SIRENE is an acronym for Supplementary Information Request at the National Entry. Each Member State has a SIRENE bureau — the UK's will be in the National Crime Agency. It supports the police and other law enforcement bodies in submitting and acting on "alerts" entered in SIS II.

			are operational, the UK will have access in 'real time' to all EAWs issued by other Member States and information relating to all other law enforcement alerts. This would maximise the UK's ability to identify and arrest people who pose a threat to public safety and security and make sure that they are brought to justice (p.72).
Europol <i>Council Decision 2009/371/JHA</i>	<u>8671</u> p.43 <u>8897</u> p.145 <u>HC 683</u> paras 370-406	Establishes the European Police Office (Europol) to provide assistance to Member States in the fight against organised crime, terrorism, and other serious crimes.	The Government recommends rejoining the Europol Council Decision and the associated instruments necessary to the practical operability of the measure (see below). Continuing to be part of these instruments would enable the UK to maintain access to important Europol systems such as the Europol Information System (EIS) and SIENA (the Secure Information Exchange Network Application) and Europol's analytical resources, thereby helping us to effectively tackle serious organised crime and terrorism, which is a priority for the Government (p.161).
Europol instruments <i>Council Decisions 2009/934/JHA, 2009/936/JHA, 2009/968/JHA</i>	<u>8671</u> p.43 <u>8897</u> p.145 <u>HC 683</u> paras 461-466	New additions to the list of 35. These measures cover the exchange of personal data and classified information, implementing rules for Europol analysis work files, and rules on the confidentiality of Europol information.	The Government recommends rejoining the Europol Council Decision and these associated instruments which it considers are necessary for the practical operability of Europol (see above). (p.161).
Eurojust <i>Council Decisions 2002/187/JHA, 2009/426/JHA, 2003/659/JHA</i>	<u>8671</u> p.58 <u>8897</u> p.84 <u>HC 683</u> paras 407-425	Eurojust is the EU's judicial cooperation agency, designed to improve coordination and cooperation between Member States in cross-border criminal investigations and prosecutions. It advises on the requirements of different national legal systems, supports mutual legal assistance, organises coordination meetings for national	The Government recommends rejoining both Eurojust and the European Judicial Network (EJN). The Eurojust measures have the additional benefit that they act as a source of funding for the EJN. Eurojust provides the facilities, language skills, legal expertise and goodwill required for effective cross-border cooperation. The benefit it brings through better international cooperation and assistance in

		<p>authorities, mediates in conflicts of jurisdiction, supports multi-jurisdictional activities, and funds Joint Investigation Teams (JITs).</p> <p>The Council Decisions establish Eurojust and bring into effect a number of changes (for example, the introduction of a new 24-hour on-call coordination system).</p>	<p>securing cross-border investigations, operations and prosecution is judged to be far greater than the running costs (p.96).</p>
<p>Joint Investigation Teams (JITs)</p> <p><i>Framework Decision 2002/465/JHA</i></p>	<p><u>8671</u> p.61 <u>8897</u> p.75 <u>HC 683</u> paras 426-437</p>	<p>Provides a framework for national authorities to set up joint investigation teams (JITs) to carry out criminal investigations involving more than one Member State.</p>	<p>The Government recommends rejoining the Framework Decision. There are no costs to participating in the measure but there are judged to be benefits in terms of the speed and ease of setting up Joint Investigation Teams (JITs). In turn, JITs help the UK tackle domestic organised crime and disrupt cross-border crime. The Framework Decision is preferable to establishing a JIT under other measures and far preferable to mutual legal assistance, as it is less time-consuming and requires less bureaucracy. Participation in this measure would ensure the UK is able to establish JITs with all Member States (p.81).</p>
<p>Naples II Convention on customs cooperation <i>Council Act of 18 December 1997</i></p>	<p><u>8671</u> p.144 <u>8897</u> p.234 <u>HC 683</u> paras 438-447</p>	<p>Provides for customs cooperation and mutual assistance between customs authorities. Allows for the sharing of information for the purposes of detecting, investigating and prosecuting customs crimes, and for joint customs operations.</p>	<p>The Government recommends rejoining this measure to continue cooperation between Member States and customs administrations. UK customs authorities would not be able to exchange information, as well as seek and give assistance to live smuggling operations, if the UK were not to opt back into the measure (p.241).</p>

Annex 3 — Relevant Select Committee Reports

The European Scrutiny Committee

Thirty-seventh Report of Session 2012–13, HC 798: *The 2014 block opt-out: engaging with Parliament*

Twenty-first Report of Session 2013–14, HC 683: *The UK's block opt-out of pre-Lisbon criminal law and policing measures*

For the Government's Responses to both Reports, see HC 289 and HC 978 of Session 2013–14.

The Home Affairs Committee

Ninth Report of Session 2013–14, HC 615: *Pre-Lisbon Treaty EU police and criminal justice measures: the UK's opt-in decision*

For the Government's Response, see HC 954 of Session 2013–14.

The Justice Committee

Eighth Report of Session 2013–14, HC 605: *Ministry of Justice measures in the JHA block opt-out*

For the Government's Response, see HC 972 of Session 2013–14.

Joint Report of the European Scrutiny, Home Affairs and Justice Committees

First Joint Report of Session 2013–14: *The Government's Response to the Committees' Reports on the 2014 block opt-out decision*

The Government's Response is contained in a letter of 6 April 2014 from the Home and Justice Secretaries to the Chairs of the three Committees.

The European Union Committee in the House of Lords

Thirteenth Report of Session 2012–13, HL Paper 159: *EU police and criminal justice measures: The UK's opt-out decision*

Fifth Report of Session 2013–14, HL Paper 69: *Follow-up report on EU police and criminal justice measures: The UK's 2014 opt-out decision*

The Government's responses to both Reports are published on the Committee's website at <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/inquiries/parliament-2010/protocol-36-follow-up/>

Formal Minutes

Wednesday 29 October 2014

Members present:

Sir William Cash, in the Chair

Nia Griffith
Kelvin Hopkins
Chris Kelly

Jacob Rees-Mogg
Henry Smith

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 51 read and agreed to.

Resolved, That the Report be the Seventeenth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Tuesday 4 November at 10.00am.]