HOUSE OF LORDS

MINUTES OF EVIDENCE

TAKEN BEFORE

THE SELECT COMMITTEE ON THE EUROPEAN UNION

FREEDOM, SECURITY AND JUSTICE OPT-INS

TUESDAY 13 MAY 2008

BARONESS ASHTON OF UPHOLLAND

Evidence heard in Public Questions 1 - 28

TUESDAY 13 MAY 2008

Present

Blackwell, L
Cohen of Pimlico, B
Dykes, L
Freeman, L
Grenfell, L (Chairman)
Howarth of Breckland, B
Kerr of Kinlochard, L
Roper, L
Tomlinson, L
Wade of Chorlton, L

Witness: **Baroness Ashton of Upholland,** a Member of the House, Leader of the House, examined.

Q1 Chairman: Thank you very much indeed, Minister, for being with us this afternoon. I know you are on a very tight schedule. We will make sure you are out of here by 4.15 sharp. Thank you for giving us of your time. You have an awful lot on your plate at the moment, not least that you have to disappear to Peru very shortly. Would you like to make an opening statement or would you like to go straight to questions?

Baroness Ashton of Upholland: Only to say it is, as always, a great pleasure to be back before a committee – which is something I do not do very often in my current role. I need to leave at 4.15, I confess, to watch my daughter do her GCSE drama production. Nothing could be more important in my life this week, even going to Peru, than being there on time this evening. I hope you will indulge me this once. I think it is the first time in four years I have left early.

Q2 Chairman: That is an admirable reason for being on time. Perhaps we could go straight to the heart of this matter. You were kind enough to reply to my letter on 29 April and you voiced the Government's concern with the system of parliamentary control of individual opt-in decisions. Are you suggesting that you could do with no parliamentary control at all on individual opt-in decisions?

Baroness Ashton of Upholland: I am not suggesting that. The process of scrutiny that we have with this Committee is extremely good. I have had experience of it, as you know, my Lord Chairman, through the work that I did on the Justice and Home Affairs Council. I am very conscious that we will need to consider how effective the procedure currently is and whether and how we should strengthen it. I know that my colleagues, the Home Secretary, the Justice Secretary, the Attorney General, are deliberating on that themselves. I think Mr Straw will be coming before this Committee at some point if the Committee so wishes. I do not accept what I was describing is no change or, indeed, nothing at all. I do think the final decision on opt-in rests with ministers and the Executive. I do think it is important that there is appropriate scrutiny and I do think we should consider ways to strengthen what we currently have.

Chairman: Thank you for that reassuring reply. We certainly want to put it on the record that we do regard parliamentary scrutiny as being absolutely vital in this case

Q3 Lord Roper: Lord President, you did say in your letter that you found the Committee's views on JHA proposals helpful when the proposals are close to their final form. At that stage, presumably, an opt-in decision will already have been reached. Can the case not be made for you receiving the Committee's views at a much earlier stage, even perhaps before the Government has reached a decision as to whether to opt-in or not?

Baroness Ashton of Upholland: In my letter, Lord Roper, I was trying to say that, having had our own internal discussions – Members of the Committee will know there are discussions that take place across government with different ministers who may have different

interests and, of course, with the devolved administrations and, therefore, when we have all that information we are much clearer in our own minds – getting information at that point on how the Committee is thinking is perhaps most useful. I have no difficulty whatsoever with the idea that the Committee would wish to look at an ongoing basis from the beginning; I was simply trying to flag up the most appropriate point, bearing in mind how much work the Committee already has to do, and nothing more than that.

Q4 Lord Blackwell: Is there not a problem in that, however? If we have involved ourselves in negotiations and indicated that we are going to be part of it and we then pull out at the last minute, we are still liable, as I understand it, to a potential cost being imposed on us, in that we have gone along with a proposal and then pulled out. Does the decision not have to be taken earlier on in that process as to whether this is something we want to be involved in or not?

Baroness Ashton of Upholland: I think Lord Roper was alluding to the process before the decision is taken whether to opt-in or not. You are right, Lord Blackwell, that there may be discussions that go on, but they are not formal discussions. They are not negotiating positions. Inevitably, the Government has different sets of relationships with different Member States and, also, with the Commission, with Parliament, and so on. There are informal conversations that go on all the time. That is not the same as what I describe as "when the clock begins to tick", when the Commission formally says, "Here is the proposal" – until that point there is nothing formal about it – and then we have 90 days in which to decide what to do. At that point there is no penalty imposed of any kind or any description.

Q5 Lord Blackwell: You are saying Parliament should be involved before we get to the point where an inconceivable consequence could come out in terms of penalties.

Baroness Ashton of Upholland: The word "penalty" is your word, not mine.

Q6 Lord Blackwell: Cost.

Baroness Ashton of Upholland: The only provision within the Lisbon Treaty is that if we decided not to opt-in to something which, as a consequence, made the underlying measure unworkable then it is within the gift of the other 26 Member States to consider whether there are financial implications as a consequence of that, because the thing collapses and it is, if you like, down to the UK's decision. I think those circumstances would be extraordinarily rare, if ever, but, nonetheless, it is an appropriate part of the negotiation of the Treaty to be able to

consider with a Member State the prospect. I do not think that has, if I might say so, any reference at all to the discussions about JHA opt-ins at the pre opt-in stage. It might, of course, if we are considering some of the measures in which we are already involved and which we will be re-looking at and re-examining, be a factor that the Committee might be interested in and the Government, of course, would be interested in, but it is only at the point at which it would become inoperable that it might be appropriate for the UK to be asked to consider payment to compensate.

Q7 Lord Freeman: Minister, may I follow Lord Blackwell's question. You have said in your letter that the timetable is very tight, implying that the Government might need the whole three-month period for negotiations. Would it not be possible for parliamentary scrutiny or, indeed, approval of a possible opt-in decision to take place at the same time as the negotiations? There would, as it were, be two procedures running in parallel, and consideration, therefore, in terms of the scrutiny review being to a certain extent hypothetical, but it would save time and would allow proper time for parliamentary scrutiny.

Baroness Ashton of Upholland: Could I just ask, Lord Freeman, for you to define what you mean by the word "negotiations"? Are you describing the process of discussion with the devolved administrations and between ministers, or are you describing the process post "the clock beginning to tick"?

Q8 Lord Freeman: Post.

Baroness Ashton of Upholland: You are suggesting that we should not opt-in at the date at which we are required to have given our decision to the Commission.

Q9 Lord Freeman: No. I am sorry; I have not explained myself clearly. I am suggesting that, in order to save time, the Committee works on a hypothetical situation of an opt-in or, indeed, an opt-out; therefore, the consideration is hypothetical until the Government says, "This is our decision" within a three-month period, so we might have saved a month or a month and a half by examining the various pros and cons and issues.

Baroness Ashton of Upholland: In other words, you are describing the pre opt-in period.

Q10 Lord Freeman: Yes.

Baroness Ashton of Upholland: I beg your pardon. I was not quite sure what you meant by negotiations. In part, this is for the Committee to deliberate for itself. We have proposals that

come forward – and, as I have said, until they are formally presented they are not really proposals – and we then have the three-month period. It is quite reasonable – the Committee is entitled, of course – to look at the proposals as it so wishes. The difficulty for the Government is we may not know at that stage whether we are minded to opt-in or not. We may have a view from, for example, the Justice and Home Affairs Ministers; we may or may not have a view from wider government; and, of course, we may or may not have a view from the devolved administrations. There is nothing to prevent it. I think the issue for the Committee would be the value of that if they are not sure where the Government would be. I suspect it would be a suck-and-see situation, because there will be some circumstances where the Committee will be very clear where it thinks the Government is going to go, based on historical precedent, based on knowing what the Government strategy and policy are and so on, and other times when it will not be. There is nothing in principle about that I have difficulty with; I just think the practice will probably depend on what the issue is and whether the Committee thinks it is most valuable to wait because that will enable the Committee to have better discussions and deliberations.

Q11 Chairman: For us, a lot will depend on the extent of our awareness of the direction in which the Government is likely to be headed during that 90-day period. It could be either guesswork or based on some helpful hints from the Government itself.

Baroness Ashton of Upholland: Helpful though the Government wishes to be and hint though it might, there are circumstances where it is just not clear exactly where we might go in a particular issue. Sometimes – this has certainly happened to me – opting in to a provision may seem extremely sensible from one departmental perspective; from another departmental perspective there are issues and implications that would send the signal in the opposite direction. Then a process of discussion needs to take place across the group of ministers who sit on the Sub-Committee of the Cabinet European Committee to consider and deliberate that, as well as through correspondence. Of course, you are right, my Lord Chairman, there are many cases where it would be pretty obvious, but I just suggest to the Committee that there are circumstances I personally can think of where it would not be.

Q12 Lord Kerr of Kinlochard: Of course there would be nothing to stop Parliament starting scrutiny on the basis of the proposal, because the proposal will come to Parliament within hours, probably quicker than it will reach ministerial colleagues.

Baroness Ashton of Upholland: That is certainly my experience.

Q13 Lord Kerr of Kinlochard: We might be one of those who would be putting the pressure on ministers to let us know how they are reacting. We could be starting without an explanatory memorandum, if that was necessary in order to ensure that our view and the process of our forming a view did not prevent the Government satisfying the three-month deadline.

Baroness Ashton of Upholland: Of course. I was agreeing with Lord Freeman that it is for the Committee. My only caveat or suggestion was that there may be circumstances where waiting to know where the Government might be going may save the Committee time and may be more fruitful for the Committee. But that is in your gift, if I might say, not in mine. It is for you to decide it.

Q14 Lord Kerr of Kinlochard: It might assist the Government to make up their mind if they knew that a view was forming independently on this side of Whitehall.

Baroness Ashton of Upholland: I would not underestimate for a moment – and I am sure you do not, from all of your previous manifestations – the importance and relevance of what the Committee is saying, particularly this Committee. I am often aware when I have been in Brussels that Brussels reads the Hansard from this Committee – as I have discovered, occasionally, to my cost.

Q15 Lord Roper: Just to follow up on the point Lord Kerr made: it seems to me that, even if the Government were not able to indicate whether or not they intended to opt-in, it would be able to submit an EM in a general explanatory memorandum covering the other matters in the document, and I therefore would be a bit disappointed if we did not have an EM at all.

Baroness Ashton of Upholland: It seems to me entirely satisfactory for the Committee to say to the Government, "We wish to have an explanatory memorandum on this particular provision because we wish to start our deliberations immediately." That is completely reasonable, and, again, I believe within your gift to do that.

Q16 Baroness Howarth of Breckland: This is really a question about transparency and public accountability in relation to how this works. You say that opt-in decisions are often made on the basis of confidential information on other Member States' positions, or private undertakings from the Commission. How can it be acceptable for the Government to take decisions on changes to law, particularly our criminal law, on the basis of material not in the public domain?

Baroness Ashton of Upholland: I need to be clear on the kinds of things I would be referring to in my description of that. Inevitably ministers create and form relationships with other Member States and with other ministers with whom they negotiate regularly and sometimes with whom they have common cause on particular issues. For example, as a common law country, we formed a little group called the Common Law Club with the other Members of the European Union who had a common law system, because, inevitably, there were areas of common interest when law was being debated. Equally, we have had strong relationships with Germany, with France, and with other countries, on particular issues of concern. Equally, too, we have strong relationships with the Commission. That is often down, as it is with all sorts of institutions, to individuals who have got to know each other. It is not unusual, when one is learning about a potential proposal coming forward, for that information to be around and about. It is not in any formal way, but it will be informally around. It is also true that when proposals come forward, because the dialogue not only with ministers but with officials is going on all the time, one will discover, roughly, in confidence, where another Member State might be. All of that is part of the jigsaw puzzle of information that governments get in order to make their decisions. If one knows, for example, that in a particular proposal six or seven other Member States might – because they have not formed their own positions properly yet and therefore it is not in the public domain – have similar views to us on a particular issue, that is a blocking minority. There are ways in which one might consider the opt-in procedure on that basis. But that information is based on those kinds of informal discussions and, until it surfaces properly, it would be improper for that to be regarded as being able to be in the public domain because it is certainly not set in concrete. The Committee will know that across government departments the same thing happens. Officials have conversations: until the minister has signed on the dotted line that is not policy but it gives a good direction of travel to officials when they are trying to put something together. That is so, too, in Europe.

Q17 Baroness Howarth of Breckland: There is often a sense that there are people alongside you or not alongside you in negotiations. The Working Time Directive is a good example of that: partners looking for indications of where you might go. When the thing becomes a clear opt-in, presumably that is the moment when it must be transparent. Without divulging individual information, surely the general ethos of the nature of the thinking would need to be transparent.

Baroness Ashton of Upholland: Certainly at the point of opt-in, positions are pretty clear and set. My proviso on that is that it is for individual Member States to determine at which point they show their hand or they make it clear what their policy finally is. Once they have done that, that is, in a sense, in the public domain and is accessible information. I am really describing those very early discussions that take place that have no formal status whatsoever but inevitably help to give you a flavour of where other Member States might go and, indeed, where the Commission sometimes might go, and what the impetus or drive behind a particular measure really is. Those bits of information have no status and could not be summoned up as rational directories, because, in a sense, that Member State (or the Commission) has not said formally what its position is, but inevitably it gives the mood music, the direction of travel, the kinds of support one is likely to receive. That firms up all the time during the process as well. Once it is in the public domain, it will, indeed, be something that the Government could pray in aid in front of this Committee or anywhere else in saying, "One of the reasons we felt we were able to do this is because we are working closely with country x, with whom we have common cause on this."

Q18 Lord Dykes: Following on from that, although it is slightly different territory, it still involves the eventual revelation of previously confidential information in a way. With the new regime in the future, if ratification is concluded successfully, the European Parliament will be fully involved in JHA decisions all the way through on the co-decision system and, therefore, it will presumably not be any longer possible for governments not to reveal fully the reasons for their opt-in decision.

Baroness Ashton of Upholland: We have a lot of co-decision already. All the civil justice, apart from family, is co-decision and, therefore, from my own experience, of course one is also talking to Members of the European Parliament. In the case of Justice and Home Affairs, the LIBE and JURI Committee, the senior staff who work and support those committees, colleagues who sit on those committees from the British delegation of MEPs, and so on. They are a part and parcel of all that. If you think of the European Parliament, members of the JURI or LIBE Committee may themselves give you a flavour of where they think the Committee might go in deliberations. It has no formal status but it informs. Would we pass on formally to another Member State information that a British MEP has given us on what they thought the Committee would do? No, we would not because that is information for us. I think it is all part of the same thing. The way in which we have operated thus far on co-decision and will continue to do so, I imagine – but it will not be for me to do these

negotiations and discussions – will be in a similar vein. That is part of putting together the picture of where the proposal might go, what the issues will be in Parliament and in the Council, and trying to make a proper and appropriate decision based on that information, but only as a part of the wider picture.

Q19 Lord Dykes: Would you accommodate the full privilege concept of the parliamentary committee concerned in being able to make a full statement afterwards on their view of the acceptability of its opt-in decision by the Government?

Baroness Ashton of Upholland: Do you mean by the LIBE or the JURI Committees?

Q20 Lord Dykes: Yes.

Baroness Ashton of Upholland: My experience of working with them is, first of all, that it is always a good move to go and visit the committees and discuss with them. At the point at which their deliberations go into the public domain, which is when the Committee is sitting formally, that information, of course, is part and parcel of the public domain information that would inform the decision, but, as you will know, sometimes the information of where the Committee might go turns out to be not where the Committee goes for a lot of different reasons as well, so one has to be a bit cautious about reading too much into it at that point.

Q21 Chairman: You have spoken reassuringly to us of the rationale for parallel processes of scrutiny during the 90-day period. I understand that that, in your mind, is probably inevitable; it ought to happen. I think our concern remains our ability to be able to know what is going on. We have the Commission proposal before us and, as Lord Kerr has said, we do not have to wait for an explanatory memorandum to start looking at this. The fact remains, however, does it not, that the Government is already getting a pretty good idea, even before a proposal is tabled by the Commission, of what is coming down the road, through UKREP or otherwise? I am really probing about the Government's willingness to share with us even the likely existence of a proposal, not necessarily all its content but the very fact that something is coming down the track at you which you are going to have to deal with. Maybe our intelligence sources in Brussels could find out the same thing through our National Parliament Representative and others, but it is going to be extremely important for us, if this parallel system is going to work, that we should at least be aware of the fact that there is something coming which we will need to look at.

Baroness Ashton of Upholland: I know that we put the Annual Work Programme within the papers before the Committee. The Annual Work Programme, to some extent, should give us a flavour. You are right to the extent that, on occasion, one hears that a proposal may or may not be coming out of the Commission. My hesitation would be that in my three years I think I heard only once or possibly twice of something that might come: one of which never appeared and one of which took a considerable length of time to appear and then did not appear in the form that I thought it might. The answer is that the Government should be concerned to make sure that the Committee is kept informed when information is firm enough, so that we are not asking the Committee to devote amounts of time to a proposal that never turns up in the end. Of course it is right and proper, not least for the management of work, particularly as we look to post the Lisbon Treaty and the whole issue of the JHA opt-ins, that as much information is given to the Committee in order for the Committee to plan effectively, take evidence effectively, and so on – I have no difficulty with that – but I am cautious of building on assumptions – sometimes what appears to be coming out does not appear – and when you discuss that with the Justice and Home Affairs ministers perhaps they could flesh out with you what that process might look like, at which point it is best to be able to give that information, and at what point it ceases to be rumour and becomes a strong possibility.

Q22 Chairman: We would assume, if a proposal comes as part of a package, that at least at the start of the three-month period you will have a pretty good idea of whether you are going to want to opt-in or not.

Baroness Ashton of Upholland: That may or may not be true. Again, my experience in three years is that I do not remember any packages. Everything I dealt with was pretty much a single proposition, not necessarily linked to another proposition. The example I would give, which is not relevant to this but it is one that stays with me, is when the Prüm decisions were taken, where we were part of everything except hot pursuit. Even when you have a package that appears to fit together, it is not beyond the realms of possibility that the UK would say, "Well, we agree with these measures but because of, particularly, issues to do with our borders, we would not wish to enter into this particular one." There may be times when that is very obvious, because it is to do with the Schengen Agreement, but there may be other times when it is less obvious. I take the point of principle. I merely put the caveat that it is not always possible to be certain within a package that that is what would happen.

Chairman: With the little time that we have left, I think we might take one question on non opt-in.

Q23 Lord Kerr of Kinlochard: I wonder whether I could ask you about the kitchen sink bit of the letter, where you throw in some extremely strong arguments to scare the opposition – I mean, to scare us.

Baroness Ashton of Upholland: You are not the opposition, may I just say.

Q24 Lord Kerr of Kinlochard: You say, "It would therefore be extremely difficult, in the time available, to also go through the Parliamentary scrutiny process and obtain Parliamentary approval of any decision to opt-in. (It would also mean significantly more sitting time for parliamentarians, including during recess.)" That is a very, very fierce card. "As a consequence, we might often miss the deadline for opting in, which could lead to us being marginalised in important JHA co-operation." First, it seems to me that those who are issuing the proposal and timing the issuing of the proposal will for the most part want us to opt-in. The chances that they would deliver 25 proposals on the last day of July, saying, "That's created a problem for the scrutiny proceedings in London," seems to me to be very low. It seems to me much more likely, if they understood the procedure in London, they would issue the proposal just before the first Council, probably in October or the end of September, which would really deal with the paradigm case/recess problem. It seems to me that a scrutiny reserve system, since it applies to everything else, all Regulations or Directives, might be inventible for this. With that, one might think of a default option, whereby one would argue that either we are opting in, and that is the assumed answer unless you hear differently from the Committee, or we are opting out (not opting in), unless you hear differently. I can think of various ways where, in practice, this risk of being marginalised could be diminished.

Baroness Ashton of Upholland: First of all, I think it is a wonderful thought that the people in Brussels look at the parliamentary timetable and determine ----

Q25 Lord Kerr of Kinlochard: They do.

Baroness Ashton of Upholland: I am glad it has been your experience. It has not necessarily been mine. Of course, one of the things they are keen to do is to make sure there is a rhythm to proposals because governments have to look at proposals across government, whether they happen to fall in a particular area called Justice and Home Affairs or into another area called, say, Agriculture, or whatever. The point I was trying to make is that it is not to frighten the

horses nor, indeed, to consider this wonderful Committee, the opposition; it is that, as we begin to think about the processes and procedures – and I know I have already indicated that we are having to think about that – it is important to recognise the realities of time and realities of the input of time that the Committee already makes and would have to make, and that there is an issue about recess. I apologise if I put it too boldly – it was written by very good officials whom you probably know well – but nonetheless it is a reality. I think it is right for the Government to say, "When we look at this, we also have to be mindful that we are on a particular timetable" and that there are recesses, some of them lengthier than others, that have an impact and the Committee itself will have to consider those too. That is what I was trying to say. In terms of the effect of not opting in on time, I just want to be very clear that not opting in but yet planning to be part of the process is a very difficult trick to pull off. The only time that I have successfully done it was in Rome I. In Rome I, a number of things came together. The first was that it was a very technical change, a very technical set of issues to be done. The second was that we did not opt-in extraordinarily quietly: we did not make any song or dance or fuss about the fact that we were not going to be a part of it. We spent a huge amount of time – I think I talked to 15 Justice ministers – to make sure that they understood that it was because of a particular problem, which those of you who are familiar with Rome I will know – and I am dredging my memory here – was to do with the City of London and the difficulties of contract law and the implications that there might be on the City and the future which might, in theory, have had a devastating effect on the City of London. Because Member States understood that it was for those very, very particular reasons that the UK was not participating, we were enabled to participate in the working groups, because we made it clear from the beginning that our ultimate ambition was to try to get in if the Commission and Council agreed to it at the end – and that, as you know, is now out for consultation because of some remarkable work done by officials from the Ministry of Justice and Treasury. I can also think of circumstances, though, where that would not be possible. When we did not opt-in to divorce Decisions, we had no role in the working group of any kind. On maintenance, I was declined by the Chairman of the Council of Ministers from being allowed to speak because the UK had not opted in. Therefore, there are already very clear issues that we have to grapple with about the fact that the rest of the European Union, the Presidency and so on, will take a view that, if the UK is not in for whatever reason, it does not play a part. It cannot amend or try to influence the negotiations in the working group to the point where it might be possible to get back in, and certainly our views should not and might not be heard at the Council of Ministers. It is a huge risk, in my view. A huge

risk. Rome I one worked because of a very particular set of circumstances. I would not, from my own experience, ever recommend to the minister that it is a useful tactic. Sometimes it will be necessary to stay out. Sometimes, as a consequence, we will be able to influence the final outcome to the point where we can get in, but, my goodness, I would not put it forward as a tactic.

Lord Kerr of Kinlochard: I agree.

Q26 Lord Wade of Chorlton: If the three-month period is causing so much difficulty, why did we agree to three months in the first place? If it is affecting this Parliament, it should be affecting all parliaments.

Baroness Ashton of Upholland: It affects us because we have the opt-in. That is the issue. A 90-day period I consider to be sufficient – it is not excessive but it is sufficient – for us to be able to do the work. There are some issues about how we tailor-make that in the future, but I think it is a reasonable amount of time for us to be given from the proposal being fully formed and put forward to having to make that decision. I do not believe it would be reasonable to go back and say we would like longer. I think we are fortunate to have got three months and to have got into an extremely good position in the Treaty on the opt-in.

Q27 Chairman: Lord President, we have about six or seven minutes left. I am going to go out on a limb a little bit, and I am hoping that it is not a default position of yours that you reject automatically hypothetical questions because I would like to ask you one. Supposing we were to end up in the House of Lords with an affirmative resolution procedure on opt-ins, would we be right in assuming that you would feel and that the Government would feel that a debate on an affirmative resolution would need to be informed by proper prior scrutiny by Parliament, and that an affirmative resolution proposal would not go to the Chamber just cold, leaving it to the House to decide maybe in a 20-minute debate, at an odd hour, with not many people present, and maybe those who do not know what on earth it is all about making a decision?

Baroness Ashton of Upholland: I would like to unpack slightly the hypothetical question. I am not in favour of a salami-sliced debate on an individual opt-in in the Chamber. This is my view. This is me, speaking as me, as Leader of the House, Lord President, but not trying to represent the views of Justice and Home Affairs ministers. The reason I am not in favour is because in the world of justice and home affairs it is essential that you begin from the principle of working through your strategic approach to justice and home affairs as

a government – an issue, of course, that Parliament may wish to discuss and debate with ministers in the normal course of events, through committees or so on, but a strategic approach. For example, our strategic approach has been that we do not wish to give up control of our borders. Our strategic approach on family law has been that we wish to make sure that our courts retain control in family law. Our strategic approach in civil justice has been to use the old Article 65 cross-border approach of mutual recognition – which, of course, again is much more firmly within the Lisbon Treaty – as our preferred method of operation and not to look for anything that smacks even vaguely of a harmonisation. Those have been our strategic approaches, very familiar to this Committee because of years of ministers coming forward; perhaps less familiar to colleagues in the Chamber who have not had the benefit of listening to me go on and on about it over the years. I do not think you can have sensible debates that take one opt-in out of that broader context. As you will know from years of experience, the proposals to opt-in will be taken for a number of different reasons. One is because it is genuinely and clearly within our interests and fits in the strategic approach. Other decisions about opt-ins may be for other reasons. It may be to do with what is also coming down the track in terms of proposals; it may be that it is part of a broader group of opt-ins; it may be that it is, in a sense, cost neutral for the UK but, because our principle position is to try to be part of the European Union, that is where we would go. I do not think it is so easy for a short debate in the Chamber, with colleagues who perhaps are less familiar, to represent genuinely, for me, the right kind of approach. Having said that, I do believe it is important to engage with the Committee appropriately, because the Committee, apart from anything else, if it sees an issue that it believes Parliament (the House of Lords in this context) should discuss, can make sure this report goes forward and suggest such a discussion which the usual channels can pick up. The expertise lies here. That, for me, is where we need to discuss and deliberate how best to make sure that the process is done properly with appropriate reporting to the broader House, but not, in my view, to suggest that we can achieve something, either for the benefit of the Government because of the salami-slicing or, indeed, that would be, in my view, of enormous benefit to the House.

Q28 Baroness Howarth of Breckland: You mentioned this strategic overarching approach in your letter. How do you see the Committee contributing to that? Do you think it is focusing on those issues that the Government sees as part of the opt-in procedure and, therefore, there might be a Government view, as some sort of EM, but the Committee might

do some sort of inquiry in a broader strategic sense which brings more information to the deliberation?

Baroness Ashton of Upholland: It is obviously for the Committee to decide, but I would take the view that post ratification of the Lisbon Treaty is possibly the moment for the Committee to think, with the three Justice ministers, with the three departments: What next? Part of that would be, I am sure, discussions that will lead the Committee and the departments into the dialogue about the strategic approach. Quite how that happens, whether that is by paper or evidence-giving or both, or, indeed, other things too, I think is for you and them to decide. I will get no thanks from my colleagues for positioning them in doing more work than they already think they are going to do, but I think that is genuinely a debate to be had with them because I think it is very important. I do think it is very important for the Committee to have a view and also in its mind a sense of the strategic approach on these issues. As I say, currently we could probably all write it together and it would make sense and it may well remain the same, but, nonetheless, I think that is an issue to be taken up post ratification.

Chairman: Thank you very much indeed, Lord President. It is 13 minutes past four, so you have a couple of minutes to spare. We wish you a very, very happy evening with your daughter and also a successful trip to Peru after that.