

Opting out of EU police and justice co-operation may be an 'own goal' for David Cameron

by Blog Admin

*After 2014 the European Court of Justice will be given new powers over how police, prosecutors and courts across the EU co-operate. The UK Prime Minister David Cameron recently announced that this will be used as an opportunity for the country to opt-out of a raft of these cooperation agreements. **Hugo Brady** argues that the UK's strategy of opting out of the full package of agreements, with the intention of opting back in to measures it agrees with, is wrong-headed unlikely to succeed and could leave the country with much diminished influence.*



Britain has a decision to make with implications both for its security and influence within the EU. Should the Conservative-Liberal Democrat coalition withdraw from most EU co-operation on crime and policing by 2014? It can do so thanks to a special deal won by Britain in negotiations over the EU's Lisbon treaty in 2009. As things stand, MPs look likely to say 'yay' when parliament votes on the matter next year: anti-EU feeling is running high in Westminster,

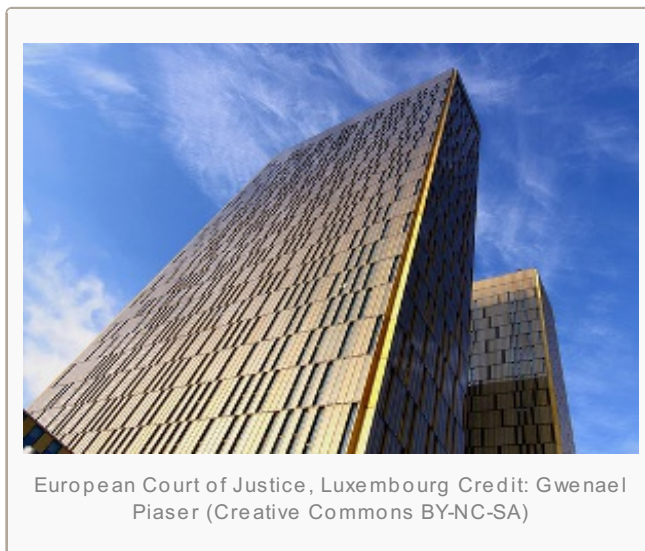
If Britain exercises this 'block opt-out', the UK will lose access to a raft of cross-border agreements and databases designed to help EU countries maintain security and better manage the free flow of people between them. Crucially, Britain's authorities will no longer be able to use the European arrest warrant (EAW) with which they have prosecuted hundreds of murders, bank robberies, drug offences and other kinds of crime that would otherwise have gone unpunished.

The UK fears the impact of new powers given to the European Court of Justice (ECJ) over how police, prosecutors and courts across the EU co-operate to investigate crime, organise extraditions, share criminal records and exchange evidence. After 2014, the European Commission will be able to enforce over 130 such agreements and EU judges interpret their exact meaning, as they do with single market regulation.

Most EU countries have criminal justice systems based on a mix of the Roman civil law and the Napoleonic legal code. Of the large member-states, only Britain uses common law, a fundamentally different system, where the defence and prosecution argue cases before a neutral judge and jury. Other governments recognise that Britain (and Ireland, another common law country) are unique in this respect. Consequently, both can opt-in to EU crime and policing measures on a case-by-case basis.

But Lisbon has shifted the emphasis of EU criminal justice policy away from 'co-operation' towards more 'integration'. Over time – the thinking in Whitehall goes – EU judges might undermine Britain's common law in favour of the continental civil model by handing down harmonising rulings. This, along a domestic political backlash against the influence of European courts, makes it likely that Britain's prime minister, David Cameron, will use the block opt-out.

That would be a mistake. First, UK officials think that Britain's size and importance mean that it can automatically opt back in to around 50 EU anti-crime measures, including the arrest warrant, once the block



opt-out is triggered. That way the government could secure access to co-operation and data valued by Britain's police while limiting the country's exposure to future ECJ rulings. This is wrongheaded. The European Commission is likely to attach tough conditions to allow this and Britain's negotiating stock in Brussels is low due to its perceived unhelpfulness during the eurozone crisis.

Furthermore, countries in the EU's Schengen area of passport-free travel have previously blocked Britain from joining Frontex, the EU's border agency, and the so-called VIS, a common database of visa records. (The UK maintains its own separate border regime.) Why should they now acquiesce to British cherry-picking in policing and justice?

Second, Britain has shaped much of the EU's internal security agenda to date. The current head of Europol (the EU's police office) Rob Wainwright, is British; as have been the last two presidents of Eurojust (its prosecution office), and the last two director-generals of the Commission's justice and home affairs directorate. For a country that is not in Schengen, possesses a minority legal system and selectively opts-out of common rules, this is a remarkable diplomatic success.

But this influence would be badly diminished were Britain to leave most co-operation in this area. Other countries are largely unaware of the forgotten opt-out and its likely use. Eurosceptics see the opt-out as a step towards their goal to move Britain to the fringes of the EU. Even traditional allies like the Netherlands and Sweden are likely to be annoyed.

If Britain's ruse to escape ECJ jurisdiction backfires, then its government must apply EU free movement rules regardless. These are part of the single market: the basis under which millions of EU nationals live in the UK. However, Britain's public authorities would be far less able to co-operate with other EU countries on extradition and basic security questions. Stephen Lander, a former head of Britain's internal intelligence service, underlined this risk in a recent letter to government, co-signed by several former UK police chiefs. Hence Cameron must choose: either face down the eurosceptics or risk future enquiries as to why Britain deliberately weakened its co-operation with other EU countries on issues like organised crime and terrorism on his watch.

This article is a shortened version of the Centre for European Reform policy brief 'Cameron's next European 'own goal': Leaving EU police and justice co-operation?'

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Hugo Brady is a senior research fellow at the Centre for European Reform. Hugo writes and commentates on the future of the EU's Schengen area of passport-free travel and on common approaches to both migration and security policy. He has published reports on counter-terrorism strategy, the development of EU migration policy and collective European efforts to tackle international organised crime, including through better co-operation between prosecutors and police. Hugo also thinks about the overall future of the EU and follows closely the implementation of the Lisbon treaty which was intended to reform its main institutions: the Commission, European Parliament and Court of Justice. His other research interests include Britain's European debate, the connections between EU foreign policy and the justice and home affairs field, and European co-operation in civil (i.e. non-criminal) justice matters. In 2010 and 2011, Hugo was consulted by both the European Commission and UK House of Lords on the development of an EU



strategy for internal security.