

The costs of the UK's opt-out of EU justice and policing measures would far exceed any benefits.

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25/04/2013

The UK government has indicated that it would like to pursue an opt-out of EU measures on police cooperation and criminal justice in 2014, in order to 'repatriate' criminal justice back to the UK. This week a UK House of Lords joint committee reported on its investigation of the opt-out, concluding that it could have negative repercussions. [Alicia Hinarejos](#) gave evidence to the joint committee, and argues that an opt-out might be costly for the UK, reduce its ability to police international crimes, and may force it to make concessions in other areas.



Under Protocol 36 to the EU Treaties, as amended at Lisbon in 2007, the UK is entitled to withdraw from a range of pre-Lisbon Treaty EU measures concerning police cooperation and criminal justice, as long as it does so before June 2014. This opt-out has to be exercised in block but, having opted out, the UK could then ask the EU for permission to opt back into specific measures. The opt-out covers key measures that allow the UK to police international crime by expediting the exchange of information and collaboration with other EU police forces, as well as the extradition of suspects through the European Arrest Warrant.

The political pressure to exercise this opt-out seems to have increased in recent months and the government has already expressed its intention to withdraw from the more than 130 criminal justice measures covered by the protocol – but only after the matter has been debated in Parliament.



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Together with colleagues John Spencer and Steve Peers, I published a [report on the matter](#) last year, and was recently invited to provide oral evidence to assist the joint [inquiry](#) launched by the House of Lords' EU Sub-Committees. We have argued, both in our report and in the evidence, against the exercise of the opt-out. We believe that there are serious misunderstandings as to what exercising this opt-out would achieve, as well as to the problems that it would cause. This week, the House of Lords joint enquiry [reported](#) on the opt-out, saying that the government had not made a convincing case for it to be exercised.

Some seem to believe that exercising the opt-out would bring with it the 'repatriation' of criminal justice to the UK. Opting out, however, would not achieve this; instead, the protocol only enables an opt-out from measures established before the Treaty of Lisbon came into force in 2009. Since then, the UK has actively agreed to a range of

other instruments which would remain in place. These include measures guaranteeing certain minimum rights to suspects during a police investigation, and others against crimes such as people trafficking.

In 2014, the Court of Justice of the EU will acquire jurisdiction in relation to all measures covered by the opt-out. Accordingly, one of the arguments put forward in favour of exercising the opt-out is that it would allow the UK to escape the jurisdiction of the Court in the criminal law area. This is tied to concerns about the Court's perceived judicial activism. Again, that ship would seem to have sailed: the Court already has jurisdiction in relation to all other criminal measures adopted since Lisbon and to which the UK has agreed. Moreover, the Court's decisions in the area so far have consistently granted considerable deference to Member States' criminal justice systems.

What about the potential pitfalls of exercising the opt-out? The first one is clear: the UK risks compromising its ability to police international crimes effectively. The second problem is that there would be a great deal of uncertainty as to the legal arrangements that would apply after exercising the opt-out; uncertainty that is likely to lead to a flurry of litigation. The third problem is that, according to Protocol 36, the UK will be liable for any costs that originate from its withdrawal. We should add to these costs the funds that the UK has already invested, for example, in order to be able to connect to the Schengen Information System II when it becomes operational in the near future (in 2007, the UK government estimated this particular investment at £39 million).

In fact, certain measures are so important that the UK would need to ask for the EU's permission to opt back into them. Cabinet minister Kenneth Clarke's [statements](#) already point in this direction. This leads to the fourth problem, which is that the UK risks not being allowed to opt back into all of the measures it wishes to cherry-pick. In any case, a long negotiation is to be expected – one that may cost the UK a good deal of political capital as well as concessions in other areas.

Overall, the costs of exercising the opt-out would seem to far outweigh any potential benefit. Of course, not all measures at stake are crucial; some of them are defunct or not very useful in practice – but none of the measures are harmful to the UK. Furthermore, some of the instruments created by these measures could be improved (i.e. the European Arrest Warrant), but the UK is in a much better position to make a positive contribution in this area as a central player within the system, rather than from the sidelines.

As we summed up in our [report](#): “the use of the block opt-out would, for instance, make it harder for British police to investigate crimes with a cross-border element, harder to get hold of fugitives who flee the UK to another Member State and harder to move foreign convicted criminals from British prisons to the prisons of other Member States. There is a risk that some serious crimes would be committed in Britain by nationals of other Member States or by British citizens returning from abroad which would have been prevented if the block opt-out had not been exercised (for instance, because less information is exchanged between Member States). Also, there is a similar risk that some crimes would go unpunished as a result of exercising the block opt-out (for instance, because other Member States would no longer extradite their nationals to the UK). Is this a price worth paying for a purely nominal increase in British sovereignty?”

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Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

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