
1. Purpose of Paper

1.1 This paper is intended to brief ACPO Cabinet re the potential impacts on policing of the UK exercising rights under the Lisbon Treaty to opt out of pre-Lisbon Treaty EU policing and criminal law measures (known as ‘Third Pillar Measures’). Cabinet is advised that the impact, dependent on the actual decisions made by the UK Government, is potentially significant.

1.2 The complexity of the issues involved in exercising the opt-out option is substantial. Some of the more significant issues will be highlighted in this paper but it is not intended to provide a full impact assessment.

2 Recommendations

2.1 That Cabinet:
   o Mandates work across the ACPO Business Areas to assess the potential impact of the UK opting out each of the measures that fall within the ambit of the decision (currently believed to be 133 measures). The measures in question span criminal justice, intelligence, crime, child protection, counter-terrorism and forensics.
   o Chief Constable James Barker-McCardle, Chair of the Criminal Justice Business Area, be deputed to lead this review.
   o Considers the resultant impact assessments with a view to engaging with Government in their deliberations on whether or how to exercise its right to opt out.

3 The Opt Out Decision

3.1 By 31 May 2014 the Government must inform the European Commission whether the UK accepts European Court of Justice (ECJ) jurisdiction over all third pillar justice and home affairs (JHA) measures adopted prior to 1 December 2009, or, alternatively, opts out of these measures (henceforth referred to as the ‘2014 decision’). The decision is pursuant to Article 10(4) of Protocol 36 of the Lisbon Treaty. The UK specifically negotiated this opt-out provision.

3.2 Prior to the Lisbon Treaty, the EU was split into three pillars. Most JHA measures fell within the third pillar, which meant that the UK was not obliged to accede. Following the Lisbon Treaty, JHA measures have moved to the first pillar, which means that any decision agreed by majority in both the EU Council and EU Parliament, is binding on all member states. The UK, however, negotiated the right to opt out in relation to pre-treaty measures at any time within five years. If we do not opt out of pre-Lisbon JHA measures by 31 May 2014, we will automatically become subject to the ECJ’s jurisdiction in respect of those measures and can be sanctioned.

for failing to implement them. The effective date for this change would be 1 December 2014.

3.3 There are currently 133 measures captured within the remit of the opt-out decision. A list of these is attached at appendix 1. The number in this list may change. For example, if any of the measures are repealed, replaced or amended, and the UK opts into those changes, they will fall out of the list. The final list may end up at between 100 and 120 measures. Some of the main ones are:
- European Arrest Warrant
- Europol
- Eurojust
- ECRIS (European Criminal Record Information System)
- Schengen Information System (SIS2)
- Joint Investigation Teams (JITs)
- CEPOL (European Police College based at Bramshill)
- Prüm Decision (provides for the automated exchange of DNA, fingerprints and vehicle registration data)

3.4 The 2014 decision is not one just to be viewed from an operational perspective. It links strongly to the debate around the balance of powers between the UK Government and courts and those of the EU. Already, a robust campaign has emerged, led by leading Eurosceptics, urging the Government to exercise its right to opt out. The 2014 decision will not be an easy one for the Coalition Government given the strong pro-Europe position of the Liberal Democrats compared to the Conservatives, whose members include a significantly greater number of Eurosceptics.

3.5 Although an official governmental position has not been declared, the feeling is that the Government will wish to exercise its right to opt out and to seek to opt back in to those pre-Lisbon JHA measures which it considers to be in the UK’s interests. Campaign groups such as Open Europe are urging an early decision, well before the 31 May 2014 deadline. It is likely that the Government will make a statement on its position before the end of the current session of Parliament.

3.6 To be able to make this decision, Government and Parliament will need to fully understand the choices available, and the impact of those choices on our policing and criminal justice systems. To this end, Home Office and Ministry of Justice officials are working on detailed impact assessments for their ministers. Other work to assess impact by other agencies and groups has commenced. The Centre for European Legal Studies, part of Cambridge University, recently hosted a seminar on this attended by leading academics, members of the judiciary, CPS, ACPO, Home Office and Ministry of Justice. The seminar identified the need for cross-agency working by academics, HO/MOJ officials and criminal justice agencies to objectively assess impact and produce working documents ahead of the charged political and public debate that will inevitably occur.

3.7 The options available to the UK Government are as follows:
   o Opt in en bloc
   o Opt out en bloc
   o Opt out en bloc and opt back in to specific measures, perhaps seeking to renegotiate the terms on which we opt back in.

3.8 Although a decision needing to be made by 31 May 2014 may not at first sight seem imminent, there is in fact not a great deal of time given the complexity the issues and the need to consider fall back alternatives.

3.9 One strategy being mooted is to indicate at an early juncture which JHA measures we would wish to opt back into and to seek to achieve a seamless transition. This would seem possible where the UK was not seeking to renegotiate terms, but less certain where it is.

3.10 ACPO should ensure that it is in the best position to assist in evaluating which pre-Lisbon JHA measures the UK should opt back into and be able to work to the emerging timetable for those decisions.

4 Overview of Potential Impact on Key Areas

4.1 European Arrest Warrant

4.1.1 The EAW is perhaps the most important of the measures that fall within the ambit of the 2014 decision. It has been in operation for eight years and has now become a mainstream tool. In 2010/11 the UK received 5,382 EAW requests. It surrendered 1,149 people to other EU states (approximately 7% of which were UK nationals). The UK issued 221 EAW requests to other EU states and had 93 people surrendered to it.

4.1.2 The EAW has been an issue of policy deliberation over the past two years within the context of the review of extradition that has been taking place. ACPO has given evidence to the Parliamentary Joint Committee on Human Rights and to Lord Justice Scott Baker’s review of extradition. ACPO has argued strongly that the EAW is an effective system that helps police to be able to deal with transnational crime and criminals more effectively. It is a simpler, faster, cheaper and more reliable system than the systems that pre-dated its introduction.

4.1.3 ACPO has also argued that it would not be sensible to return to reliance on the 1957 European Convention on Extradition. Under those arrangements police and prosecutors in the UK had to work to different systems with different EU states. Many would not surrender their nationals to stand trial in the UK and would require the case to be tried within their own jurisdiction. This would involve witnesses having to travel, translation of all documentation, long delays, etc. Under the old system the average extradition to between EU states took a year, with many taking much longer. In contrast, in 65% of the EAWs between 2005

and 2009, individuals were extradited within 17 days with consent, or 48 without consent.

4.1.4 Another major reason why it would be undesirable to return to reliance on the 1957 Convention is the changing nature of crime in the UK. Transnational crime is far more prevalent than it ever used to be. Organised criminal groups run their enterprises across European boundaries. Citizens of the EU have much greater freedom to travel across the continent. Analysis of arrests in London for the first quarter of 2012 showed that of the 61,939 people arrested, 13 % (8,089) were from EU countries, and another 13% (9,358) were from foreign nationals from non-EU countries.

4.1.5 Critics of the EAW point out the fact that it can lead to British nationals being detained for long periods on remand without trial and the fact that is used for relatively minor offences by some states (e.g. Poland). They would want the UK to negotiate changes prior to opting back in, if we opt back in at all. Whilst ACPO would not dispute that the operation of the EAW could be improved, it would argue that overall the detriment to the UK from not being part of it would be much greater than the current problems.

4.1.6 The European Investigation Order is a post-Lisbon JHA measure and the current Government chose to opt into this measure. If we were to opt out of the EAW, the UK could be in a position of having the EIO but not the EAW, a potentially perverse situation.

4.2 Europol / JITs

4.2.1 Now an organization employing 700 people, Europol’s role is to foster closer collaboration between police forces in member states through facilitating the exchange of information and intelligence, by enabling cross-border investigations (currently 12,000 per year), through the provision of expert advice and by the production of strategic assessments of cross-border crime affecting member states (analytical work files and its Organised Crime Threat Assessment).

4.2.2 Under the Europol arrangements we have seen the emergence and growth of joint investigation teams (JITs) to tackle specific cross border crimes or organized crime groups affecting member states. These working arrangements have proved effective and successful. JITs, by bringing together investigators from different countries who retain their powers in their jurisdictions and their access to information and systems, are able to work more quickly and efficiently. Things that previously would have required international letters of request to get done, can now be undertaken using investigators and prosecutors from within the JIT.

4.2.3 Opting out en bloc could mean an end to the UK’s ability to access Europol’s policing databases and prohibit the exchange of police information in the way that we see now.

4.3 Eurojust

4.3.1 Established in 2002 and chaired by a Brit (Aled Williams), Eurojust’s mission is “to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more member states”. The organization “is composed of national prosecutors, magistrates, or police officers of equivalent competence, detached from each member state according to their own legal systems”. It conducts its business by facilitating and coordinating the exchange of judicial information to enable prosecutions to take place of persons involved in transnational crime.

4.3.2 Like its sister organization, Europol, Eurojust’s role has grown significantly. In 2010, member states requested assistance from Eurojust in 1,424 cases, with the UK having the highest number of cases referred that year. As mentioned above, Eurojust is a key player in the creation and operation of JITs. It also supports the operation of the EAW.

4.3.3 The impact of opting out of Eurojust is perhaps something that the CPS should take the lead in assessing rather than police. However, such a decision would not be impact free from a police perspective.

4.4 ECRIS

4.4.1 The European Criminal Record Information System enables member states to notify other member states of an individual’s previous convictions. Its operation is underpinned by another pre-Lisbon measure that requires courts in member states to take into consideration previous convictions obtained in another member state.

4.4.2 It is clearly logical that the UK’s courts should be fully sighted on a person’s criminal past when dealing with them. This also has become a mainstream activity. Data from ACPO’s Criminal Record Office shows that in 2009 ACRO received 5,750 notifications of convictions of UK nationals by other EU countries and sent 32,833 notifications to other member states telling them about convictions of their nationals by our courts.

4.4.3 Given the point made above about the high incidence of crimes committed by foreign national offenders, the exchange of information about the criminal histories of European nationals arrested in the UK is important. The benefits of opting out of this are not immediately apparent.
4.5 **SIS2**

4.5.1 The Schengen Information System (SIS2), when introduced (planned for 2014) will provide UK law enforcement agencies with routine, real-time access to the EU’s most comprehensive law enforcement database via the UK’s Police National Computer. It will enable the UK to better combat transnational crime, protect the border and strengthen public protection through improved information sharing. In a sentence, it will assist the UK in keeping the unwanted out and help prevent the wanted from leaving.

4.5.2 The purpose of SIS2 is to hold a number of specific alerts on people, vehicles and property. There are five types of alerts that law enforcement officers can either create or respond to depending on the circumstances and policy:

- Persons wanted for extradition to another member state (i.e. for whom an EAW has been issued)
- Missing persons
- Requests for a locate report on witnesses and people for court appearances
- Request information reports on major criminals and linked vehicles
- Stolen vehicles, trailers, firearms, identity documents and registered banknotes.

4.5.3 The UK has been planning for the implementation of SIS2 for a number of years and has invested millions of pounds in the project. To opt out now would not make sense financially or operationally given the importance attached to protecting our borders and our problems with foreign national offenders.

4.5.4 Given that the system was built around a standardized process, an opt-out of the EAW could also impact on the implementation of SIS2 or the way it will operate in the UK.

4.6 **Prüm Convention**

4.6.1 The Prüm Convention of 2005 was adopted to enable the exchange of DNA and fingerprints information on a hit or no hit basis, and vehicle registration information, to combat terrorism and cross-border crime. The UK agreed to participate via the Prüm Council Decision of 2007. All member states agreed to implement Prüm by September 2011.

4.6.2 However, little progress has been made by the UK in implementing the decision. Financial pressures have affected funding for the project.

4.6.3 There have also been other issues. The UK has by far the largest DNA database in Europe and its database includes unconvicted persons. There is also an issue in the identification standard underpinning the hit / no hit matching of DNA. The UK is concerned about adventitious matches using this standard and the resultant issuance of EAWs for innocent UK citizens.
4.6.4 The impact of opting out Prüm will need to be assessed by our forensic specialists. However, given that we have not implemented and there have been difficulties, the detriments to policing associated with an opt-out may not be so great.

4.7 CEPOL

4.7.1 CEPOL was established in 2005 and is based at Bramshill. Its mission is “to bring together senior police officers from police forces in Europe - essentially to support the development of a network - and encourage cross-border cooperation in the fight against crime, public security and law and order by organising training activities and research findings”.

4.7.2 CEPOL runs training programmes for senior police officers, offers exchange programmes, provides an e-learning platform and supports research in relevant areas of policing.

4.7.3 Over and above its operational support value to UK policing, which might be difficult to specify, having CEPOL based in the UK adds a dimension to the issue of opting out of the Council decision that created it. ACPO will need to consider its position on this, as it must on all the other measures. If the UK opted out, CEPOL could not remain based in the UK.

5 The Evaluation Questions

5.1 For each of the measures within the list at appendix 1, it is important that we consider the following questions:
- What is the significance of the measure to policing in the UK?
- What would be the impact of the UK opting out and not opting back in?
- If the Government is minded to renegotiate the terms of us opting back in, what changes would ACPO seek?
- What fall back alternatives are there if the UK opts out and how effective would they be in comparison?
- What costs would there be for policing in this change?

6 Next Steps

6.1 It is recommended that Cabinet commission a piece of work to evaluate the potential impact of a UK opt-out of the crime and policing measures contained in appendix 1.

6.2 The evaluation will need to involve a ‘virtual’ team of subject matter experts from across ACPO’s Business Areas and will also need to engage other agencies. The team will need access to legal specialists. It is recommended that CC James Barker-McCardle, Chair of ACPO Crime

Business Area should become the strategic lead to oversee the delivery of the work.

6.3 The assessment team should be asked to provide an interim report to Cabinet in two months.