

Justice Committee

EU priorities and other EU issues

Letter from the Cabinet Secretary for Justice to the Convener

UK PRE-LISBON TREATY POLICE AND JUSTICE OPT-OUT DECISION

Thank you for your letter of 5 December following my letter of 28 November updating the Committee on various EU issues, including the UK Government's opt-out decision on pre-Lisbon Treaty police and criminal justice measures, known as the "3rd Pillar".

You ask whether we agree with the UK Government's current stated position that it is minded to opt out of the "3rd Pillar" and opt back in only to certain measures. In December, I copied to you my written submission to the sub-committees of the UK House of Lords EU Select Committee for their joint inquiry into the opt-out decision. My written evidence set out my current view:

"Scottish Ministers' starting position on this matter has been and remains, that no decision to opt-out should be taken by the UK Government without a clear and compelling case, which would justify the potential disruption to existing cross-border co-operation and practical measures that assist authorities in tackling serious and organised crimes. The decision must be informed by the views and experiences of those agencies involved directly in applying these measures within each of the UK's distinct justice systems. UK Ministers must also be able to demonstrate that any alternative arrangements would be more effective in combating cross-border crime."

A number of Scottish justice agencies and representatives of the legal profession also submitted written evidence to the House of Lords inquiry, including the Association of Chief Police Officers in Scotland (ACPOS); the Crown Office and Procurator Fiscal Service; Faculty of Advocates and the Law Society of Scotland. Copies of the written evidence are available on the Committee's web site.¹

These submissions raised consistent and significant concerns about the potential disruption and risk to Scotland's justice system if the UK Government was to opt out of and not opt back in to specific measures; in particular the European Arrest Warrant, Europol, information exchange systems, Joint Investigative Teams, etc. The potential negative implications are summarised well in the ACPOS submission:

"ACPOS believe that opting out would leave the UK vulnerable to an increased risk of foreign criminals and criminality. In doing so, Scottish officers will encounter complex and protracted processes when dealing with offenders effectively both within the Scottish and European Criminal Justice process and partner agencies. This could effectively isolate the UK in respect

¹ <http://www.parliament.uk/business/committees/committees-a-z/lords-select/eu-home-affairs-sub-committee-f/>

of serious and organised cross border crime, thus providing a refuge for foreign criminals within our borders.”

Given these significant concerns, on 17 January, I met in Edinburgh with James Brokenshire MP, Home Office Minister for Security, to discuss the UK Government's current position on the opt out. Mr Brokenshire also met with the Lord Advocate and with representatives of the Scottish police.

UK Ministers have confirmed that no final decision on the opt out has been taken. They have also committed that votes on this matter in both Houses of the Westminster Parliament will not be held until the House of Lords EU Committee has completed its inquiry later this year. Mr Brokenshire invited Scottish agencies to provide information about their practical experiences and the benefits of applying the pre-Lisbon measures.

The UK Government must take a final decision on whether to opt in or out of the pre-Lisbon measures by May 2014. My officials and I will continue to engage with UK Government counterparts on this important decision, to ensure that the views and concerns of agencies and organisations within Scotland's devolved justice system are communicated clearly. I will keep the Justice Committee informed of further developments, as they arise.

I hope this reply is helpful to the Committee.

Kenny MacAskill
Cabinet Secretary for Justice
23 January 2013