

Justice Committee

UK Government's 2014 EU opt-out decision

Letter from the Law Society of Scotland to the Convener

I refer to your letter dated 17 January 2014 addressed to the President of the Law Society, Mr Bruce Beveridge, a copy of which has been passed to me for my attention.

The Law Society of Scotland provided the House of Lords European Union Select Committee with both written and oral evidence in relation to its inquiry into the 2014 opt-out decision.

At that time, we stated that the exercise of the opt-out could have very serious consequences involving cross border crime from both a practical and cost perspective and that such a decision should not be taken before a thorough consideration of the implications is undertaken. We further stated that even if the UK is able to opt back into some measures then this is likely to lead to confusion, complexity and cost.

We specifically expressed concerns that, with regard to the European Arrest Warrant, that it would not be in the UK's interest for individuals who commit crimes in other EU Member States to be able to treat the UK as a safe haven, knowing that their offending was either non extraditable or that it was likely to be subject to a more cumbersome extradition process for another country to seek return by that route.

A copy of our written response to the House of Lords Select Committee on the European Union is attached for ease of reference.

We remain seriously concerned that there has been no proper consultation from UK Government prior to the Home Secretary's announcement on 9 July 2013 which confirmed the UK Government's decision to exercise the opt out and the list of 35 measures which they had planned to negotiate with the Commission and the Member States to opt back into.

With regard to the consequences of not opting back into around 35 of the Pre Lisbon Police and Criminal Justice Measures, the Society believes that the opt out should not have been exercised at all. In particular, the Society notes the reference that it made in its written submission to the House of Lords European Union Select Committee at Paragraph 11. The Centre for European Legal Studies Working Paper 'Opting out of EU Criminal Law; what is actually involved?' states that:

"The UK's withdrawal from these instruments would seem to send a negative message as regards to the UK's attitude to Law and Order, and international efforts to further it. By withdrawing from them, the UK would appear to be telling other Member States (and indeed its own citizens and the rest of the world) that it considers the forms of anti-social conduct they are aimed at – Terrorism, Money Laundering, People Smuggling, Cyber Crime and so on and so forth – are not so grave as to require international cooperation to deal with them effectively".

Accordingly we remain seriously concerned at the decision to exercise the opt-out and, with regard to the 35 measures which UK Ministers plan to opt back into, we believe that it is for UK Government to demonstrate now that they have a plan that there will be no “gap” between the block opt out coming into effect and opting back into individual measures such as the European Arrest Warrant. Also we believe that the proposal which form part of such a strategy require to be scrutinised robustly and debated by Westminster.

We understand that there have not been any formal negotiations as yet between the UK Government and the European Institutions.

With reference to the European Judicial Network not been included in the list of 35 measures, we see there being no reason not to opt back into this measure.

I trust that this information is of some assistance to you in advance of your evidence session fixed for 11 March but should you require further information, please don't hesitate to contact me.

Alan McCreadie
Law Reform, Law Society of Scotland
25 February 2014