

Cameron's choice: Play to the gallery or keep Britain safe

by Hugo Brady



Britain has a decision to make that has major implications for both its security and its influence within the EU. Should it opt out of most EU co-operation on crime and policing by 2014? It can do so thanks to a special deal won by Britain in negotiations on the EU's Lisbon treaty in 2009. MPs look likely to say 'yay' when parliament votes on the matter next year: anti-EU feeling is running high in Westminster.

If Britain uses this 'block opt-out', it 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. UK authorities will no longer be able to use the European arrest warrant (EAW) with which they have prosecuted hundreds of criminals who would otherwise have gone unpunished.

If Britain does not opt-out, after 2014 the European Court of Justice (ECJ) will have a say over how police, prosecutors and courts across the EU co-operate to investigate crime, organise extraditions, share criminal records and exchange evidence. The Lisbon treaty will give the European Commission, for the first time, the power to enforce over 130 such agreements. EU judges will be able to interpret their exact meaning, as they do with the rules of the single market.

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 this entitles Britain (and Ireland, also a common law country) to special treatment: both 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', by abolishing national vetoes and giving the Union's institutions more powers. Over time – the thinking in Whitehall goes – EU judges might undermine Britain's common law traditions by handing down harmonising rulings that favour the continental model of criminal justice. This, along with strong opposition in the Conservative Party to the influence of European courts in general, makes it likely that Britain's prime minister, David Cameron, will use the block opt-out.

For a full analysis of this issue, see the forthcoming CER publication 'Cameron's next European 'own goal': Leaving EU police and justice co-operation?' by Hugo Brady.

That would be a mistake. First, UK officials imagine 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 an attempted partial re-entry, and Britain's negotiating stock in Brussels is low due to its perceived unhelpfulness during the eurozone crisis. 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. Why should they now acquiesce to British cherry-picking in policing and justice?

Second, Britain has done a lot to shape the EU's internal security agenda. 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.

Eurosceptics support the block opt-out as a step towards their goal of moving Britain to the

fringes of the EU. Such a move would annoy even traditional allies like the Netherlands and Sweden. And it would greatly reduce British influence on this crucial area of EU policy-making.

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David Cameron should remember that the UK will still have to apply EU free movement rules, under which millions of EU nationals reside legally in Britain. However, if he mishandles the block opt-out question, Britain may be unable to work effectively with other EU countries on extradition and basic security questions. Stephen Lander, a former head of Britain's intelligence service, MI5, underlined this risk in a recent letter to the government, co-signed by several former UK police chiefs.

Hence the prime minister must choose: either to face down the eurosceptics or explain why it is in Britain's interest to weaken co-operation with other EU countries on serious and organised crime.

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CER in the press

The New York Times

18th September 2012

“Germany's renewal of the concept of political union reflects the fact that the German political class has become more integrationist as the euro crisis has progressed,” said Charles Grant, director of the CER.

The Guardian

18th September 2012

“Afghanistan turned out a lot less safe than they thought it was going to be, but the Germans toughed it out, changed their rules of engagement, and fired back,” said Tomas Valasek of the CER.

The Guardian

16th September 2012

German taxpayers stump up a “solidarity surcharge” of 5.5 per cent of income tax to fund the hefty costs of unification in an arrangement due to last until 2019. “East Germany might well need another trillion,” said Katinka Barysch, deputy director of the CER.

The Wall Street Journal

15th September 2012

“Greece isn't the cause of illegal immigration [into the EU], it's a serious patch of vulnerability,” said Hugo Brady of the CER.

Financial Times

13th September 2012

“Faced with the lack of demand in Europe, the name of the game for many European defence companies has been to try and get into other markets like the US,” says Clara Marina O'Donnell of the CER.

Financial Times

6th September 2012

“One question is whether the benefits from the bond buying are going to be enough to offset the damage inflicted by the conditionality attached,” said Simon Tilford, chief economist at the CER.

The Daily Telegraph

31st August 2012

“Countries facing depressions and rapidly weakening inflation typically face very low borrowing costs,” said Simon Tilford of the CER.

BBC News

10th August 2012

“Three views of the UK are now common across Europe: that it is unreliable and unconstructive; that it is an active distraction from solving the region's worst crisis since World War II; and that it appears to be heading for the EU's exit door,” said Philip Whyte of the CER.