



House of Commons  
Justice Committee

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# Ministry of Justice measures in the JHA block opt-out

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Eighth Report of Session 2013–14

*Volume II*

*Additional written evidence*

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## The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General's Office, the Treasury Solicitor's Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

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### Publication

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# List of additional written evidence

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# Written evidence

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## Written evidence from the Ministry of Justice

### GOVERNMENT RESPONSE TO THE JUSTICE SELECT COMMITTEE'S CALL FOR EVIDENCE: MINISTRY OF JUSTICE MEASURES IN THE JHA OPT-OUT

Detailed information on the measures for which the Ministry of Justice is responsible for is of course provided in command paper 8671 and the Explanatory Memorandum contained within. However, I thought it may be helpful to your committee if I provided some additional information on some of the key measures that I am responsible for, and that we are seeking to rejoin, ahead of that date. As such, please find some additional information which I hope you can take into account in your call for evidence. I apologise for the delay in providing this.

### GOVERNMENT RESPONSE TO THE JUSTICE SELECT COMMITTEE'S CALL FOR EVIDENCE: MINISTRY OF JUSTICE MEASURES IN THE JHA OPT-OUT

We are seeking to rejoin those measures that underpin cooperation in the fight against organised crime and protect the British public. While detailed analysis of each individual measure is included in the five Explanatory Memoranda contained in Command Paper 8671, I have set out more of the Government's reasoning for wishing to rejoin a number of the key measures where the Ministry of Justice has responsibility: the Prison Transfer Framework Decision (PTFD) (number 85 on the list), the European Supervision Order (ESO) (number 97), the Data Protection Framework Decision (DPFD) (number 90), and the Mutual Recognition of Financial Penalties Framework Decision (MRFP) (number 59).

#### PRISONER TRANSFER FRAMEWORK DECISION (PTFD)

Reducing the Foreign National Offender (FNO) population is a top priority for the Government. As a general rule the UK believes prisoners reintegrate better into society upon their eventual release from prison if they serve their sentence in their country. In addition, returning FNOs to serve sentences in their home countries will free up prison spaces and contribute towards savings. Over the last ten years the UK has witnessed an increase in the number of EU nationals detained within prisons in England and Wales. The UK is already party to a number of international prisoner transfer arrangements; however the PTFD which came into force on 5 December 2011 is important in mitigating this increase as it permits Member States to transfer prisoners without the consent of the prisoner and restricts the grounds on which receiving Member States may refuse to accept transfers. It will enable non-British EU nationals held in prisons here to be returned to their country of nationality to serve their sentences and for British nationals held in other EU Member States to serve their sentences here. There are currently around 4,000 EU nationals detained in England and Wales which is 37% of the overall prison population.

The UK is beginning to see more EU nationals being removed from UK prisons. So far we have transferred nine prisoners on a voluntary basis and have just completed the first four compulsory transfers (three of which have been transferred to the Netherlands, an EU Member State which has a large number of their nationals in UK prisons, and one to Malta). A further 22 transfer certificates have been referred to other EU jurisdictions and a further tranche of prisoners are under consideration for deportation by Home Office Immigration Enforcement. The PTFD has also allowed us to secure the return of five British national offenders (two from Italy, two from Denmark and one from Belgium).

The EU PTFD, once fully implemented across all Member States, will allow us to more effectively seek the removal of EU FNOs, to serve the remainder of their sentence in their home country with or without their consent. This supports Government policy by enabling FNOs who have no right to remain in the UK to be removed from the UK at the earliest opportunity. We are actively encouraging those Member States that have not yet implemented to do so.

The measure is also an important part of the overall reform package for the European Arrest Warrant (EAW). Where EAWs are issued for convicted UK nationals to serve sentences abroad, we can make greater use of the PTFD to help ensure that more UK nationals are able to serve their sentences in the UK. As the Home Secretary announced on 9 July, this will mean asking the issuing state to withdraw the warrant and use Prisoner Transfer arrangements instead. This is clearly a more efficient use of resources and is in the interests of all concerned. The use of the PTFD in this way could have prevented the unnecessary extraditions of Michael Binnington and Luke Atkinson—sent to Cyprus, only to be returned to the UK six months later.

#### EUROPEAN SUPERVISION ORDER (ESO)

The ESO provides a legal framework which in certain circumstances will enable the court in the State where the crime is alleged to transfer the suspect back to their home Member State to await trial, and for the home Member State to assume responsibility for supervising compliance with any conditions of that bail (eg not contacting alleged victims or certain witnesses, not visiting certain places, a curfew, surrender of passport etc).

While there is no real experience of the impact of the ESO because it has only recently come into force, the potential benefits of the ESO are clear. It will provide a new option for suspects, and the courts dealing with them, to allow those suitable to return home under conditional bail to be supervised there, rather than having to stay and be supervised in the Member State where they are accused. It might even allow some suspects who might otherwise be held on remand in the prosecuting Member State to be returned home under supervised bail conditions, meaning the prosecuting State can be safe in the knowledge that any bail conditions it considers necessary will be supervised in the suspect's home Member State. The suspect, of course, gets to return home.

It is also possible that the ESO might go some way to help avoiding lengthy pre-trial detention for some suspects surrendered under an EAW, as it will allow courts to bail the suspect back to the UK while they await trial. This could benefit requested persons where unconditional bail is considered inappropriate. For example, the case of Andrew Symeou is sometimes cited as one which might have benefited from an ESO if it had been available at the time. In this case Mr Symeou spent 10 months in pre-trial detention and a further nine months under locally supervised bail in Greece. The ESO would have at least given the prosecuting court an alternative to remand or monitoring the bail of the suspect locally. In his review of UK extradition, Sir Scott Baker recommended that the ESO could play a part in helping reduce lengthy pre-trial detention for some suspects in some cases who might otherwise be held abroad and the Government agrees with that observation.

#### DATA PROTECTION FRAMEWORK DECISION (DPFD)

The DPFD provides for the protection of personal data in the area of police and judicial cooperation in criminal matters. It only applies to data which is shared across borders, not domestically (for example it would apply in an exchange of data between UK and French police forces, but it would not apply to an exchange of data between the Metropolitan and Thames Valley police forces). It applies to "competent authorities", which in the UK includes the police, Courts, the Serious Organised Crime Agency (SOCA) and many government departments.

A fully-functional law enforcement and criminal justice system within the EU needs to share data in an appropriate manner to protect the public and the rights of individuals. The DPFD achieves this well. It provides a flexible framework which is principles based and places minimum burdens on the criminal justice system. It ensures UK citizens are protected while simultaneously allowing for the necessary data sharing on criminal matters. By participating in this measure the UK ensures that law enforcement can effectively share data with EU partners without unnecessary red tape or costly burdens. The measure is considered "vital" by the Association of Chief Police Officers. In their evidence to the inquiry undertaken by the House of Lords European Union Committee they said "the UK needs to remain a part of this measure. The reason is that other states may not agree to share such data with any other state under these provisions unless they remain within it".

The DPFD additionally provides the data protection framework for many other post-Lisbon EU JHA measures. These include the Child Sexual Exploitation Directive (2012/92/EU), the Victims Directive (2012/29/EU) and the Cybercrime Directive (2013/40/EU). Participation in the DPFD therefore means that the UK will be able to fully compliant with these instruments.

#### MUTUAL RECOGNITION OF FINANCIAL PENALTIES (MRFP)

The MRFP ensures that offenders are not able to evade financial penalties simply because they do not live in the Member State where they offend. The measure maintains any deterrent effect of a financial penalty even for people who are resident elsewhere in the Union. For example, visitors in the UK from another Member State may be less inclined to commit road traffic offences if they know they will likely still have to pay the resulting fine imposed for any offence.

The Framework Decision applies to fines, fines registered as a result of fixed penalty notices, compensation orders, victims surcharge and court costs. The enforcing Member State that collects the financial penalty will generally keep it (other than compensation monies that would generally be remitted back to the victim) as there are often costs associated with enforcement. The key aim of the measure is to broaden the effectiveness of financial penalties imposed by Member States

*October 2012*

#### **Supplementary written evidence from Rt Hon Chris Grayling MP, Lord Chancellor and Secretary of State for Justice, Ministry of Justice, following the evidence session on 16 October 2013**

##### PROTOCOL 36 PROCESS

While giving evidence to the Justice Committee on 16 October 2013, I committed to providing you with some additional information relating to Council Framework Decision 2008/947/JHA on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions (the Probation FD). For ease of reference, this measure is number 88 on the list of measures within the scope of the 2014 decision that we placed in the House library and further information on it can be found in Command Paper 8671.

As I explained while giving evidence, one of the key issues the Government had in mind when considering which measures to rejoin was that those measures will permanently come under the jurisdiction of the European Court of Justice (ECJ) once we rejoin them. As you know, many of the pre-Lisbon measures were political compromises in order to secure unanimity and as a result can be broadly drafted. If the UK Parliament enacted similarly broad legislation UK courts would have to interpret that legislation were it ambiguous or unclear. Of course in the case of EU legislation, it would ultimately be the ECJ which would decide how a measure should be interpreted. The key issue is what happens if the interpretation of that legislation by the ECJ results in unwelcome outcomes for the UK which the Government wants to address. If it was a UK law and a UK court then the UK Parliament could respond. However, with an EU law and an ECJ judgment the—UK cannot act unilaterally to amend the law.

With this in mind, the Government assessed each measure and considered whether on balance the UK should seek to rejoin it. In the case of the Probation FD, it has only been implemented by a limited number of Member States and we are not aware of it ever having been used to date. As such, at this stage it is very difficult to make an assessment as to how the measure might or might not work.

When I made this point while giving evidence I touched upon the measure's vagueness in relation to deportation and committed to provide you with further detail on that point in particular. Article 5 of the measure relates to the criteria for forwarding on a judgment and, where applicable, a probation decision. In our view it is entirely unclear in relation to its application to persons who have been returned to another Member State as a consequence of being deported and who did not consent to be returned but who are now lawfully and ordinarily residing there. My view is that the better reading of this FD is that this does not apply to deportees, as the provision implies that return should be a choice, but it is absolutely not clear whether other Member States, the Commission and ultimately the ECJ would agree.

Whether or not it applies to deportees and in what circumstances could of course have potentially substantial consequences in terms of the Probation FD's usefulness, and impact on the UK. If it doesn't apply to deportees then its usefulness (as a public protection measure allowing states to supervise incoming deportees who may present a risk) is obviously significantly curtailed. If it does apply to deportees then, although this may affect a relatively small group of offenders, we are unclear as to what happens in the event an individual is deported, the probation decision or alternative sanction is transferred, and there is a subsequent breach. In particular, Member States may make a declaration that they will not deal with breach locally, under certain circumstances, but will transfer jurisdiction back to the issuing Member State (and we already know from declarations made by some Member States that some States will do this). As a result, if the person has already been deported, and the receiving Member State then wishes to return jurisdiction on breach, I am not clear what the status of that deportation would be. Alternatively, the transferred order may be unenforceable, thereby entirely undermining the purpose of the FD. These are very important questions and until we have clearer answers it is not a measure that I consider the UK should seek to rejoin.

*October 2013*

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### **Written evidence from Justice Across Borders**

#### **SUMMARY**

- Justice Across Borders supports the Government's decision to opt back into the 35 measures specified in Command Paper 8671 but believes there is a good case for adding to the list.
- The three Justice Measures it would seek to add are Council Framework Decision 2008/947/JHA of 27 November 2008 on the supervision of probation measures and alternative sanctions; Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment; and Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

#### **JUSTICE ACROSS BORDERS**

1. Justice Across Borders is an NGO founded in November 2012 to support British citizens who have been victims of serious crime in other EU countries. In particular, we have campaigned for the maximum involvement of the United Kingdom in EU police and justice measures, since we believe that these work overwhelmingly to the benefit of British victims of crime.

2. Our submission to the House of Commons Justice Committee is based on material already submitted to the House of Lords Inquiry. The present submission focuses on Question 1 which reproduces similar arguments and analysis as our submissions to the House of Lords EU Committee of 11 September 2013 and to the House of Commons Home Affairs Committee today.

Question 1: *Do you agree with the list of measures falling within the Ministry of Justice's responsibility that the Government proposes the UK should seek to rejoin after exercise of the block opt-out? Do you consider that the UK should seek to rejoin measures which are not contained in the Government's list, or, conversely, do you consider that the UK should not seek to rejoin measures which are contained in the Government's list?*

3. We welcome the Government's decision to seek to rejoin the 35 measures specified in Command Paper 8671, although—as we argue below—we believe that there is a good case for adding to this list.

Other Measures which should be on the list

4. There appears to be a misconception that the 133 measures fall into two broad categories: the 35 on the Government's list, and defunct or obsolete measures, with only a small number in between. The Command Paper shows this is not true. While the list of 35 represents those with the strongest case for inclusion, there is a good case for including a large number of other measures, for the following reasons:

- (a) Coherence.
- (b) The risk of an operational gap.
- (c) Reputational risk to the UK and Benefit to the EU by raising standards.

Coherence

5. This issue mainly arises in respect of Europol and to a lesser extent Schengen measures. These fall within the remit of the Home Affairs Committee and we have therefore covered this in a separate submission.

The risk of an operational gap

6. We consider that the Command Paper analysis shows the risk of an operational gap in respect of the following measures falling under the Home Office:

- (2) Joint Action 96/277/JHA of 22 April 1996 concerning a framework for the exchange of liaison magistrates.
- (25) Council Act of 29 May 2000 establishing the Convention on Mutual Legal Assistance in criminal matters between the Member States of the European Union.
- (32) Council Act of 16 October 2001 establishing the Protocol to the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union.
- (30) Council Decision 2001/419/JHA of 28 May 2001 on the transmission of samples of controlled substances.
- (66) Council Decision 2005/671/JHA of 20 September 2005 on the exchange of information and cooperation concerning terrorist offences.

7. We consider also that an operational gap would result also from non-implementation and non-application of the following measure falling under the Ministry of Justice:

- (88) Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

8. Although the UK has not implemented this Decision, we believe that it would be useful in allowing EU citizens, including British citizens, subject to sanctions such as supervision orders, to move freely between EU Member States.

Reputational Risk to the UK and Benefit to the EU by raising standards

9. There remain a series of measures which, if the UK is not party to them, may not leave operational gaps but may cause reputational damage to the UK and loss of influence. We have included in this section those measures which clearly benefit other Member States and the EU as a whole by raising standards. By not affirming these measures, the UK is abandoning one of the main avenues for building the rule of law in these important areas. These include terrorism, confiscation of assets, fraud and corruption where for many years the UK has encouraged other EU Member States and accession countries to adopt precisely these measures.

10. The titles of the measures are self-explanatory of their scope and therefore of the argument. The following measures fall within the Home Office remit:

- (1) (8) (12) Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests, and the Council Acts drawing up the First and Second Protocols.
- (4) Joint Action 96/698/JHA on cooperation between customs authorities and business organizations in combating drug trafficking.
- (5) Joint Action 96/699/JHA concerning the exchange of information on the chemical profiling of drugs to facilitate improved cooperation between Member States in combating illicit drug trafficking.

- (17) Joint Action 98/699/JHA of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and proceeds of crime.
- (18) Council Framework Decision 2001/500/JHA of 26 June 2001 on the same subject.
- (54) Council Framework Decision 2004/757/JHA of 25 October 2004 laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of drug trafficking.
- (58) Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property.
- (33) Council Decision 2001/887/JHA of 6 December 2001 on the protection of the euro against counterfeiting.
- (39) (87) Council Framework Decisions 2002/475/JHA of 13 June 2002 and 2008/919/JHA of 28 November 2008 on combating terrorism.
- (43) Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.
- (45) Council Decision 2002/996/JHA of 28 November 2002 establishing a mechanism for evaluating the legal systems and their implementation at national level in the fight against terrorism.
- (84) Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.
- (98) Council Decision 2009/902/JHA of 30 November 2009 setting up a European Crime Prevention Network.
- (9) (49) Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of Member States, and its application to Gibraltar.

11. The following two measures in this category fall under the Ministry of Justice:

- (29) Council Framework Decision 2001/413/JHA of 28 May 2001 combating fraud and counterfeiting of non-cash means of payment.
- (47) Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

*Jeremy Hill, Trustee, Justice Across Borders*

*Thais Portilho-Shrimpton, Director, Justice Across Borders*

*30 September 2013*

Jeremy Hill was Assistant Legal Adviser in the Foreign and Commonwealth Office (FCO) dealing with extradition and mutual legal assistance between 1982 and 1987. He was Legal Adviser to the British Embassy in Germany between 1987 and 1990, dealing (among other things) with judicial cooperation, including cases of terrorism such as the Lockerbie Inquiry. He was Counsellor in the Attorney General's Office between 1991 and 1994 specialising in international and EU law. He was Counsellor for Justice and Home Affairs and Legal Adviser in the UK Representation in Brussels between 1995 and 1998, and took part in negotiations in the early pre-Lisbon JHA instruments. He was Head of the Southern European Department in the FCO between 1999 and 2001, then Ambassador to Lithuania from 2001 to 2003, and Ambassador to Bulgaria from 2004 to 2007, where JHA featured prominently in the EU accession process. He also supervised operational police and judicial cooperation from the Embassy with these two countries. He left the FCO in November 2007 but continues to work on a wide variety of international projects. He is an Associate Director of the Centre for Political and Diplomatic Studies and for 2013–14 is a Visiting Scholar at the University of Ulster working on issues of the past in Northern Ireland. He is a member of the Executive Committee of Westminster Liberal Democrats. He is a co-founder and trustee of Justice Across Borders.

Thais Portilho-Shrimpton is Director of Justice Across Borders, which she founded with Jeremy Hill, Lord Taverne and Peter Wilding in November 2012. She has been a journalist for seven years, two of them as an all-round (and crime) reporter at Brazilian national newspaper O Dia, based in Rio de Janeiro. She moved to the UK in 2007 and worked at local newspapers in south London, at Newsquest Ltd, until 2011. She contributed to a range of publications including the Guardian, Independent on Sunday, New Statesman, Daily Telegraph and CNN International. She managed the Hacked Off campaign, and took part in the negotiations of the Leveson Inquiry's Terms of Reference, as well as the drafting of amendments to proposed changes to CFAs for defamation and privacy cases in the Legal Aid, Sentencing and Punishment of Offenders Bill. She advised academics developing proposals for new models of regulation of the press throughout the inquiry. She was at Hacked Off from its inception until October 2012.

*September 2013*

## Written evidence from Fair Trials International

### THE UK'S 2014 OPT-OUT DECISION (PROTOCOL 36)

Fair Trials International (“FTI”) welcomes the opportunity to comment on the United Kingdom’s opt-out decision under Protocol 36 of the Treaty on the Functioning of the European Union.

Please find attached a copy of the written evidence previously submitted to the House of Lords Select Committee on European Union in the context of its initial inquiry into the UK’s 2014 Opt-out Decision. This continues to reflect our position. As evidenced by our previous briefing, FTI’s primary focus throughout the debates on the opt-out decision has been on the operation of the European Arrest Warrant (“EAW”). Given our experience of numerous cases of injustice under the EAW, we could not support an opt-in to the EAW without a prior commitment to reform of the EAW at both the domestic and EU levels.

FTI has raised concerns regarding the disproportionate and premature use of the EAW system, which in turn have resulted in people being extradited for minor crimes and being subjected to prolonged periods of pre-trial detention. Further, our casework has demonstrated the failure of the EAW regime to ensure adequate protection of the fundamental rights of those whose swift removal from one Member State to another it effects.

The Government has stated in its Command Paper that the EAW Framework Decision—implicitly—allows refusal of EAWs on human rights grounds, as provided for under UK law, suggesting that opting into the EAW raises no concerns from a human rights perspective. However, whilst it may be true that the EAW scheme implicitly allows refusal of an EAW on human rights grounds, this has proved to be of limited practical use: in practice, the courts apply principles elaborated by the European Court of Human Rights which impose virtually unachievable evidential and legal hurdles. FTI believes that the current approach to human rights protection needs redefining at both EU and national level so as to provide more realistic tests. As such, FTI has long called for reform of both the EAW Framework Decision and the UK Extradition Act with the objective of addressing the identified flaws.

We were, of course, encouraged by the Home Secretary’s announcement that the Government would, in line with our recommendations, use the 2014 opt-out decision as an opportunity to raise the need for reform with the EU institutions and other Member States. While this has not yet produced concrete commitments to reform at the EU level, we greatly welcome the steps which the Government has now taken to seek reforms to the Extradition Act 2003, particularly the proportionality assessment, the mechanisms through which premature extradition might be avoided and the amendments to the appeal process. These go a long way towards addressing our concerns and justifying the decision to opt back in to the EAW Framework Decision. Our view is that certain of the proposed amendments to the Extradition Act 2003 could go further, particularly to ensure the adequate protection of fundamental rights, and we hope that the Government will be receptive to the amendments which we hope are tabled in Parliament during the progress of the Anti-social Behaviour, Crime and Policing (“ASBCP”) Bill. We are producing a briefing on these amendments and will happily provide the Committee with a copy in due course. We also welcome the Home Secretary’s announcement that the Government will opt in to, and seek to implement, the Framework Decision on the European Supervision Order, which FTI has consistently called for as a means of avoiding the pre-trial detention of some of those extradited under the EAW.

In relation to the measures falling within the Ministry of Justice’s competence to which the Government has proposed to opt back in, FTI notes that two of these have potential relevance to the operation of the EAW system:

- *Framework Decision 2002/514/JHA on the mutual recognition of financial penalties*: In relation to the issue of proportionality, FTI has raised concerns about the use of EAWs to enforce relatively short sentences issued in respect of minor crimes, often as a result of suspended sentences being activated several years after the person’s departure from the country. FTI believes that the availability of a mechanism for ensuring the enforcement of financial penalties creates an alternative for other Member States to use in order to enforce punishment for minor crimes instead of seeking extradition in respect of a short term prison sentence. The decision to opt in to this measure is therefore potentially helpful. However, this being a measure based on mutual recognition, participation in it raises issues relating to human rights, as discussed above.

- *Framework Decision 2008/909/JHA on the mutual recognition of custodial sentences*: FTI has also drawn attention to the unnecessary human and economic cost arising from the lack of discretion available under UK law for judges to refuse the execution of a “conviction EAW” in respect of a UK national or resident on condition that they serve the sentence in the UK. The Government has announced that “where a UK national has been convicted and sentenced abroad, and is now the subject of a [n EAW], we will ask, with [the issuing state’s] permission, for the warrant to be withdrawn and use the prisoner transfer arrangements instead”. Whilst FTI does not consider this to be a satisfactory approach and believes that the policy should be put on a statutory footing so as to provide effective protection to both UK nationals and residents, the availability of a mechanism for ensuring the enforcement of custodial sentences may be of assistance in ensuring those subject to conviction EAWs are not extradited needlessly to serve sentences abroad. However, this being a measure based on mutual recognition, participation in it raises issues relating to human rights, as discussed above. Further, the effective implementation of the Framework Decision more broadly will also give rise to a number of practical issues such as: the requirement for the effective consultation of prisoners, some of whom can be transferred without their consent; the need to use the measure to support the rehabilitation of prisoners; the need to take into account discrepancies regarding the likely sentence to be served in the other member state following transfer; and the need to consider the human rights in the other member state, including most notably prison conditions.

Finally, we also note that improvements to the EAW scheme are, to some extent, dependent on reforms to the EAW Framework Decision. We therefore maintain that the Government should seek a commitment from the EU Institutions and Member States to reform of the EU legislation. In this regard, we have been encouraged to see that the European Parliament has decided to produce a legislative initiative report, and wait to see whether it proposes reforms capable of addressing the major flaws in the EAW’s operation and whether the Member States support its recommendations.

September 2013

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### **Written evidence from the Law Societies of England and Wales and of Scotland**

1. The Law Society of England and Wales is the independent professional body, established for solicitors in England and Wales in 1825, that works globally to support and represent its 166,000 members, promoting the highest professional standards and the rule of law.

2. The Law Society of Scotland is the professional body of the Scottish solicitors’ profession. Not only does it act in the interests of its solicitor members, but it also has a clear responsibility to work in the public interest. That is why it actively engages and seeks to assist in the legislative and public policy decision making processes.

3. The Law Societies welcome this opportunity to provide evidence to the Justice Select Committee of the House of Commons on the Government’s plans to opt out of EU police and criminal justice (PCJ) measures concluded prior to the Treaty of Lisbon.

#### **SUMMARY**

- The Law Societies do not support the exercise of the opt-out. We start from the premise that systems need to be in place to facilitate effective cross-border co-operation in criminal justice matters between Member States and provide for corresponding procedural rights for suspects and victims. Exercising the opt-out is likely to cause significant difficulties for cross-border criminal investigations and to increase the complexity of advising suspects and victims. It may also give rise to significant unnecessary costs (at a time when many reductions, not least in the field of legal aid, are being made to domestic criminal justice funding). The opt-out could also diminish the ability of the UK to influence future developments in this field of law at EU-level.
- The Law Societies welcome that the Government has recognised the value of 35 of the EU PCJ measures. These measures generally correspond to those that the Law Societies identified as of particular value to legal practice in the UK in cross-border cases (though below we highlight further measures that could be added). The Law Societies are also willing to provide additional input on the measures if this would assist policymakers.
- It remains the case that we do not view any of the measures as harmful. This includes the European Arrest Warrant (EAW) Framework Decision<sup>1</sup> which, while it could be improved, offers a better system than was in place before. The Law Societies are concerned that it may not be possible for the UK to opt back in to all of the measures that are proposed in the forthcoming negotiations and that this is an inherent risk in exercising the opt-out. Any transitional period is likely to give rise to significant legal uncertainty.

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<sup>1</sup> Council Framework Decision 2002/348/JHA on the European arrest warrant and surrender procedures between Member States.

- As the Law Societies have previously explained to the House of Lords' EU Select Committee, accepting the jurisdiction of the Court of Justice of the European Union (CJEU) for such measures is unlikely to pose any practical difficulties for the UK,<sup>2</sup> and the UK has chosen to accept the CJEU's jurisdiction for PCJ measures opted into following the Treaty of Lisbon and all other areas of EU law. If EU law is to function, then there must be a court able to provide interpretation on its meaning (through preliminary rulings to national courts) and to consider whether the EU institutions or Member States have infringed that law. Domestic courts already take account of CJEU case-law, even in relation to measures where the UK is not yet subject to the CJEU's jurisdiction.<sup>3</sup>

*Do you agree with the list of measures falling within the Ministry of Justice's responsibility that the Government proposes the UK should seek to rejoin after exercise of the block opt-out? Do you consider that the UK should seek to rejoin measures which are not contained in the Government's list, or, conversely, do you consider that the UK should not seek to rejoin measures which are contained in the Government's list?*

*What is your assessment of the national interest involved in rejoining the measures for which the Ministry of Justice is responsible?*

4. If the opt-out is exercised, the Law Societies welcome the provisional list of the 35 PCJ measures that the Government intends to request to rejoin and believe that this would be in the national interest.<sup>4</sup> The following measures on the list are viewed as particularly valuable:

- *Framework Decision on the EAW*  
The Law Societies believe that the EAW is extremely important and related to a number of the measures overseen by the Ministry of Justice addressed in this response. The EAW could be improved but offers a better and more efficient system than previous arrangements. (We address these points in more detail in our response to the Home Affairs Select Committee's inquiry.)
- *Framework Decision on the application of the principle of mutual recognition for judgments imposing custodial sentences or measures involving deprivation of liberty*<sup>5</sup>  
This provides for a prisoner transfer scheme, which the Law Societies view as helpful in enabling nationals to serve sentences in their own Member States.
- *Framework Decision on taking account of convictions in the Member States of the EU in the course of new criminal proceedings*;<sup>6</sup> *Framework Decision on the organisation and content of the exchange of information extracted from the criminal record between Member States*;<sup>7</sup> *Framework Decision on the establishment of the European Criminal Records Information System (ECRIS)*;<sup>8</sup> and *Framework Decision on joint investigation teams*.<sup>9</sup>  
Prosecutors regard these measures as particularly valuable.
- *Framework Decision enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial*<sup>10</sup>  
This measure can improve the procedural rights of the accused, for example, in EAW cases.
- *Framework Decision on the application of mutual recognition to decisions on supervision measures as an alternative to provisional detention (the European Supervision Order (ESO))*<sup>11</sup>  
This will be beneficial to many defendants resident in a Member State other than where they are due to stand trial.
- The various information and data sharing measures, and data protection measures. In particular, *the Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters* is important from the perspective of data protection.<sup>12</sup>
- The existing Eurojust and Europol measures (not all of which are on the list).

<sup>2</sup> Bar Council of England and Wales; Law Society of England and Wales—Supplementary written evidence to the House of Lords' EU Select Committee's original inquiry.

<sup>3</sup> *Assange (Appellant) v The Swedish Prosecution Authority (Respondent)*, [2012] UKSC 22.

<sup>4</sup> Command Paper 8671—9 July 2013, Decision pursuant to Article 10 of Protocol 36 to The Treaty on the Functioning of the European Union, pages 8 to 12.

<sup>5</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purposes of their enforcement in the European Union.

<sup>6</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings.

<sup>7</sup> Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States.

<sup>8</sup> Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA.

<sup>9</sup> Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams.

<sup>10</sup> Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial.

<sup>11</sup> Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

<sup>12</sup> Council Framework Decision 2008/977/JHA of 27 November 2008 on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters.

*Measures within the remit of the Ministry of Justice omitted from the list*

There are a number of measures that the Law Societies believe should be added to the list .

Conflicts of jurisdiction in criminal matters

5. From a practical perspective, when considering the *Framework Decision on prevention and settlement of conflicts of exercise of jurisdiction in criminal matters*,<sup>13</sup> practitioners note that the instrument, which aims to prevent parallel proceedings in different Member States, could be helpful. Were the UK not to opt back in, as the Command Paper notes, other Member States would not be required to try to resolve a conflict of jurisdiction with the UK, which could be to the detriment of the accused.

6. It is also clear that withdrawing from this instrument could be to the detriment of the UK's own interests; for example, if the UK would like to prosecute a particular case and another Member State decides to go ahead before proceedings can begin in the UK. In this case, double jeopardy rules would then preclude the UK from prosecuting.

7. It is noted that Eurojust, acting as a College, provides non-binding opinions in the case that two or more members have not been able to resolve a conflict of jurisdiction. The sanction is to name non-compliant Member States in the Eurojust annual report. On the assumption that the UK would remain a member of the College, there would remain some incentive for Member States to avoid parallel proceedings with the UK—although the potential for a decline in mutual understanding and cooperation would increase.

Mutual recognition of judgments and probation decisions

8. A review of extradition arrangements in the UK produced for the Home Office (otherwise known as the “Scott Baker Review”) highlights the potential value of the *Framework Decision on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions*.<sup>14</sup> As the report explains, this would enable other Member States to “...[transfer] probation or non-custodial measures to the United Kingdom for execution rather than issuing a European arrest warrant for a sentence imposed in default...”, thus potentially reducing the number of EAWs issued.<sup>15</sup>

*Do you have any comments on the analysis of policy implications and fundamental rights provided in the Ministry of Justice's Explanatory Memorandum?*

*Do you consider any other factors should be taken into account in deciding whether the UK should seek to rejoin each measure?*

9. The Law Societies appreciate that a significant effort has been made to explain each of the measures in the explanatory memorandums. As a general comment, the Law Societies believe that it is also important to consider the impact of the instruments in practical terms. Many of the measures are intrinsically linked and may all come into play during the course of an EU-wide investigation and prosecution, for example: the use of data sharing measures to detect a crime, or the whereabouts of a suspect; the involvement of a liaison magistrate; the obtaining of an EAW; the setting up of a joint investigation team, etc. The more measures that are opted back into (excluding those that are obsolete), the less difficulty that is likely to arise from the UK not being subject to a measure which could be useful for an important cross-border investigation/prosecution.

European Supervision Order

10. From a practical perspective, if the ESO is made available this would benefit many accused, including those subject to an EAW, and their family members who would be able to spend a pre-trial period together in their Member State of residency prior to the accused facing trial elsewhere. We anticipate that the ESO could be used for a relatively broad range of offences, particularly given the availability of new technology to monitor suspects under bail conditions, etc.

11. As Fair Trials International has noted, “the ESO lays down rules according to which one Member State must recognise a decision on supervision measures issued by another Member State as an alternative to pre-trial detention. This could have a huge impact on people arrested abroad, who are often denied bail simply because they are non-nationals. Unless the ESO is implemented into UK law, it will not be available to the many British citizens who may spend months or years in foreign prisons awaiting trial away from home, often in horrendous conditions”.<sup>16</sup>

<sup>13</sup> Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal matters.

<sup>14</sup> Council Framework Decision 2008/947/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions.

<sup>15</sup> A Review of the United Kingdom's Extradition Arrangements (Following Written Ministerial Statement by the Secretary of State for the Home Department of 8 September 2010). Presented to the Home Secretary on 30 September 2011, paragraph 11.22. (This is also referred to as the “Scott Baker Review”).

<sup>16</sup> Fair Trials International—Written evidence to the House of Lords' EU Select Committee's original inquiry.

## European Arrest Warrant

12. While we understand that the Home Affairs Select Committee is considering the EAW Framework Decision in greater detail, the Law Societies wish to make clear that we support the Government's analysis that "the European Arrest Warrant has been successful in streamlining extradition processes and returning serious criminals".<sup>17</sup> We would add that, in general, the EAW has also benefitted the accused because extradition proceedings are more efficient and pre-trial detention periods tend to be significantly shorter than under the previous *1957 Council of Europe Convention on Extradition* (or ECE).

13. The Command Paper explains that "if the UK were to decide not to participate in this measure, we believe the UK would revert to the ECE and its additional Protocols. All Member States have ratified the ECE. Some barriers to extradition exist under the ECE that do not exist under the EAW, including the nationality of those sought and the statute of limitations (where the extradition offence would be time-barred under the law of the requested state). In order to remove these barriers work would need to be taken bilaterally, but there is no guarantee this would be possible where Constitutional barriers exist".<sup>18</sup> The Law Society of England and Wales is not convinced that an approach of reverting back to the ECE would work. Firstly, there is a risk that in some Member States the ECE would not be able to apply due to superseding legislation.<sup>19</sup> Secondly, some Member States never brought the ECE into force, eg Ireland in relation to the UK. The "backing of warrants" legislation, which was used instead, has also been repealed. In the case of Ireland, the UK would require a bilateral arrangement.

## Procedural rights roadmap

14. From a broader perspective, as the Law Society of England and Wales has previously stated, it "...is hopeful that the protection of defence rights in the operation of the EAW scheme will be further strengthened by the existing and pending instruments adopted in furtherance of the "Roadmap". The Law Society has called on the EU to introduce binding minimum procedural rights throughout the EU for suspects and defendants at all stages of the criminal process from investigation onwards..."<sup>20</sup>

15. For example, the soon-to-be-approved *Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest*,<sup>21</sup> to which the UK has not yet opted in, provides not only for the right of access to a lawyer in the executing Member State, but also the right to appoint a lawyer (and help to facilitate this) in the issuing Member State. While not a full right to dual representation, this is a significant step forward and the Law Societies would urge the Government to opt in to this Directive.

16. The Law Societies wish to highlight the importance of the following statement in the Scott Baker Review: "We note that the Joint Committee on Human Rights recommended that the United Kingdom Government should "take the lead in ensuring there is equal protection of rights, in practice as well as in law, across the EU". We recommend that the UK Government work with the European Union and other Member States through the Roadmap for strengthening the procedural rights of suspected or accused persons in criminal proceedings and other measures to improve standards."<sup>22 23</sup>

## Access to justice

17. Another important element is access to justice. The Law Society of England and Wales has previously highlighted that "anecdotal evidence suggests that the introduction of means testing in the Magistrates' Courts effectively denies access to legal aid for defendants in extradition proceedings, where the time taken to process applications exceeds the length of those proceedings".<sup>24</sup> The Scott Baker Review has since called for the reintroduction of non means-tested legal aid for extradition proceedings in England or an alternative solution.<sup>25</sup> As suggested by Fair Trials International, the abolition of means testing for legal aid in extradition cases could be included in amendments to the Anti-Social Behaviour, Crime and Policing Bill.<sup>26</sup>

## European judicial network

18. The Law Societies have also highlighted to the Home Affairs Select Committee that we believe that the UK should seek to opt back into the European Judicial Network (EJN) instrument relating to criminal

<sup>17</sup> Command Paper 8671, op. cit., page 94.

<sup>18</sup> Command Paper 8671, op. cit., page 95.

<sup>19</sup> The UK's 2014 Opt-out Decision (Protocol 36), Response of the Bar Council of England and Wales, written evidence to the House of Lords' EU Select Committee's original inquiry, paragraph 56.

<sup>20</sup> Law Society response to Extradition Review, op. cit., page 9.

<sup>21</sup> Proposal for a Directive on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest [First reading]—Approval of the final compromise text (10190/13, 2011/0154 (COD)): <http://register.consilium.europa.eu/pdf/en/13/st10/st10190.en13.pdf>

<sup>22</sup> The Scott Baker Review, op. cit., paragraph 1.14.

<sup>23</sup> A further example of the wish to improve procedural rights across the UK's jurisdictions, and be seen to do so, is reflected in the Criminal Justice (Scotland) Bill currently before the Scottish Parliament. This specifically provides for the rights of suspects in Chapters 4 and 5.

<sup>24</sup> Law Society response to Extradition Review, op. cit., page 2.

<sup>25</sup> The Scott Baker Review, op. cit., paragraphs 1.37–1.39.

<sup>26</sup> Anti-Social Behaviour, Crime and Policing Bill, Written evidence from Fair Trials International, 2 July 2013.

matters.<sup>27</sup> This aims to promote cross-border judicial co-operation in criminal matters. One of the key difficulties for legal practitioners when encountering EU PCJ instruments is a lack of training and awareness. Legal practitioners are also reliant on judges having sufficient training, in order that any relevant EU law is applied fairly and accurately in the case of their client. In addition, many practising solicitors are part-time judges, who could in principle also benefit from the EJN in the latter capacity.

19. It is vitally important that, as EU law develops, lawyers and judges applying EU law in the UK have access to adequate training and are able to access contacts in other Member States. It is for this reason that the Law Societies are also concerned that the UK has not yet opted in to the *Regulation establishing for the period 2014 to 2020 the Justice Programme*,<sup>28</sup> which aims to encourage a more consistent application of EU legislation in the field of judicial cooperation in civil and criminal matters.<sup>29</sup>

20. While the explanatory memorandum in the Command Paper detailing the *Council Decision on the European Judicial Network* correctly sets out the nature of the organisation, we are concerned that some of the underlying value of entities such as the EJN is being overlooked in the analysis. From a practitioner perspective, more rather than less training and contact with colleagues from other Member States is needed to ensure a greater knowledge of the EU instruments in this field and how to apply them.

21. If the UK does not continue to play an active role in bodies such as the EJN, this can only be to the detriment of those who find themselves subject to EU law instruments in the domestic courts. While some informal contact and networking would of course continue, the Law Societies doubt that all the relevant UK judges/practitioners required to apply EU law in criminal matters "...know the names and numbers of people they need to speak to regularly".<sup>30</sup> This depends on how much experience and training they have had of EU measures. While practitioners established in applying EU law may well have good contacts, this does not apply to all.

22. The Law Societies also believe that any assessment of the value of the EJN and the UK's involvement should also take into account the interconnection between civil and criminal matters.<sup>31</sup> The Government's assessment of EU civil judicial co-operation, as part of the Review of the Balance of Competences between the UK and the EU, is also relevant to the decision whether or not to stay within the EJN instrument.<sup>32</sup>

#### Potential cost of opt-out

23. Article 10(4) of Protocol 36 provides that: "The Council, acting by a qualified majority on a proposal from the Commission, may also adopt a decision determining that the United Kingdom shall bear the direct financial consequences, if any, necessarily and unavoidably incurred as a result of the cessation of its participation in those acts."

24. The Command Paper explains that "the Government considers this to be a high threshold to meet; it would only cover those direct costs incurred as a result of the UK not opting back into a measure".<sup>33</sup> However, the Law Societies take the view that different legal interpretations of the treaty wording are possible and equally valid; including the possibility of a lower threshold being applied (and more costs therefore arising for the UK). For example, we understand that it is possible that the financial consequences could incorporate not only costs to the EU institutions but also the costs to the other Member States of instituting changes, which could be substantial. The Law Societies encourage the Government to carry out a thorough impact assessment taking account of the different possible interpretations of Article 10(4).

25. In addition, the costs of exercising the block opt out may include not only the costs imposed by the Council but also any domestic costs (including those of any transitional arrangements) and, if the UK is unsuccessful in rejoining the measures that it wishes to, the costs of putting into place alternative arrangements (where this proves possible). In particular, practitioners believe that costs relating to extradition are likely to increase. Moreover, both prosecutors and defence practitioners involved in cross-border cases (from the UK and in other Member States) would require training to understand which measures the UK is still subject to, any

<sup>27</sup> Council Decision 2008/976/JHA of 16 December 2008 on the European Judicial Network.

<sup>28</sup> Proposal for a Regulation establishing for the period 2014 to 2020 the Justice Programme (COM(2011) 759 final, 2011/0369 (COD)).

<sup>29</sup> Review of the Balance of Competences between the United Kingdom and the European Union, Civil Judicial Co-operation. Written response by the Law Society of England and Wales, August 2013, pages 18 to 19: <http://www.lawsociety.org.uk/representation/policy-discussion/documents/balance-of-competences-review-civil-judicial-cooperation/>

<sup>30</sup> Command Paper 8671, op. cit., page 74.

<sup>31</sup> For example, an assault under criminal law and a civil action for assault can apply to the same circumstances. In the same way, there are levels of criminal and civil judicial co-operation.

<sup>32</sup> Review of the Balance of Competences, Civil Judicial Co-operation:  
- Written response of the Law Society of England and Wales: <http://www.lawsociety.org.uk/representation/policy-discussion/documents/balance-of-competences-review-civil-judicial-cooperation/>  
- Written response of the Law Society of Scotland: [https://www.lawscot.org.uk/media/649594/lawref%20\\_civil\\_judicial\\_cooperation.pdf](https://www.lawscot.org.uk/media/649594/lawref%20_civil_judicial_cooperation.pdf)

<sup>33</sup> Command Paper 8671, op. cit., page 4.

transitional measures and any new framework. The Law Societies anticipate that significant legal uncertainty is likely to arise, to the detriment of all parties.

October 2013

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### Written evidence from Christopher Gill

#### *Who Cares?*

So, what are the principles upon which traditional English common law is founded ?

Firstly, that until proven otherwise, every person is presumed innocent. The *presumption of innocence* is the very keystone of the British criminal justice system.

Secondly, except under the circumstances prescribed in the latter day Prevention of Terrorism Act, nobody may have their liberty infringed without being charged in open court within 24 hours of arrest. Crucially the “charge” has to be backed by *prima facie* evidence. Even when the suspect is thought to have committed murder, detention without charge may only be extended, with the permission of magistrates, to a maximum of 96 hours. This fundamental principle is enshrined in the law of *Habeas Corpus* which Archbishop Desmond Tutu once described as being “such an incredible part of freedom”.

Thirdly, the right to *trial by jury*, originating in *Magna Carta*, forms part of the very bedrock of the British criminal justice system. Its significance is that it ensures that the defendant can insist that he or she is effectively “tried” by his or her peers—“12 good men and true”—drawn at random from amongst the general public and demonstrably independent of “the powers that be” who might otherwise act in an authoritarian and arbitrary fashion.

Fourthly, until recently that is, it was always held that once a defendant had been acquitted it was unlawful to charge that person again with the same offence. *Double jeopardy* was something that British subjects have heretofore never had to worry about. The view was taken that it was totally unacceptable that a potentially innocent person should forever live under the threat of being dragged through the courts again and again in the circumstances in which the prosecution had failed to establish guilt in the first case. An unwritten principle of the British criminal justice system was that it was better that 10 guilty men went free than that one innocent person be hanged.

Fifthly, in order to avoid the possibility of defendants being condemned on the strength of their own testimony the law embraces the *right to silence*.

Sixthly, the *inadmissibility of hearsay* avoids the possibility of defendants being found guilty on the basis of say-so evidence from absent “witnesses”.

Seventhly, the *withholding of previous convictions* ensures that the hearing of cases brought to court are not prejudiced by the defendant’s previous record.

Eighthly, trials *in absentia*, in other words trials in the absence of the defendant, have no place in the British criminal justice system.

Finally, we have *reporting restrictions* so that whilst matters are *sub judice* Press reporting is limited so as not to prejudice a fair trial.

As can be seen from the foregoing, the British system of criminal justice has bent over backwards to protect and defend the individual from State inspired coercion. It has been the individual’s sure protection against false accusation, arbitrary arrest and wrongful imprisonment.

As we face a future in which the harmonisation of criminal justice systems within the European Union looms ever closer it is instructive to note that there is no equivalent of the law of *Habeas Corpus* in continental Europe, trial by jury is a little known concept and they most certainly don’t start from a position of presumed innocence !

As for all the other defences against State coercion that we British enjoy, in the event of an acquittal, the continental systems allow the prosecution to appeal for the defendant to be tried again; a defendant’s refusal to answer questions is regarded as an admission of guilt; reported or “hearsay” evidence is frequently used to obtain convictions; a defendant’s record, including prosecutions pending, may be read out at the hearing; the defendant may be tried without being present in court or, as recently confirmed, without the defendant even being aware of the hearing and, not least, the Press are free to name names and express opinions both before and during the course of a trial.

At a time when we stand in extreme danger of having the European Court of Justice made superior to our own national institutions those of us who were born free, for that is the very nature of our British inheritance, would do well to contemplate the commendable words of Admiral Blake, the chief founder of England’s naval supremacy in the 17th century, that “I will have the whole world know that none but an Englishman shall chastise an Englishman”.

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The English common law is what has made us a free people and has kept us a free people—the prospect of surrendering it in favour of criminal justice systems whose *raison d'être* is to ensure the supremacy of the State rather than the freedom of the individual is really too awful to contemplate but, be warned and be very afraid, that is the direction in which your Government is currently taking you.

*October 2013*

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