

**Liberal Democrats Home Affairs Justice and Equalities Parliamentary Party Committee**  
**Submission to the Police and Criminal Justice Call for Evidence**

**Introduction**

1. The Liberal Democrats Home Affairs, Justice and Equalities Backbench Committee is the primary forum for MPs, Peers and Liberal Democrat stakeholders involved in Home Affairs, Justice and Equalities issues to exchange information and ideas. The views expressed here are those of the committee as a collective, however may not currently be formal Liberal Democrat policy. We have decided to respond to the general principles and questions raised in the call for evidence rather than each question individually. Any oversight reflects only our decision to structure our response under main headings.
2. The Liberal Democrats Home Affairs, Justice and Equalities Backbench Committee has previously submitted an opinion on issues related to civil justice and asylum and non-EU migration and now respond to the Balance of Competences call for evidence on the issue of police and criminal justice.
3. Over the last 15 years, European Police and Judicial Cooperation legislation and structures have evolved into a highly effective and mainstreamed cross-border tool kit to crack down on serious and organised crime and terrorism. The committee firmly believes that cooperation on Justice and Home Affairs can deliver key benefits to British citizens allowing them to work or conduct business and holiday across Europe with the necessary confidence.
4. This call for evidence comes at a timely point as the UK Government negotiates to opt in to a number of measures following its mass opt-out. This Committee hopes for a quick and easy transition to ensure no capability or operational gap emerges. Below we show how the UK's participation in EU police and criminal justice measures have helped keep British citizens safe, convicted criminals and improved the effectiveness of law enforcement.

**Eurojust**

5. The development of EU competence in the field of policing and criminal justice has been significantly bolstered by the Lisbon Treaty having evolved continuously in response to challenges, opportunities and events over the preceding decades. We are of the opinion that the balance of competences as they are currently stand are broadly correct and stress the need for continued cross-border cooperation and joint-working. Moreover, the way in which development has happened, codifying practices and expectations, has vastly improved cross-border cooperation. For example, the growth of Eurojust has facilitated cross-border investigations. Michèle Coninx, President of Eurojust, told the European Union Committee that if the UK left Eurojust "it would be unable to benefit from its services, including the judicial co-ordination meetings, judicial cooperation

agreements with third countries, office facilities, the facilitation of mutual legal assistance requests, the acceleration and execution of EAWs and the funding and establishment of Joint Investigation Teams (JITs).”<sup>1</sup>

6. Joint Investigating Teams have been able to work far more effectively and efficiently under clear EU structures and processes. Since 2009, the UK has been involved in at least 21 JITs, covering offences including drug trafficking, human trafficking, illegal immigration, fraud, money laundering and cybercrime. Eurojust more generally has proven to be extremely good value for money<sup>2</sup> and for seven years of its 11-year history, the elected president of Eurojust has been the UK member. The committee is therefore happy to see that the Government are opting back into Eurojust.

### **European Arrest Warrant (EAW)**

7. The European Arrest Warrant is often described as one of the more controversial tools in the fight against cross-border criminality, at least in the UK. However, we believe that the UK’s participation is necessary.
8. The EAW has been instrumental in extradition of British citizens who have fled the country after committing a crime. Notable examples include the extradition and conviction of Francis Paul Cullen, a former priest who sexually assaulted seven children before spending more than two decades on the run in Spain; he is now serving a 15 year prison sentence in the UK. It has also meant that foreign nationals who commit crimes against British citizens can be brought back to face justice. David Heiss viciously murdered a British student...Heiss was arrested on a European arrest warrant at his home in Germany a month after the offence and was surrendered to the UK the month after that. He has since been sentenced to a minimum of 18 years in prison. Before the European arrest warrant, Germany did not surrender its own nationals; indeed, there was a constitutional bar to its doing so therefore it is clear that in this case the arrest warrant made a real difference.
9. The Association of Chief Police Officers’ evidence to the Home Affairs Committee made clear its view that the arrest warrant is an “essential weapon” in the fight against serious criminality. Indeed, in the opt-out debate on 15 July 2013, the Home Secretary told the House that in the last four years the EAW had been used to extradite from the UK 57 suspects for child sex offences, 86 for rape and 105 for murder. In the same period, 63 suspected child sex offenders, 27 suspected rapists and 44 suspected murderers were extradited back to the UK to face charges proving its worth.

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<sup>1</sup> <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldcom/159/15910.htm>

<sup>2</sup> <http://www.publications.parliament.uk/pa/ld201314/ldselect/ldcom/173/17308.htm>

10. Critics of the EAW and cooperation on JHA issues through the EU argue that we would still be able to carry out extraditions through bilateral arrangements or via Council of Europe channels. In response we would argue that justice should be delivered swiftly - an extradition under the EAW now takes on average three months, whereas it requires approximately 10 months on average for a non-EU jurisdiction. Meanwhile, the Director of Public Prosecutions told the Home Affairs Select Committee that it would likely take much longer to resolve extradition proceedings if the UK reverted to the Convention,<sup>3</sup> this assumes that the UK could still revert to this Convention at all as some Member States repealed the legislation implementing the 1957 Convention when they introduced the EAW. Therefore, we strongly believe that the EU is the most appropriate channel for cooperation.
11. Legitimate concerns do exist where the use of the EAW has led to miscarriages of justice. Imperfections in the functioning of the system include non-respect of procedural rights of suspected and accused persons, long pre-trial detention and poor detention conditions, alleged overuse of EAWs by some Member States, failure to apply proportionality and the absence of an explicit human rights refusal ground. In the explanatory statement<sup>4</sup> of a European Parliament report which led to a resolution<sup>5</sup> on a 'review of the European Arrest Warrant' the (then MEP) rapporteur, Sarah Ludford, a member of the HAJE committee stated: "in order not to undermine the credibility of the EAW and EU criminal justice initiatives in general, these problems should be addressed." The report went on to say, "operational issues with the EAW have their roots in different causes: incomplete and inconsistent implementation of the EAW FD such as failure to comply with time limits; gaps in the EAW FD; and the incomplete and unbalanced nature of the EU area of criminal justice." This committee agrees with this statement, supports the European Parliament demand that the Commission should propose legislative reforms and is also pleased to see that the British Government has started pushing for change, particularly on the issue of proportionality, at the EU-level.
12. The Committee would also like to see the UK fully implement the European Supervision Order (ESO). The Lords' European Union Committee in their report into the opt-out decision said the following: "the implementation of the ESO could help to mitigate some of the EAW's problems by allowing British citizens to be supervised in the UK until the trial in the requesting Member State was ready to begin, thereby helping to avoid a repeat of the Symeou case."<sup>6</sup> We believe such flanking measures help bolster the confidence the UK can have in the EAW.

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<sup>3</sup> <http://www.publications.parliament.uk/pa/cm201314/cmselect/cmhaff/615/61504.htm>

<sup>4</sup> <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2014-0039+0+DOC+XML+V0//EN#title2>

<sup>5</sup> <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P7-TA-2014-0174&language=EN>

<sup>6</sup> <http://www.publications.parliament.uk/pa/ld201213/ldselect/ldaucm/159/15909.htm>

## Europol

13. Our continued participation in Europol is clearly in the national interest. The advantages of Britain's participation in Europol are numerous, given that almost half the 600 investigations that Europol is currently pursuing have links to the UK this is unsurprising. In evidence given to the Home Affairs Select Committee the Home Office made it clear that Europol made a valuable contribution to organised crime.

13. The Home Affairs Select Committee highlighted one recent example of this, Operation Rescue (see box below), there are many more.

### **Box A: Operation Rescue**

Led by the UK's Centre for Child Exploitation and Online Protection (CEOP) and involving co-operation with 12 other countries. Europol provided vital intelligence and analytical support to the investigation, including the cracking of a seized copy of a computer server that identified the members of a child sex abuse network. The operation resulted in the safeguarding of at least 230 children worldwide, including 60 in the UK, and the arrest of more than 180 offenders, 121 of whom were arrested in the UK.

- *Home Affairs Select Committee, Ninth Report of Session 2013–14*

14. This Committee also supports the new European Cyber Crime Centre (EC3), which is based within Europol. Given the rise in cybercrime and ever more sophisticated criminal methods we need to coordinate our defences with our European partners. Only recently EC3 led an operation into a massive credit card fraud network, much of which lay in the UK, ultimately leading to 44 arrests being made.

15. We believe that the current balance between EU-level organisations such as Europol and the UK are correct. Europol is not a police force and does not have direct powers of arrest and this committee is of the view that this is correct. However, with approximately 3,600 internationally active organised crime gangs operating across Europe it clear that Europol has a vital role to play in co-ordinating police forces across borders and acting as a point for information and knowledge exchange. Rob Wainwright, the British Director General of Europol divulged to the Home Affairs Select Committee that the UK had doubled the amount of casework that it put through Europol's information exchange channels in the last two years.<sup>7</sup> And the UK is in fact the biggest provider of intelligence and the second biggest user of that intelligence. This evidence alone makes it clear that Europol is an important

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<sup>7</sup> <http://www.statewatch.org/news/2014/jan/uk-eu-opt-out-hasc-report.pdf>, p.17

asset to the UK and this committee is of the opinion that its resources and funding should be strengthened accordingly.

### **Minimum Standards**

16. As stated in our Liberal Democrat European Manifesto “when you’re abroad, we want your basic civil liberties to travel with you. Liberal Democrats want to ensure that if you are a victim of crime or if you are arrested in another EU country, you enjoy the same minimum advice, legal rights and standards of treatment as you would in the UK.”<sup>8</sup>

17. EU action on minimum standards in criminal law and procedure is essential to give more consistency and effectiveness to the way EU countries implement ECHR rules. Without EU legislation backed by Commission and CJEU enforcement codifying ECtHR judgements, EU states can and do implement Strasbourg case law in a variety of ways. This is unhelpful to both police cooperation and to judicial cooperation based on mutual recognition: if minimum standards are not established and followed, police and judicial cooperation could be longer, slower and more expensive if open to challenge.

18. As noted above, there has been considerable criticism in the UK of the way that the European Arrest Warrant can operate unfairly, for instance with long pre-trial detention or poor legal advice, and the recently adopted European Investigation Order could potentially lead to similar criticism. It is thus very important to have measures such as in the 2009 ‘procedural rights roadmap’ (right to interpretation and translation; right to information; right to legal advice) which enforce good defence and fair trial standards alongside tools which help cross-border investigation and prosecution. The European Supervision Order should help avoid long periods in pre-trial detention and thus help protect fast-track extradition within the EU from challenge.

19. EU Directives on victims’ rights, combatting human trafficking and child sexual exploitation, and on the European Protection Order have all helped to secure justice for victims of crime and therefore very much coincide with a strong priority of the Coalition Government.

20. It is important that EU Directives on minimum standards in criminal law and procedure, as well as on judicial and police cooperation, are negotiated in a way which respects the different national legal structures and features, including importantly the common law tradition. Liberal Democrat experience is that this is indeed generally the case, but it is vital that there is full UK participation in those negotiations from the side of both Council and Parliament in order to protect our interests. Liberal Democrat work in the European Parliament on the ‘Right to Lawyer’ Directive ensured that procedures in England and Wales under the Police and Criminal Evidence Act were not undermined.

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<sup>8</sup>[http://d3n8a8pro7vhmx.cloudfront.net/libdems/pages/5056/attachments/original/1398775863/UK\\_LibDem\\_2014\\_Euromanifesto\\_Clear\\_Print.pdf?1398775863](http://d3n8a8pro7vhmx.cloudfront.net/libdems/pages/5056/attachments/original/1398775863/UK_LibDem_2014_Euromanifesto_Clear_Print.pdf?1398775863), p.10

21. Liberal Democrats believe that there should be a 'presumption to opt in' to EU criminal justice measures, subject of course to any overriding contrary arguments. We are not persuaded that it is sensible to decline to opt in to a measure on the grounds that it is 'unnecessary' for the UK since we already have compliant national legislation and that our nationals will be protected abroad if other EU states apply the relevant Directive. If there is no 'cost', why stand aside from the measure? It is in fact an abdication of leadership in the area of justice and law enforcement in which the UK has a deservedly good record, causes reputational damage and reduces our leverage in other policy and legislative projects.

22. Liberal Democrats agree that the apparent removal of the ability to draw inferences from silence in the proposed Directive on the presumption of innocence is a real problem for the UK. But we believe that the EU tradition of not prejudicing national legal systems is a strong one and would be likely to assist a UK negotiating position. In the exercise of Article 83 powers (definition of criminal offences and sanctions), where Liberal Democrats in the European Parliament have been alert to the need to avoid distortions in national sentencing regimes and judicial discretion, we opposed attempts to impose minimum (as opposed to 'minimum maximum') sentences in the Directives on protection of the euro against counterfeiting and on the fight against fraud to the Union's financial interests ('PIF'). The fact that this opposition was in both cases successful shows that a sound policy position can win the day. In any case, the risk of prejudice to national legal interests is addressed by the possibility of pulling the 'emergency brake' in Articles 82 (3) and 83 (3). Post-adoption opt-ins, while possible, fail to apply UK influence in the shaping of the final measure.

### **Schengen Agreements and Databases**

23. Despite the fact that Britain is not part of the Schengen Area this committee believes that it benefits the UK greatly to participate in associated Schengen acquis police and judicial measures.

24. The Schengen Information System is incredibly valuable to the UK. ACPO has argued that "criminals do not respect borders so it is extremely beneficial to law enforcement officers in all Member States to have the support of their European colleagues in tracing fugitives from justice and stolen property."<sup>9</sup>

25. The European Criminal Records Information System (ECRIS), established in 2012, is also another example of pan-European database systems which have been helpful to British police forces and judicial actors. The system gives judges and prosecutors easy access to comprehensive information on the offending history of any EU citizen, no matter in which EU countries that person has been convicted in the past. This stops criminals escaping their past by moving to a different country and ensures judges are fully aware of the full history of the defendant. The then Head of ACRO (ACPO Criminal Records Office) Superintendent Phil Winchester said at the start of the UK's participation in ECRIS that: "the new system will

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<sup>9</sup> <http://www.acpo.police.uk/documents/criminaljustice/2008/200810CJUSIS01.pdf>, p.3

enable us to get information to front line police officers in a faster, more secure way and will help us to protect the public from dangerous repeat offenders.”<sup>10</sup>

26. Moreover, Liberal Democrats hope that the evaluation of future UK participation in the ‘Prum’ data-sharing arrangements will reach a positive conclusion, subject to satisfactory new data protection safeguards.

## **Conclusions**

27. The HAJE PPC strongly believes that in a global world we need strong judicial and police co-operation, collaboration and information sharing across borders. It is well acknowledged that free movement of goods, persons, services and capital in the EU single market (even for those like the UK not in Schengen) brings in its inevitable wake the ability of major organised crime to operate freely, such as in smuggling of drugs and people, terrorism, cybercrime, financial crime and money-laundering, thus making cross border police cooperation essential. When crime crosses borders we must too and the tool-box in the sphere of police and criminal justice measures helps us do this effectively and efficiently.

28. The UK is considered as a leader in the area of police and criminal justice it is therefore unsurprising that we are often at the heart of collaborative projects with our European partners. We believe that it is to our advantage that we participate as fully as possible in the different mechanisms of EU cooperation in this field and work with other Member States to strengthen the EU’s ability to act quickly and effectively to combat cross-border crime.

29. The Committee is agreed that the development of EU police and criminal justice competences has helped the effectiveness of law enforcement and has benefitted the British criminal justice system. More can be done in areas such as passenger information records, prisoner transfer and enforcement of fines but we do this by being at the table and participating fully in the negotiations. Therefore, it is important that Britain makes a strong and firm commitment to EU JHA measures to ensure its reputational standing remains untarnished and so it can be an effective negotiator.

30. There will be future challenges as globalisation increases pace and cross-border working and travel becomes more and more part of everyday life. This Committee believes that cyber security and strong but fair external borders are of particular importance and hopes that the EU will work closely with Member States to find solutions. Collectively, our governments can be much stronger and more effective at bringing criminals to justice and keeping our citizens safe and we hope that our Government will work with other members of the Council to set priorities and respond to challenges and opportunities.

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<sup>10</sup> [http://www.acro.police.uk/acro\\_std.aspx?id=485](http://www.acro.police.uk/acro_std.aspx?id=485)