



Analysis

The UK's planned 'block opt-out' from EU justice and policing measures in 2014

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Introduction

The UK government announced on 15 October 2012 that it intended in principle to take up the option to opt-out from all EU policing and criminal law measures adopted before the Treaty of Lisbon, with effect from 1 December 2014, but then to opt back in to some of these measures. This analysis looks in detail at the legal framework and practical implications of the government's intentions.

Legal Framework

The UK's option to opt-out from all EU policing and criminal law measures adopted before the Treaty of Lisbon ('pre-Lisbon third pillar measures') is set out in Article 10 of the Protocol to the EU Treaties on transitional measures, which appears in Annex I of this analysis.

First of all, it can be seen that Article 10 takes the form of a transitional rule relating to the EU Court of Justice's jurisdiction over pre-Lisbon third pillar measures: the prior rules concerning the Court's jurisdiction will stay in force as regards those acts (Article 10(1)). This rule applies for a period of five years from the entry into force of the Treaty of Lisbon (Article 10(3)). Since that Treaty entered into force on 1 December 2009, the limits on the Court's jurisdiction will expire on 1 December 2014. The rule ceases to apply earlier as regards any of the pre-Lisbon third pillar acts which are *amended* before 1 December 2014 (Article 10(2)). Some press stories have stated that this transitional rule concerns decision-making (ie a move to qualified majority voting) on EU criminal law and policing issues, but this is not correct: the 'powers of the institutions' referred to in Article 10(1) of the Protocol are only those powers related to the Court of Justice's jurisdiction.

In practice, this rule means that, until 1 December 2014: (a) the Court of Justice has no jurisdiction over infringement actions brought by the Commission against Member States as regards pre-Lisbon third pillar acts (ie, Article 258 of the Treaty on the Functioning of the European Union, referred to in Article 10(1) of the Protocol); and (b) the Court of Justice only has jurisdiction as regards references from national courts on the interpretation and

validity of pre-Lisbon third pillar acts where the Member State concerned chose to opt in to that jurisdiction (Article 35(2) of the Treaty on European Union before the Treaty of Lisbon, also referred to in Article 10(1) of the Protocol). Two-thirds of Member States opted in to that jurisdiction: the exceptions are the UK, Ireland and Denmark (among the first fifteen Member States) and Poland, Bulgaria, Slovakia, Malta and Estonia (among the twelve most recent Member States). Of the Member States which opted in to the Court's jurisdiction, one (Spain) has limited the power to send questions to the Court of Justice to final courts only. The other seventeen Member States allow all their national courts or tribunals to send questions to the Court of Justice.

Since eighteen Member States opted in to the Court's jurisdiction, it is clear that such jurisdiction existed already before the entry into force of the Treaty of Lisbon, and continues to exist even during the five-year transitional period. The end of the transitional period will simply mean the application of the normal rules on the Court's jurisdiction (the Commission's power to sue Member States for infringement of EU law, and the power of all national courts and tribunals to send questions to the Court of Justice on the interpretation and validity of EU law) in a uniform manner for all Member States. In practice, national courts in the Member States which have opted in to this jurisdiction have referred 3-5 cases a year on pre-Lisbon third pillar acts to the Court of Justice, both before and after the Treaty of Lisbon entered into force. These cases have almost exclusively concerned three third pillar acts: the Framework Decision on crime victims; the Framework Decision on the European Arrest Warrant; and the Schengen Convention rules on cross-border double jeopardy. Only two cases have concerned another act (the Framework Decision on mutual recognition of financial penalties).

Article 10(4) of the transitional protocol then sets out the specific rule relating to the UK (which does not apply to any other Member State). By 1 June 2014 'at the latest', the UK 'may' decide that it does not want to accept the Court's jurisdiction, in which case none of the pre-Lisbon third pillar acts will continue to apply to it, as from 1 December 2014. However, Article 10(4) makes clear that this 'block opt-out' cannot apply where the acts in question have already been amended after the entry into force of the Treaty of Lisbon. A number of pre-Lisbon third pillar acts have been amended after the entry into force of that Treaty, and more such acts will be amended before 1 December 2014 (see further the discussion below).

The government announced on October 15 2012 that it intended in principle to exercise the option set out in Article 10(4), but that it has not yet formally notified the Council of this decision. It intends to make the formal notification only after discussing which measures it will then opt back into (see further discussion below).

After the UK formally notifies its decision, the Council can, by qualified majority, adopt transitional arrangements (without the UK's participation) and decide (with the UK's participation) that the UK will have to bear the 'direct financial consequences' of the mass opt-out (**see further discussion below**).

The UK has the option, 'at any time afterwards', of notifying its wish to opt back in to the pre-Lisbon third pillar acts which 'have ceased to apply to it' (Article 10(5)). The government has said that it intends to opt back in to certain pre-Lisbon third pillar measures, but has not yet indicated which these measures are.

The process which would apply to the UK's decision to opt back into to some of these measures is discussed further below, but it should be emphasised at the outset that **in the large majority of cases, the UK will not need the consent of other Member States to opt back in** to these acts.

What would be the impact of the 'block opt-out'?

At the outset, it must be pointed out that while a block opt-out officially would take the form of a refusal to accept the Court of Justice's jurisdiction in this area, the more important impact would be the non-application of the EU measures concerned to the UK as of 1 December 2014. That prospect is therefore the focus on this analysis.

As for the timing of the block opt-out decision, the deadline to notify the Council is clearly 1 June 2014. There is no legal reason why (as the UK's Prime Minister recently stated) the UK must take this decision by the end of the year 2012. Even if (as seems likely) the UK notifies its decision early, ie well before 1 June 2014, it would clearly only take effect as from 1 December 2014 (Article 10(4)), not before (and not after). The measures would continue to apply to the UK until that date – and equally other Member States would be bound by the UK's participation in those measures until that date also. For instance, the French authorities would be bound in principle to execute European Arrest Warrants issued by the UK up until that date – unless an exception in the relevant legislation applied.

It is even possible that the pre-Lisbon third pillar acts would continue to have some historical effect in the UK after any block opt-out decision. Since it is up to the Council (without the UK's vote) to decide on transitional arrangements, it might decide, for instance, that any European Arrest Warrants transmitted to the UK by other Member States (and vice versa) before 1 December 2014 still had to be executed in accordance with the Framework Decision, even after that date. If that happened, and if the UK thought that the Council had exceeded its legal powers as regards transitional arrangements by adopting such a decision (for instance, it could be argued that the Council only has power to regulate the transitional arrangements in the other Member States, but not the UK), it could sue the Council to annul that decision before the Court of Justice. If the UK refused to comply with such a decision, however, presumably it could not be sued in the Court of Justice, because the block opt-out decision is intrinsically linked to a refusal to accept that Court's jurisdiction. For the same reason, British courts could not ask the Court of Justice to clarify the interpretation or validity of the transitional decision.

Also the Court would have jurisdiction to rule on the interpretation and validity of the transitional decision if the national court of another Member State asked it to – for instance, if the German authorities were executing a European Arrest Warrant (EAW) issued by the UK before 1 December 2014, and the fugitive resisting the execution of that EAW argued that the Council exceeded its powers by providing for the continuing validity of that EAW in other Member States after that date. Other Member States could also sue to annul the transitional decision, if they disagreed with it. The Commission could also sue other Member States if they failed to comply with it.

Scope of the block opt-out

First of all, it should be emphasised that the block opt-out would *not* apply (as is sometimes suggested) to all pre-Lisbon ‘Justice and Home Affairs’ measures, but only to pre-Lisbon *policing and criminal law* measures (see clearly Article 10(1) of the Protocol). So it would not apply to those EU measures concerning immigration, asylum or civil law which apply to the UK.

Secondly, as is self-evident, the block opt-out could only apply to measures adopted *prior* to the entry into force of the Treaty of Lisbon, not measures adopted *after* its entry into force. This is clear from the words ‘which have been adopted before the entry into force of the Treaty of Lisbon’ in Article 10(1) of the Protocol. For policing and criminal law measures adopted after the Treaty of Lisbon, the UK can choose whether to opt-in to them on a case-by-case basis three months after they are first proposed, or (if it opts out of the initial discussions) after those measures are finally adopted. But once it has opted in to them, the block opt-out will not apply, and there is no alternative way for the UK to opt out.

It is therefore obviously wrong to claim, as some press stories assert, that the UK can use the block opt-out in order to opt-out of the European Investigation Order (which was proposed in March 2010, and which the UK opted into). Equally it is wrong to claim (as some press stories do) that the block opt out is in any way relevant to the issue of the European Public Prosecutor, because no legislation on this issue has even been proposed yet. If and when such legislation is proposed, the UK can (and certainly will) use its case-by-case opt out, but that is a separate matter from the block opt-out concerning pre-Lisbon third pillar measures.

For a list of EU criminal law and policing measures which have been adopted or proposed since the entry into force of the Treaty of Lisbon (as of October 16 2012), and which are therefore not covered by the block opt-out, see Annex II to this analysis. This list of measures will certainly be longer by 1 December 2014, as the Commission plans to make further proposals in this area.

Thirdly, the block opt-out can only apply to those measures which have not been amended since the entry into force of the Treaty of Lisbon. The exact meaning and scope of this rule is discussed further below.

Finally, the block opt-out would only apply to EU measures (‘acts of the Union’: see Article 10(1)), rather than international treaties to which the UK is separately a party outside the EU legal framework. For instance, the EU’s Framework Decision on the European Arrest Warrant has essentially replaced, as between EU Member States, the regime established by the Council of Europe Convention on extradition and its Protocols. If the UK were no longer bound by the Framework Decision, the requests for extradition from the UK to other EU Member States (and vice versa) would then revert to being governed by the Council of Europe system (unless the UK decided separately to denounce the Council of Europe extradition Convention as well). Of course, the Council of Europe extradition system is not the same as the European Arrest Warrant (for good or ill), but it should not be forgotten that there would be some multilateral framework for extradition in place in relations with other Member States, rather than none at all. The same is true of issues such as the transfer

of prisoners, money laundering and mutual assistance, and certain substantive criminal law issues such as drug trafficking.

However, there are some areas of law where the relevant EU act has not replaced a Council of Europe measure (such as mutual recognition of pre-trial measures) or where the UK and/or some other Member States is/are not a party to the relevant Council of Europe measures (such as mutual recognition of financial penalties). In those cases, there is either no international framework to fall back on, or the UK and/or the other relevant Member States would have to ratify the relevant treaty (ie the Council of Europe treaty on the validity of criminal judgments) for there to be one. For instance, the UK could, if it wished, seek to mitigate the impact of the block opt-out in certain areas, where possible, by signing up to the relevant treaties and/or by encouraging other Member States to sign them. It should not be forgotten that signing up to such treaties would affect the UK's relations with non-EU states as well. Or conversely, the UK could, if it wished, exacerbate the effect of a block opt-out by denouncing some or all of the treaties concerned.

Obviously there would be political and practical consequences to such courses of action. A detailed list of cases where an alternative legal framework exists is set out in Annex III. Since Croatia will likely be a Member State by 2014, its position is also mentioned.

Opting back in

As noted already, article 10(5) of the transitional Protocol states that the UK can apply to participate in acts 'which have ceased to apply to it' as a result of its decision to exercise the block opt-out, and the government has stated its intention to use this possibility. Article 10(5) states that in the event of such an application by the UK, either the Protocol on the Schengen *acquis* applies, or the Protocol on the UK's participation in justice and home affairs measures (the 'JHA Protocol') applies. In either case, the UK and the EU institutions 'shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence'. Once the measure applies to the UK again, the Court of Justice will have its usual jurisdiction.

There is no time limit on the application to opt back in (Article 10(5) of the transitional Protocol states that the UK can notify its wish to do so 'at any time'), although the government's intention is obviously to do so before June 2014, given that it does not intend to notify the EU formally of its block opt-out before it has held discussions on opting back in. While the literal meaning of the words 'which have ceased to apply to it' (and 're-establish') in Article 10(5) of the transitional Protocol suggest that the UK can only apply to opt back in to measures after 1 December 2014, the words 'at any time afterwards' (also in Article 10(5) of the Protocol) are more ambiguous (the most obvious meaning of these words is that the UK can apply to opt back in after its formal notification of its invocation of the block opt out). The underlying intention of Article 10(5) is clearly to encourage the UK's continued participation as much as possible ('the widest possible measure of participation'), with concern also for 'practical operability'. The best interpretation is therefore that the UK can officially apply to opt back in to measures as soon as it has officially notified the EU of its block opt-out, and that the EU institutions can then decide during the period between 1 June 2014 and 1 December 2014 that the measures concerned will continue to apply to the UK as from 1 December 2014, without any gap in their application.

Alternatively, if the UK could not officially apply to opt back in to any EU measures until 1 December 2014, there would be a formal gap of at least a few months before the Commission's and/or the Council's decision on the UK's opt-in could be formally adopted. But as regards criminal procedural law, there is no bar to the retroactive application of the opt-in decision. In other words, if the UK opted back in to (for example) the Framework Decision on the transfer of prisoners as from 1 March 2015, the decision approving the opt-in could provide that the UK's requests to other Member States to transfer prisoners there (and vice versa) would still be valid even if they were issued between 1 December 2014 and 1 March 2015. If necessary, the opt-in approval decision could also specify that transfer requests issued before 1 December 2014 were also still valid – although it would arguably be possible to provide already for the continuing validity of such requests in the Council decision on transitional measures (Art. 10(4), second sub-paragraph), if the UK's intention to opt back in had already been agreed in principle. Given that the UK would have previously been applying the measures concerned, there would be no need to provide for any transposition period before those measures apply to it again.

On the other hand, it would not be possible (in this scenario) to provide for any retroactive application of measures concerning substantive criminal law, given the ban on retroactivity of criminal liability set out in the ECHR and the EU's Charter of Fundamental Rights. But the impact of this would be limited in practice, since the UK could always retain in force its existing national criminal law which gives effect to the EU measures in the interim. Finally, the UK could not have access to EU criminal law databases or other mechanisms for the exchange of information between national police forces in the period between 1 December 2014 and the date when it officially opts back in to the measures concerned. Access to these sources could not be granted informally during the period concerned, since the exchange of personal data can only take place on the basis of a formal, detailed legal act, according to the ECHR and the EU Charter of Fundamental Rights.

Also, there is no requirement that opting back in must be a 'one-off'. The UK could therefore apply to opt back in to further measures at a later date.

There are very different procedural rules for the UK depending on which Protocol is applicable. If the Protocol on the Schengen *acquis* applies, because the measure 'builds upon the Schengen *acquis*' (ie is part of or closely related to the Schengen Convention on the abolition of border controls), then the Council (ie other Member States' justice and interior ministers) will decide on whether to re-admit the UK by unanimity, ie every Member State has a veto. If the JHA Protocol applies, then the Commission will decide, according to the rules set out in Article 331 of the Treaty on the Functioning of the European Union (ie the rules on joining enhanced cooperation in progress). When it makes such a decision, the Commission will not be subject to the control of Member States (as it usually is when adopting measures implementing EU law). So while some of the commentary on the process of opting back in to pre-Lisbon third pillar acts refers to the potential difficulty of the UK convincing other Member States to 'let it back in', the UK will only have to convince other Member States to do this where the measures concerned fall within the scope of the Schengen *acquis*.

As can be seen from the list of pre-Lisbon third pillar acts in Annex IV to this analysis, the measures building on the Schengen *acquis* (part (g) of Annex IV) make up only a small

minority of pre-Lisbon third pillar acts. The large majority of such acts (parts (a) to (f) of Annex IV) are within the scope of the JHA Protocol, and therefore the Commission alone will decide whether the UK should (continue to) participate in such measures.

In any event, is it likely (as some have suggested) that the UK will have difficulty obtaining the permission of the Council (ie other Member States) or Commission to opt back in? While the Council in principle has discretion to decide whether to permit the UK to participate in the Schengen acquis, all other Member States were willing to accept its participation in the criminal law and policing aspects of that acquis in the past (the Council decided to permit this participation in 2000). The Council's discretion is also curtailed by Article 10(5) of the transitional protocol, which states that the EU institutions '*shall seek to re-establish the widest possible measure of participation*' of the UK (emphasis added).

As for the Commission, it has also always been willing in the past to accede to British requests to participate in measures which it had initially opted out of, on the basis of Article 331 of the Treaty on the Functioning of the European Union (or its predecessor provision), as regards rules on conflict of law (OJ 2009 L 10/72), maintenance (OJ 2009 L 149/73) and trafficking in persons (OJ 2011 L 271/49). The wording of this Treaty Article suggests that the Commission has a legal obligation to permit Member States to participate in measures which they did not originally participate in ('shall...confirm the participation of the Member State concerned'), if that Member State satisfies the 'conditions of participation'. Arguably such conditions can only relate to the willingness and ability to participate in the measure concerned – which would easily be satisfied in this case, since the UK has already been participating in them. This interpretation is consistent with Article 328 of the same Treaty, which states that the Commission and the participating Member States must 'ensure that they promote participation by as many Member States as possible' in enhanced cooperation measures, and that such measures 'shall...be open to [Member States which initially do not participate] at any other time, subject to compliance with the acts already adopted within that framework, in addition to' 'any conditions of participation laid down by the authorising decision'. In this case, there would be no 'authorising decision' (ie there is no measure formally authorising enhanced cooperation), so all the UK would have to do would be to comply with the relevant acts – which it already does.

Article 10(5) of the transitional protocol does establish specific conditions regarding the partial opt-in. It could not 'seriously [affect] the practical operability of the various parts' of the EU's acquis on Justice and Home Affairs matters, and has to '[respect] their coherence'. Since the same provision also specifies that the EU institutions 'shall seek to re-establish the widest possible measure of participation' of the UK in that acquis, those conditions must be interpreted narrowly. Also this list of conditions is implicitly exhaustive, ie no other conditions can apply. So, for instance, the EU institutions and other Member States cannot make demands of the UK in other areas of EU law (ie concessions on the EU budget, or in relation to the single currency) in relation to its requests to opt back in to JHA measures.

From the above analysis, it must follow that the UK's application to opt back in to certain pre-Lisbon third pillar acts must be accepted, unless (and to the extent that) the UK seeks to opt back in to only some of a group of measures which are inextricably linked (the coherence requirement), or it would be impossible or very difficult in practice for technical reasons to opt back in to one measure but not another (the operability requirement). These requirements will often overlap. For examples, the requirements mean that the UK should

not be able to participate in the Europol Decision without also participating in the measures implementing it (or vice versa), or in the Framework Decision on the exchange of information on criminal records without also participating in the Decision which regulates that exchange in detail, or in the Eurojust Decision without the measures amending it. On the other hand, for instance, the UK should not be required to participate in the EAW as a condition of participating in measures relating to the exchange of information between police (or vice versa). *A fortiori*, the whole ensemble of pre-Lisbon third pillar acts cannot be regarded as a coherent whole which can only be applied in total or not at all – because in that case, Article 10(5) would have no meaning at all.

The scope of the block opt-out – which pre-Lisbon measures have been amended?

To date, only one pre-Lisbon third pillar Decision (concerning the ‘migration’ from the first-generation Schengen Information System to the second-generation system) has been amended, and three pre-Lisbon third pillar Framework Decisions have been replaced (these concerned trafficking in persons, sexual exploitation of children and crime victims’ rights). In practice, the Directives replacing pre-Lisbon Framework Decisions also state in their preambles that they are amending those acts (see the list of pre-Lisbon measures in Annex IV to this analysis).

However, although there has obviously only been a modest reduction of the scope of the pre-Lisbon third pillar *acquis* to date, the replacement or amendment of pre-Lisbon third pillar measures is very to intensify in the run up to June 2014. The Council has already agreed in principle to replace or amend three more Framework Decisions (concerning attacks on information systems, freezing orders and the European evidence warrant). In the latter two cases, the legislation concerned still has to be agreed with the European Parliament, but a deal seems likely given the similar positions of the EP and the Council. relevant proposals altogether. Furthermore, the Commission is planning to make a number of proposals to replace other pre-Lisbon measures in the rest of 2012 and in 2013. Other proposals may be tabled in the first five months of 2014. It should be recalled that legislation in this area can be proposed not only by the Commission, but by a group of Member States.

To date, the UK has opted in to a large majority of the proposals which replace pre-Lisbon third pillar acts. It has also opted in to many of the criminal law proposals which do *not* replace pre-Lisbon third pillar acts. So even if the UK decides to invoke the block opt-out, the Court of Justice will still have some jurisdiction over criminal law measures as regards the UK. In fact, it will gain this jurisdiction even before 1 December 2014, as some of the measures concerned have to be transposed into national law before that date. Obviously, it remains to be seen whether the UK will opt in to all of the upcoming proposals replacing pre-Lisbon third pillar acts; it could choose instead to opt in to only some of them, or even opt out of all of them. In the event that the UK does not opt in to such proposals, then it will continue to be bound by the pre-Lisbon third pillar acts which they replace, since the prior acts will only be repealed as regards the participants in the new act; but the UK could still end its obligations under the previous acts if its invokes its block opt-out.

It is likely that most or all of the proposals for legislation in this area which are tabled by mid-2013 will be adopted by 1 June 2014, since there is usually a major effort made to agree on most legislative proposals before each European Parliament election (the next election is

due in June 2014). However, there will likely still be at least a few proposals in this area not yet agreed or adopted at that point. The critical issue in those cases will be whether the UK has already opted in to the proposal concerned; if so, then the UK's decision to invoke the block opt-out would have no real impact as regards the pre-Lisbon third pillar measure which is due to be replaced, since the UK will sooner or later be bound by the replacement measure – unless (improbably) that measure is not ultimately agreed.

A complete list of pre-Lisbon third pillar measures appears in Annex II, which also indicates which measures have already been replaced or amended, which replacement or amendment measures have been agreed in principle, and which replacement or amendment measures are likely to be proposed. The latter information is based on the Commission's work programme for 2012 (the work programme for 2013 is due at the end of October) as well as the Commission's action plan on the implementation of the Stockholm programme. It is always possible that planned proposals will be cancelled or delayed, or not agreed if they are made, and conversely that the Commission or a group of Member States will make further proposals which have not been announced at time of writing.

Furthermore, as indicated in detail in Annex IV, some existing EU measures are due to lapse automatically (legislation establishing funding programmes will expire by the end of 2013) or will be repealed effective from the start of operations of the second-generation Schengen Information System, which is currently scheduled for the first quarter of 2013. Annex IV lists all Framework Decisions and Decisions, even though some of them were repealed or lapsed before the Treaty of Lisbon entered into force, or were annulled by the Court of Justice. However, it does not mention other pre-Lisbon third pillar measures that are no longer in force, measures implementing legislation, or treaties with third States on security matters (since such treaties also concern the EU's foreign and security policy, and so to that extent will continue to apply to the UK if it invokes the block opt-out).

Overall, it can be seen from Annex IV that nearly half of the third pillar Decisions originally adopted will likely have lapsed or been repealed by 1 December 2014 (35 will likely still be in force, 24 will likely not be). However, **quantitatively** speaking some of the most important measures would likely have been amended (Europol, Eurojust, European Police College and the Customs Information System); the most important Decisions still in force without amendment would be measures concerning the exchange of information. However, of these, the UK will possibly not yet be applying the Schengen Information System in 2014, and UK police only have limited access to the Visa Information System. The 'Prum Decision' on police cooperation would, however, cease to apply.

Similarly, about 21 of the 34 Framework Decisions will likely still be in force. Most of these concern mutual recognition (the European Arrest Warrant, transfer of prisoners, probation and pre-trial measures, financial penalties), and some concern substantive criminal law (terrorism, non-cash payments, organised crime, racism), plus there are measures concerning the exchange of policing information: the 'Swedish framework decision' and the Framework Decision on joint investigation teams.

As regards international treaties, the only relevant measures, the EU/USA treaties on extradition and mutual assistance, largely supplement (and are implemented by) bilateral treaties, so their abrogation as regards the UK would have little practical effect. As for Conventions between EU Member States, a block opt-out would particularly impact on

customs cooperation (the ‘Naples II’ Convention) and corruption. Finally, none of the remaining Joint Actions are hugely significant, and the impact of not applying the remaining Schengen *acquis* would largely concern police cooperation and the double jeopardy rules. If the new version of the Schengen Information System is not yet operational, the UK could not have access to the old version as a result of the block opt-out (again, the UK’s access to the system is not currently operational).

Conclusions

Given that the UK can retain in force its existing substantive criminal law rules if it wishes to, the main practical impact of the block opt-out would be to end the UK’s access to policing databases and other forms of exchange of police information, and to terminate the UK’s involvement in some aspects of criminal law judicial cooperation, most notably the European Arrest Warrant and the transfer of prisoners. In most, but not all, of the areas addressed by EU criminal law (but not police cooperation), there is in any event another international law framework in place. However, in all cases, that framework is less detailed than the EU rules, and in many cases the UK and/or some other Member States do not participate in the relevant rules. The UK’s block opt-out could also be ameliorated in part by an opt-in to some of the measures concerned.

Further reading:

Statewatch analysis, ‘The Mother of All Opt-outs’, January 2012

[://www.statewatch.org/analyses/no-168-eu-uk-opt-out.pdf](http://www.statewatch.org/analyses/no-168-eu-uk-opt-out.pdf)

Home Office statement:

[://www.homeoffice.gov.uk/publications/about-us/corporate-publications/2014-decision/](http://www.homeoffice.gov.uk/publications/about-us/corporate-publications/2014-decision/)

Centre for European Reform analysis:

[://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/pb_hb_cameron_3oct12-6224.pdf](http://www.cer.org.uk/sites/default/files/publications/attachments/pdf/2012/pb_hb_cameron_3oct12-6224.pdf)

Centre for European Legal Studies analysis:

[://www.statewatch.org/news/2012/oct/eu-cels-uk-opt-out-crim-law.pdf](http://www.statewatch.org/news/2012/oct/eu-cels-uk-opt-out-crim-law.pdf)

Open Europe analysis:

[://www.openeurope.org.uk/Content/Documents/PDFs/JHA2014choice.pdf](http://www.openeurope.org.uk/Content/Documents/PDFs/JHA2014choice.pdf)

Annex I

Article 10, Protocol 36

1. As a transitional measure, and with respect to acts of the Union in the field of police cooperation and judicial cooperation in criminal matters which have been adopted before the entry into force of the Treaty of Lisbon, the powers of the institutions shall be the following at the date of entry into force of that Treaty: the powers of the Commission under Article 258 of the Treaty on the Functioning of the European Union shall not be applicable and the powers of the Court of Justice of the European Union under Title VI of the Treaty on European Union, in the version in force before the entry into force of the Treaty of Lisbon, shall remain the same, including where they have been accepted under Article 35(2) of the said Treaty on European Union.

2. The amendment of an act referred to in paragraph 1 shall entail the applicability of the powers of the institutions referred to in that paragraph as set out in the Treaties with respect to the amended act for those Member States to which that amended act shall apply.

3. In any case, the transitional measure mentioned in paragraph 1 shall cease to have effect five years after the date of entry into force of the Treaty of Lisbon.

4. At the latest six months before the expiry of the transitional period referred to in paragraph 3, the United Kingdom may notify to the Council that it does not accept, with respect to the acts referred to in paragraph 1, the powers of the institutions referred to in paragraph 1 as set out in the Treaties. In case the United Kingdom has made that notification, all acts referred to in paragraph 1 shall cease to apply to it as from the date of expiry of the transitional period referred to in paragraph 3. This subparagraph shall not apply with respect to the amended acts which are applicable to the United Kingdom as referred to in paragraph 2.

The Council, acting by a qualified majority on a proposal from the Commission, shall determine the necessary consequential and transitional arrangements. The United Kingdom shall not participate in the adoption of this decision. A qualified majority of the Council shall be defined in accordance with Article 238(3)(a) of the Treaty on the Functioning of the European Union.

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.

5. The United Kingdom may, at any time afterwards, notify the Council of its wish to participate in acts which have ceased to apply to it pursuant to paragraph 4, first subparagraph. In that case, the relevant provisions of the Protocol on the Schengen *acquis* integrated into the framework of the European Union or of the Protocol on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, as the case may be, shall apply. The powers of the institutions with regard to those acts shall be those set out in the Treaties. When acting under the relevant Protocols, the Union institutions and the United Kingdom shall seek to re-establish the widest possible measure of participation of the United Kingdom in the *acquis* of the Union in the area of freedom, security and justice without seriously affecting the practical operability of the various parts thereof, while respecting their coherence.

Annex II

EU criminal law and policing measures **not covered by the block opt-out**

(ie, adopted or proposed since the entry into force of the Treaty of Lisbon)

(as of October 16 2012)

Adopted legislation

Directives

1. *Directive 2010/64 on the right to interpretation and translation in the framework of criminal proceedings (OJ 2010 L 280/1)*

- UK opt in

- *Deadline date to apply: 27 Oct. 2013 (Art. 9(1))*

2. *Directive 2011/36 on trafficking in persons (OJ 2011 L 101/1)*

- UK opt in after adoption; Commission decision on UK opt-in: OJ 2011 L 271/49

- replaces pre-Lisbon Framework Decision

- *Deadline date to apply: 6 April 2013 (Art. 22(1))*

3. *Directive 2011/82 on exchange of information on traffic offences (OJ 2011 L 288/1)*

- UK opt out

- *legal challenge to validity: Case C-43/12 Commission v Council, pending; if challenge is successful, UK cannot opt out*

- *Deadline date to apply: 7 Nov. 2013 (Art. 12(1))*

4. *Directive 2011/92 on sexual exploitation of children (OJ 2011 L 335/1)*

- UK opt in

- replaces pre-Lisbon Framework Decision

- *Deadline date to apply: 18 Dec. 2013 (Art. 27(1))*

5. *Directive 2011/99 on European protection order (OJ 2011 L 338/2)*

- UK opt in

- *Deadline date to apply: 11 Jan. 2015 (Art. 21(1))*

6. *Directive 2012/13 on the right to information on criminal proceedings (OJ 2012 L 142/1)*

- UK opt in

- *Deadline date to apply: 2 June 2014 (Art. 11(1))*

Regulations

1. Regulation 542/2010 amending Decision on migration of third-pillar SIS to SIS II (OJ 2010 L 155/23)

- UK opt in

- Entry into force: 25 June 2010 (Art 2)

Proposed legislation

Directives

1. Proposal for Directive on the right to interpretation and translation in the framework of criminal proceedings (COM (2010) 82, 9 March 2010)

- proposal is obsolete since adoption of Directive 2010/64 (see above)

2. Initiative for Directive on European investigation order ([2010] OJ C 165/22)

- UK opt in

- would repeal Framework Decision on European Evidence Warrant, and apply instead of corresponding provisions of Schengen Convention, Council of Europe Convention and Protocols on mutual assistance, and EU Convention and Protocol on mutual assistance

- full general approach agreed by Dec. 2011 JHA Council; EP has also defined negotiating position

3. Proposal for Directive on attacks on information systems (COM (2010) 517, 30 Sep. 2010)

- UK opt in

- replaces pre-Lisbon Framework Decision

- Council and EP agreed text, June 2012; not yet formally adopted

4. Proposal for Directive on passenger name records (COM (2011) 32, 2 Feb. 2011)

- UK opt in

- Council agreed position, April 2012; no EP position yet

5. Proposal for Directive on access to lawyer and communication rights (COM (2011) 326, 8 June 2011)

- UK opt out

- EP and Council have adopted positions, negotiations underway

6. Proposal for Directive on criminal sanctions against market abuse (COM (2011) 654, 20 Oct. 2011); revised: COM (2012) 420, 25 July 2012

- UK opt out

- no EP or Council positions yet

7. Proposal for Directive on freezing and confiscation of criminal proceeds (COM (2012) 85, 12 Mar. 2012)

- UK opt out

- no EP or Council positions yet

8. *Proposal for Directive on protection of EU financial interests (COM (2012) 363, 11 July 2012)*

- *no opts out possible*
- *would repeal Convention on protection of EU financial interests and its Protocols*
- *no EP or Council positions yet*

9. *Proposal for Directive on data protection in criminal law and policing (COM (2012) 10, 25 Jan. 2012)*

- *no opts out possible*
- *would repeal pre-Lisbon Framework Decision*
- *no EP or Council positions yet*

Regulations

1. *Regulation on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management (COM (2011) 753, 15 Nov. 2011)*

- *UK opt in*
- *no EP or Council positions yet*

2. *Regulation establishing a Justice Programme (COM (2011) 759, 15 Nov. 2011)*

- *UK opt out*
- *no EP position yet; Council position agreed June 2012*

External relations

In force

1. *Treaty on access to Swift information – between EU and USA (OJ 2010 L 195/1)*

- *UK opt in*

2. *Treaty on exchange of PNR data between EU and Australia (OJ 2012 L 186/4)*

- *UK opt in*
- *replaces pre-Lisbon treaty*
- *Entry into force: 1 June 2012 (OJ 2012 L 186/1)*

3. *Treaty on exchange of PNR data between EU and USA (OJ 2012 L 215/5)*

- *UK opt in*
- *replaces pre-Lisbon treaty*
- *Entry into force: 1 July 2012 (OJ 2012 L 174/1)*

4. mutual assistance treaty with Japan (OJ 2010 L 39/19)

- *UK opt in*

- **Entry into force: 2 Jan. 2011 (OJ 2010 L 343/1)**

Concluded by EU, not yet in force

1. Treaty with Norway and Iceland associating them with Prum Decisions

- **decision to conclude (OJ 2010 L 238/1)**

2. Treaty with Norway and Iceland on mutual assistance (OJ 2004 C 26/1)

- **decision to conclude (OJ 2012 L 153/1)**

- *UK opt in*

Conclusion proposed

1. Treaty with Norway and Iceland regarding extradition (OJ 2006 L 292)

- **proposal to conclude: COM (2009) 705, 17 Dec. 2009**

- **UK opt in**

Under negotiation

1. Treaty on exchange of personal data– between EU and USA

2. Treaty on exchange of PNR data between EU and Canada

Annex III

Alternative legal frameworks

Council of Europe

a) 'Fallback' treaties which all Member States (and Croatia) are party to:

ETS 24 Extradition Convention (1957)

ETS 30 Convention on mutual assistance (1959)

ETS 90 Convention on the suppression of terrorism (1977)

ETS 98 First Protocol to Convention on mutual assistance (1978)

ETS 112 Convention on the transfer of sentenced persons (1983)

ETS 141 Convention on the proceeds of crime, et al (1990)

b) 'Fallback' treaties which the UK and some Member States are party to:

ETS 98 Second Protocol, Extradition Convention (1978)

Ratified by: 23 Member States: all except France, Greece, Ireland and Luxembourg; also ratified by Croatia

Signed by: 1 Member State: Greece

ETS 99 First Protocol to Convention on mutual assistance (1978)

Ratified by: 26 Member States: all except Malta; also ratified by Croatia

Signed by: Malta

ETS 167 Protocol to the Convention on the transfer of sentenced persons (1997)

Ratified by: 22 Member States: all except Italy, Portugal, Spain, Slovenia and Slovakia; also in force in Croatia

Signed by: 3 Member States: Italy, Slovenia and Portugal

ETS 173 Criminal law Convention on corruption (1999)

Ratified by: 24 Member States: all except Austria, Germany and Italy; also in force in Croatia

Signed by: 3 Member States: Austria, Germany and Italy

ETS 182 Second Protocol to Convention on mutual assistance (2001)

Ratified by: 16 Member States: Belgium, Bulgaria, Czech Republic, Denmark, Estonia, France, Ireland, Latvia, Lithuania, Malta, Netherlands, Poland, Portugal, Romania, Slovakia and UK; Croatia has also ratified

Signed by: 7 Member States: Austria, Finland, Hungary, Greece, Germany, Slovenia and Sweden

c) 'Fallback' treaties which the UK is not party to, but which some Member States are party to:

ETS 51 Convention on the supervision of conditionally released or conditionally sentenced offenders (1964)

Ratified by: 12 Member States: Austria, Belgium, Czech Republic, Estonia, France, Italy, Luxembourg, Netherlands, Portugal, Slovakia, Slovenia and Sweden; Croatia has also ratified

Signed by: 4 Member States: Denmark, Germany, Greece and Malta

ETS 52 Convention on road traffic offences (1964)

Ratified by: 4 Member States: Cyprus, Denmark, France and Sweden; not ratified by Croatia

Signed by: 8 Member States: Austria, Belgium, Germany, Greece, Italy, Luxembourg, Netherlands and Portugal

ETS 70 Convention on the international validity of criminal judgments (1970)

Ratified by: 12 Member States: Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Latvia, Lithuania, Netherlands, Romania, Spain and Sweden; Croatia has not ratified

Signed by: 6 Member States: Germany, Greece, Italy, Luxembourg, Portugal and Slovenia

ETS 73 Convention on transfer of criminal proceedings (1972)

Ratified by: 13 Member States: Austria, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Latvia, Lithuania, Netherlands, Romania, Slovakia, Spain and Sweden

Signed by: 7 Member States: Belgium, Greece, Hungary, Italy, Luxembourg, Portugal and Slovenia; also signed by Croatia

ETS 86 First Protocol, Extradition Convention (1975)

Ratified by: 19 Member States: all except Austria, Finland, France, Germany, Greece, Ireland, Italy and United Kingdom; also ratified by Croatia

Signed by: 1 Member State: Greece

ETS 189 Protocol to Cyber- crime Convention (2003)

Ratified by: 11 Member States: Cyprus, Denmark, Finland, France, Germany, Latvia, Lithuania, Netherlands, Portugal, Romania and Slovenia; Croatia has also ratified

Signed by: 9 Member States: Austria, Belgium, Estonia, Greece, Italy, Luxembourg, Malta, Poland and Sweden

ETS 190 Protocol to Convention on the suppression of terrorism (2003) (not yet in force)

Ratified by: 16 Member States: Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Romania, Slovakia and Slovenia; Croatia has also ratified

Signed by: 11 Member States: all other Member States

CETS 196 Convention on the prevention of terrorism (2005)

Ratified by: 17 Member States: Austria, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Hungary, Latvia, Netherlands, Poland, Slovenia, Slovakia, Sweden and Spain; Croatia has also ratified

Signed by: 9 Member States: all others except Czech Republic

CETS 198 Convention on the proceeds of crime, et al (2005)

Ratified by: 12 Member States: Belgium, Cyprus, Hungary, Latvia, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia and Spain; Croatia has also ratified

Signed by: 9 Member States: Austria, Bulgaria, Denmark, Finland, France, Greece, Italy, Luxembourg and Sweden

CETS 209 Third Protocol, Extradition Convention (2010)

Ratified by: 2 Member States: Latvia, Netherlands

Signed by: 14 Member States: Austria, Bulgaria, Cyprus, Czech Republic, Finland, Germany, Greece, Hungary, Luxembourg, Poland, Portugal, Romania, Slovenia and Sweden; also signed by Croatia

CETS 212 Fourth Protocol, Extradition Convention (2012) (not yet in force)

Ratified by: no Member States

Signed by: 8 Member States: Austria, Hungary, Latvia, Luxembourg, Poland, Romania, Slovenia and Sweden

United Nations

Convention on transnational organized crime

Ratified by: 26 Member States: all except Czech Republic; also ratified by Croatia

Signed by: 1 Member State: Czech Republic

Protocol on smuggling of persons, Convention on transnational organized crime

Ratified by: 25 Member States: all except the Czech Republic and Ireland; Croatia has also ratified

Signed by: 2 Member States: Czech Republic and Ireland

Convention on corruption

Ratified by: 25 Member States: all except Czech Republic and Germany; also ratified by Croatia

Signed by: 2 Member States: Czech Republic and Germany

OECD

Anti-bribery (corruption) convention (1997)

Ratified by: 26 Member States: all except Romania; not ratified by Croatia

Annex IV Pre-Lisbon third pillar acts

a) Common Positions [several others have lapsed]

1. Combatting terrorism (OJ 2001 L 344/90)

2. Application of specific measures to combat terrorism (OJ 2001 L 344/93)

- both measures apply both to international terrorists and to domestic terrorists, hence they

have a foreign policy legal base as well. They might possibly be amended as regards domestic terrorists by an upcoming proposal (probably in 2013) to be based on Art. 75 TFEU.

3. Common Position on transfer of data to Interpol (OJ 2005 L 27/61)

b) Decisions

Overview – 59 decisions; 14 are no longer in force; 3 will lapse when SIS II begins operations (one of these 3 has already been amended post-Lisbon); 2 others will lapse at the end of 2013

– so as of Oct. 2012, 45 still in force, 1 of those amended post-Lisbon

– as of June 2014, 2 will certainly lapse, 2 are projected to lapse; Commission proposals expected 2012 or 2013 regarding 5 Decisions

– this would leave 35 Decisions in force without amendment

– note that the Stockholm programme refers to the possible adoption of an ‘EU police code’; this could result in amendments to other measures

1. Exchange of information on counterfeit travel documents (OJ 2000 L 81/1)
2. Combatting child pornography on the Internet (OJ 2000 L 138/1)
3. Decision 2000/586/JHA: Procedure for amending Articles 40(4) and (5), 41(7) and 65(2) of Schengen Convention (OJ 2000 L 248/1)
4. Decision 2000/641/JHA: Joint Secretariat for third pillar data protection authorities (OJ 2000 L 271/1)
5. Decision 2000/642 concerning Member States’ Financial intelligence units (FIUs) (OJ 2000 L 271/4)
6. Decision 2000/799/JHA setting up a provisional Judicial Cooperation Unit (Eurojust) (OJ 2000 L 324/2)
- lapsed when 2002 Eurojust decision adopted
7. Decision 2000/820/JHA on the provisional establishment of the European Police College (OJ 2000 L 336/1)
- repealed by 2005 Decision
8. Decision 2001/419/JHA on the transmission of samples of controlled substances (OJ 2001 L 150/1)
9. Decision 2001/427 on Crime Prevention Network (OJ 2001 L 153/1)
- repealed by 2009 Decision
10. 'Grotius II' Decision 2001/512 on criminal law cooperation (OJ 2001 L 186/1)
- lapsed
11. Decision 2001/513 on Oisin II programme (OJ 2001 L 186/4)
- lapsed
12. Decision 2001/513 on Stop II programme on sexual exploitation and trafficking in persons (OJ 2001 L 186/7)
- lapsed
13. Decision 2001/515 on Hippocrates programme on incentives, exchanges, training and cooperation for prevention of crime (OJ 2001 L 186/11)
- lapsed
14. Decision 2001/887/JHA on protection of the euro against counterfeiting (OJ 2001 L 329/1)
15. Decision 2001/886/JHA on funding SIS II within the third pillar (OJ 2001 L 328/1)
- lapsed in 2008
16. Decision establishing Eurojust (OJ 2002 L 63/1)
- amended in 2003 and 2008; Commission proposal planned 2013
17. Decision 2002/348/JHA concerning security in connection with football matches with an international dimension (OJ 2002 L 121/1)
- amended by 2007 Decision
18. Decision 2002/494 on exchange of information and contact points concerning genocide, crimes against humanity and war crimes (OJ 2002 L 167/1)
19. Decision on a Title VI framework funding programme (OJ 2002 L 203/5)
- lapsed

20. Decision on network for protection of public figures (OJ 2002 L 333/1)
- *amended by 2009 Decision*
21. Decision on evaluating Member States' implementation of international commitments regarding terrorism (OJ 2002 L 349/1)
22. Decision 2003/48/JHA implementing the Common Position on terrorism as regards police and judicial cooperation (OJ 2003 L 16/68)
- *repealed by 2005 Decision*
23. Decision 2003/169 designating which provisions of the 1995 and 1996 EU extradition Conventions are related to the Schengen acquis (OJ 2003 L 76/25)
24. Decision 2003/170 on joint use of liaison officers (OJ 2003 L 67/27)
- *amended by 2006 decision*
25. Decision 2003/335 on investigation and prosecution of genocide, crimes against humanity and war crimes (OJ 2003 L 118/12)
26. Decision extending Convention on corruption to Gibraltar (OJ 2003 L 226/27)
27. Decision amending Eurojust decision (OJ 2003 L 245/44)
- *Commission proposal due 2013*
28. Decision amending Article 40, Schengen Convention to permit extended cross-border police surveillance (OJ 2003 L 260/37)
29. Decision on amending Sirene manual (OJ 2004 L 64/45)
- *will be obsolete when SIS II starts operations*
30. Decision amending Decision on European Police College (OJ 2004 L 251/19)
- *repealed in 2005*
31. Decision amending Decision on European Police College (OJ 2004 L 251/20)
- *repealed in 2005*
32. Decision on vehicle crime (OJ 2004 L 389/28)
33. Decision on future functionalities for SIS (OJ 2005 L 68/44)
- *will be obsolete when SIS II starts operations*
34. Decision on synthetic drugs (OJ 2005 L 127/32)
35. Decision designating Europol as the central office for counterfeiting the euro (OJ 2005 L 185/35)
36. Decision on exchange of information on terrorism (OJ 2005 L 253/22)
37. Decision on European police college (OJ 2005 L 256/63)
38. Decision on criminal record information exchange (OJ 2005 L 322/33)
- *repealed by 2009 Decision*
39. Decision amending 2003 Decision on police liaison officers (OJ 2006 L 219/31)
40. Decision on SIS II (OJ 2006 L 411/78)
- *lapsed in 2008*
41. Decision establishing 'criminal justice' programme (OJ 2007 L 58/13)
- *will expire end 2013; replacement proposal Nov. 2011*
42. Decision establishing 'Crime prevention/fight against crime' programme (OJ 2007 L 58/7)
- *will expire end 2013; replacement proposal Nov. 2011*
43. Decision establishing SIS II (Criminal law/policing aspects) (OJ 2007 L 205/63)
44. Decision amending Decision on football hooligans (OJ 2007 L 155/76)
45. Decision establishing an asset recovery network (OJ 2007 L 332/103)
46. Decision on cross-border intervention teams (OJ 2008 L 210/73)
47. Decision on cross-border police cooperation (Prum Treaty Decision) (OJ 2008 L 210/1)
48. Decision on cross-border police cooperation (Prum Treaty Decision) (OJ 2008 L 210/12)
49. Decision on law enforcement access to VIS (OJ 2008 L 218/129)
- *does not apply to UK in any event; see Court of Justice judgment of 26 Oct. 2010 in Case C-482/08 UK v Council*
50. Decision establishing an anti-corruption network (OJ 2008 L 301/38)
51. Decision on migration from SIS to SIS II (OJ 2008 L 299/43)
- *amended by Regulation, 2010; further proposal for amendment 2012*
52. Decision amending Decision establishing Eurojust (OJ 2009 L 138/14)

- *Commission proposal for amendment due 2013*
- 53. Decision on the European Judicial Network (OJ 2008 L 348/130)
- 54. Decision implementing the Framework Decision on the exchange of criminal records (OJ 2009 L 93/33)
- 55. Decision establishing Europol (OJ 2009 L 121/37)
- *Commission proposal for amendment due 2012*
- 56. Decision amending the Decision establishing a network for the protection of public figures (OJ 2009 L 283/62)
- 57. Decision amending and replacing the Convention establishing a Customs Information System, and its Protocols (OJ 2009 L 323/20)
- *Commission proposal to merge this decision with EC Regulations due 2012*
- 58. Decision on crime prevention network (OJ 2009 L 321/44)
- *Stockholm programme calls for more ambitious measure in this area, possibly implies amendment or repeal of this act*
- 59. Decision extending EU/USA extradition treaties to Netherlands Antilles and Aruba (OJ 2009 L 325/4)

c) Framework Decisions

Overview – 34 Framework Decisions; 2 annulled by Court of Justice; 3 of the remainder have been replaced by Directives

- so as of Oct. 2012, 29 still in force; the Council has agreed on the replacement or amendment of 3 more and the Commission has proposed to amend or replace 3 more – leaving 23 Framework Decisions

- as of June 2014, the Commission will likely have proposed the repeal of another 2 – leaving 21 Framework Decisions

1. Criminal sanctions for counterfeiting the euro (OJ 2000 L 140/1)
 - *will likely be replaced or amended by planned 2012 proposal*
2. Framework Decision 2001/220/JHA on the status of victims (OJ 2001 L 82/1)
 - *replaced by Directive (UK opt-in) adopted in 2012*
3. Framework Decision 2001/413/JHA on payment card fraud and counterfeiting (OJ 2001 L 149/1)
4. Framework Decision 2001/500 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime (OJ 2001 L 182/1)
 - *will be partly amended by March 2012 proposal (UK opt-out)*
5. Framework Decision 2001/888/JHA on criminal records for counterfeiting the euro (OJ 2001 L 329/3)
 - *will likely be replaced or amended by planned 2012 proposal*
6. Framework Decision on terrorism (OJ 2002 L 164/3)
7. Framework Decision on European arrest warrant (OJ 2002 L 190/1)
8. Framework Decision on joint investigation teams (OJ 2002 L 162/1)
9. Framework Decision on trafficking in humans (OJ 2002 L 203/1)
 - *replaced by Directive (UK opt-in) adopted in 2011*
10. Framework Decision on the penal framework to prevent the facilitation of illegal entry and residence (OJ 2002 L 328/1)
11. Framework Decision on environmental crime (OJ 2003 L 29/55)
 - *annulled by judgment of Court of Justice (Case C-176/03, judgment of 13 Sept. 2005), and replaced by Directive*
12. Framework Decision on the execution of orders freezing assets and evidence (OJ 2003 L 196/45)
 - *will be partly replaced by European Investigation Order Directive, agreed by Council (UK opt-in)*
13. Framework Decision on corruption in private sector (OJ 2003 L 192/54)
14. Framework Decision on the sexual exploitation of children and child pornography (OJ 2004 L 13/44)

- replaced by Directive (UK opt-in) adopted in 2011
- 15. Framework Decision on illicit drug trafficking (OJ 2004 L 335/8)
- 16. Framework Decision on mutual recognition of financial penalties (OJ 2005 L 76/16)
- 17. Framework Decision concerning attacks on information systems (OJ 2005 L 69/67)
- will be replaced by Directive (UK opt-in) agreed by Council in 2011, and agreed with EP in 2012, to be officially adopted soon
- 18. Framework Decision on confiscation (OJ 2005 L 68/49)
- would be amended by March 2012 proposal (UK opt-out)
- 19. Framework Decision concerning criminal sanctions for pollution resulting from shipping (OJ 2005 L 255/164)
- annulled by Court of Justice (judgment of 23 Oct. 2007 in Case C-440/05, *Commission v Council*); replaced by Directive
- 20. Framework Decision on the execution of confiscation orders (OJ 2006 L 328/59)
- 21. Framework decision on exchange of data between law enforcement services (OJ 2006 L 386/89)
- 22. Framework decision on taking account of prior convictions in another Member State (OJ 2008 L 220/32)
- 23. Framework Decision on organised crime (OJ 2008 L 300/42)
- 24. Framework Decision on the transfer of custodial sentences (OJ 2008 L 327/27)
- 25. Framework Decision on data protection in the sphere of criminal law and policing (OJ 2008 L 350/60)
- would be replaced by Directive proposed Jan. 2012; UK does not have opt-out
- 26. Framework Decision on mutual recognition of alternative sanctions and suspended sentences (OJ 2008 L 337/102)
- 27. Framework Decision on racism and xenophobia (OJ 2008 L 328/55)
- 28. Framework Decision amending the framework decision on terrorism (OJ 2008 L 330/21)
- 29. Framework Decision on European evidence warrant (OJ 2008 L 350/72)
- will be replaced by European Investigation Order Directive (UK opt-in) – general approach of Council, Dec. 2011
- 30. Framework decision on criminal record exchange (OJ 2009 L 93/23)
- presumed that the planned 2013 proposal on criminal records of third-country nationals will not amend this, but this may not be correct
- 31. Framework Decision on ‘in absentia’ trials (OJ 2009 L 81/24)
- 32. Framework decision on mutual recognition of pre-trial supervision orders (OJ 2009 L 294/20)
- 33. Framework Decision on prevention and settlement of conflicts of jurisdiction in criminal matters (OJ 2009 L 328/42)
- 34. Framework Decision on accreditation of forensic laboratory activities (OJ 2009 L 322/14)

d) International treaties

- 1. Treaties with US on mutual assistance and extradition (OJ 2003 L 181/25)
- 2. PNR treaty with USA (OJ 2007 L 204) – applied provisionally
- replaced by new agreement, in force 2012 (UK opt-in)
- 3. PNR treaty with Australia (OJ 2008 L 213/47) – applied provisionally
- replaced by new agreement, in force 2012 (UK opt-in)

Note: a PNR treaty with Canada (not listed here) was an EC measure, and has lapsed; no other treaties agreed pre-Lisbon were finally concluded pre-Lisbon, and the treaties concluded post-Lisbon are not subject to the block opt-out

e) Conventions

Extradition (1995)

Ratified by: 20 Member States: all the first fifteen Member States except Italy, plus Cyprus, Poland, Estonia, Lithuania, Latvia and Slovenia

Applied by: 14 Member States: the ratifying States except Greece, Ireland, Netherlands, Portugal, Cyprus and Estonia

Extradition (1996)

Ratified by: 20 Member States: all the 'old' Member States except Italy, plus Cyprus, Poland, Estonia, Lithuania, Latvia and Slovenia

Applied by: 14 Member States: the ratifying States except Greece, Ireland, Netherlands, Cyprus, Estonia and Latvia

Note: the Conventions have little practical relevance in light of the Framework Decision on the European Arrest Warrant

Convention on Protection of EC Financial Interests (PIF) (1995)

Ratified by: 26 Member States: all except Czech Republic

First Protocol to PIF Convention (1996)

Ratified by: 26 Member States: all except Czech Republic

Court of Justice Protocol to PIF Convention (1996)

Ratified by: 25 Member States: all except Estonia and Czech Republic

Second Protocol to PIF Convention (1997)

Ratified by: 26 Member States: all except Czech Republic

Note: the PIF Convention and all Protocols to it would be replaced by a Directive proposed June 2012; the UK does not have an opt-out

Convention on corruption (1997)

Ratified by: 25 Member States: all except Malta and Czech Republic

Naples II Convention (1998)

Ratified by: all Member States

Driving Disqualification Convention (1998)

Ratified by: 7 Member States: Bulgaria, Cyprus, Spain, UK, Ireland, Romania and Slovakia

Applied by: Ireland and UK

Note: the Commission is planning to propose legislation on disqualifications in 2013; this might replace some and possibly all of the text of the Convention

Convention on mutual assistance (2000)

Ratified by: 24 Member States: all except Greece, Italy and Ireland

- will be partly replaced by European Investigation Order Directive (UK opt-in) – general approach of Council, Dec. 2011

Protocol to Convention on mutual assistance (2001)

Ratified by: 23 Member States: all except Estonia, Greece, Italy and Ireland

- will be partly replaced by European Investigation Order Directive (UK opt-in) – general approach of Council, Dec. 2011

Note: the Europol Convention and the Customs Information Convention, and all their Protocols, were replaced by Decisions adopted in 2009, so are not listed above

There were also treaties between Member States concluded within the framework of 'European Political Cooperation' before the Maastricht Treaty was ratified. In the area of policing and criminal law, these treaties concerned double jeopardy (1987), the transfer of sentenced persons (1987), the faxing of extradition requests (1989), the transfer of criminal proceedings (1990) and the enforcement of criminal sentences (1991). None are yet in force. The UK has only ratified the extradition treaty.

f) Joint Actions (still in force)

1. Joint Action 98/700/JHA on European Imaging Archive System ([1998] OJ L 333/4)
2. Joint Action 96/277/JHA on exchange of liaison magistrates ([1996] OJ L 105/1)
3. Joint Action 96/750/JHA on drug trafficking ([1996] OJ L 342/6)
4. Joint Action 98/427/JHA on good practice in mutual legal assistance ([1998] OJ L 191/1)
5. Joint Action 98/699/JHA on money laundering and confiscation of proceeds ([1998] OJ L 333/1)
Note: Framework Decision of 2001 amended and supplemented this Joint Action in part (see above); a Directive proposed in 2012 (UK opt-out) would repeal it
6. Joint Action 96/610/JHA on directory of specialist counter-terrorist expertise ([1996] OJ L 273/1)
7. Joint Action 96/698/JHA on customs and business cooperation in drug trafficking ([1996] OJ L 322/3)
8. Joint Action 96/699/JHA on exchange of information on chemical profiling of drugs ([1996] OJ L 322/5)
9. Joint Action 96/747/JHA on directory of expertise on international organised crime ([1996] OJ L 342/2)
10. Joint Action 97/339/JHA on cooperation in law and order ([1997] OJ L 147/1)
11. Joint Action 97/372/JHA on targeting criteria for police ([1997] OJ L 159/1)
12. Joint Action 97/827/JHA on evaluation ([1997] OJ L 344/7)
13. Joint Action 98/429/JHA on collective evaluation of application of *acquis* by applicant states ([1998] OJ L 191/8)
14. Joint Action 96/658/JHA on US Helms-Burton legislation ([1996] OJ L 309/7)

g) Schengen *acquis*

1) Schengen Convention:

Arts 39-45, 47-49 (police cooperation), 51 (mutual assistance), 54-58 (double jeopardy), 71-72, 75-76 (drugs), 92-119 (SIS), 126-30 (data protection); also some provisions of Schengen accession treaties

Notes: Arts 92-119 have been amended by Decisions concerning the SIS in 2005 and 2008 (see above); they will be repealed with effect from when the decision setting up SIS II (adopted in 2007, see above) becomes operational (planned for 2013)

Arts 39(1), (2) and (3) and 46 were repealed by the Framework Decision on exchange of data between law enforcement services; Art 47(4) was repealed by a 2003 Decision; Art 40(1) and (7) were amended by a 2003 Decision

Arts 49(a), 52, 53 and 73 were repealed by the 2000 EU mutual assistance Convention, Art 2(2); Art 50 was repealed by Art 8(3) of the 2001 protocol to that Convention (see above); but note that a few Member States have not ratified the Convention or the Protocol, so the Schengen Convention provisions still apply; also they still apply as regards relations with to Switzerland and Liechtenstein; note that these provisions and Art. 51 would largely be replaced as between EU Member States by the Directive on the European Investigation Order (except that Ireland and Denmark will not be

covered by that Directive)

Arts 59-60, 62-66 (extradition) were repealed by the Framework Decision on the European Arrest Warrant, but might still apply in a few cases where the effect of the EAW is restricted, and to Schengen associates (except that a treaty between the EU, Norway and Iceland has signed and might enter into force as a post-Lisbon act; this would effectively replace the Schengen provisions)

Articles 67-69 were repealed by the Framework Decision on transfer of prisoners; they still apply to Schengen associates

2) Schengen Executive Committee Decisions/Declarations/Central Group acts:

i) repealed with effect from when SIS II Decision is operational:

SCH/Com-ex (93) 16 - 14.12.1993 - Financial Regulations on the installation and operating costs for the Schengen C.SIS

SCH/Com-ex (97) 18 - 7.10.1997 - Contributions from Norway and Iceland to the C.SIS operating costs

SCH/Com-ex (97) 24 - 7.10.1997 - Future of the SIS

SCH/Com-ex (97) 35 - 15.12.1997 - Amendment to the C.SIS Financial Regulations

SCH/Com-ex (98) 11 - 21.4.1998 - C.SIS with 15/18 connections

SCH/Com-ex (99) Decl 2 Rev - 28.4.1999 - SIS-structure

SCH/Com-ex (99) 4 - 28.4.1999 - C.SIS installation costs

SCH/Com-ex (99) 5 - 28.4.1999 - SIRENE Manual

ii) other (within scope of third pillar)

SCH/Com-ex (93) 10 - 14.12.1993 - Confirmation of the declarations by the Ministers and Secretaries of State of 19 June 1992 and 30 June 1993 on bringing into force

SCH/Com-ex (93) 14 - 14.12.1993 - Improving practical cooperation between the judicial authorities to combat drug trafficking

SCH/Com-ex (97) 2 Rev 2 - 25.4.1997 - Awarding the tender for the SIS II preliminary study

SCH/Com-ex (97) 6 Rev 2 - 24.6.1997 - Schengen Manual on police cooperation in the field of public order and security

SCH/Com-ex (97) 29 Rev 2 - 7.10.1997 - Bringing into force the Convention implementing the Schengen Agreement in Greece

SCH/Com-ex (98) 26 def - 16.9.1998 - Setting up of the Schengen implementing Convention Standing Committee

SCH/Com-ex (98) 29 Rev - 23.6.1998 - Catch-all clause to cover the whole technical Schengen acquis

SCH/Com-ex (98) 37 def 2 - 16.9.1998 - Action plan to combat illegal immigration

SCH/Com-ex (98) 43 Rev - 16.12.1998 - Ad hoc Committee for Greece

SCH/Com-ex (98) 49 Rev 3 - 16.12.1998 - Bringing the Convention implementing the Schengen Agreement into force in Greece

SCH/Com-ex (98) 52 - 16.12.1998 - Handbook on cross-border police cooperation

SCH/Com-ex (99) 3 - 28.4.1999 - Help Desk budget for 1999

SCH/Com-ex (99) 6 - 28.4.1999 - Telecomms situation

SCH/Com-ex (99) 7 Rev 2 - 28.4.1999 - Liaison officers

SCH/Com-ex (99) 8 Rev 2 - 28.4.1999 - Payments to informers

SCH/Com-ex (99) 11 Rev 2 - 28.4.1999 - Agreement on cooperation in proceedings for road traffic offences

SCH/Com-ex (96) Decl 6 - Rev 2 - 26.6.1996 - Declaration on extradition

SCH/Com-ex (97) Decl 13 - Rev 2 - 21.4.1998 - Abduction of minors

SCH/C (98) 117 - 27.10.1998 - Action plan to combat illegal immigration

SCH/C (99) 25 - 22.3.1999 - General principles for the remuneration of informants and infiltrators

3) International treaties in force:

1. Schengen association agreement with Norway and Iceland ([1999] OJ L 176)
2. Schengen association agreement with Switzerland ([2008] OJ L 53)

Note: the Protocol to the Schengen association agreement with Switzerland, as regards Liechtenstein ([2011] OJ L 160), is a post-Lisbon measure

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