HOUSE OF LORDS

Select Committee on Extradition Law

1st Report of Session 2014–15

The European Arrest Warrant Opt-in

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Select Committee on Extradition Law

The Select Committee on Extradition Law was appointed by the House of Lords on 12 June 2014 to consider and report on the law and practice relating to extradition, in particular the Extradition Act 2003.

Membership

The Members of the Select Committee on Extradition Law are:

Lord Brown of Eaton-under-Heywood
Baroness Hamwee
Lord Henley
Lord Inglewood (Chairman)
Lord Jones
Lord Rowlands
Lord Empey
Lord Hart of Chilton
Lord Hussain
Baroness Jay of Paddington
Lord Mackay of Drumadoon
Baroness Wilcox

Declaration of interests

See Appendix 1

A full list of Members' interests can be found in the Register of Lords' Interests:
http://www.parliament.uk/mps-lords-and-offices/standards-and-interests/register-of-lords-interests

Publications

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Committee staff

The current staff of the Committee are James Whittle (Clerk), Cathryn Auplish (Policy Analyst) and Morgan Sim (Committee Assistant).

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Q in footnotes refers to a question in oral evidence, the transcript of which is reproduced in Appendix 2.

The European Arrest Warrant Opt-in

Introduction

1. As part of its wider inquiry into extradition law and practice, on 5 November 2014 the Select Committee on Extradition Law took evidence on the question of whether the UK should remain part of the European Arrest Warrant system (EAW). The witnesses for the session were Baroness Ludford and Jacob Rees-Mogg MP.

2. Baroness Ludford was, until recently, a member of the European Parliament. Whilst in the European Parliament she was the rapporteur for the review of the EAW by the Committee on Civil Liberties, Justice and Home Affairs (LIBE). The report of that Committee was supportive of the system as a whole but made a number of specific criticisms of the EAW and recommendations for its improvement.

3. Mr Rees-Mogg has been a strong critic of the EAW and of other aspects of the EU more generally.

The EAW and the UK's opt-in

4. The EAW provides for the surrender from one EU Member State to another of those accused or convicted of crimes. It replaced existing extradition proceedings between Member States and was designed to speed up and simplify the transfer of suspected criminals and fugitives.

5. The House's European Union Committee has already published a number of reports about the EAW.[1]

6. Under the provisions of the Lisbon Treaty, the UK had the option to opt out of all of the pre-Lisbon Treaty EU justice and home affairs legislation. In October 2012, the Government confirmed that it would make use of this provision to opt out of approximately 130 measures and that it would seek to opt back into 35, including the EAW.

7. Again, the European Union Committee has commented in detail on the UK's opt-out arrangements.[2]

8. On 1 December 2014 the UK's opt-out will come into effect (though negotiations are underway to extend that deadline on a transitional basis to

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1 European Union Committee, *Counter-terrorism: the European Arrest Warrant* (6th Report, Session 2001–02, HL Paper 34); European Union Committee, *The European Arrest Warrant* (16th Report, Session 2001–02, HL Paper 89); and European Union Committee, *European Arrest Warrant—Recent Developments* (30th Report, Session 2005–06, HL Paper 156)

2 European Union Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159); European Union Committee, *Follow-up report on EU police and criminal justice measures: The UK's 2014 opt-out decision* (5th Report, Session 2013–14, HL Paper 69)

7 December)[3]. If the UK has not opted back in by this date, it will no longer be part of the EAW scheme.

9. The issue of the UK's opt-in, and the EAW in particular, has become an increasingly political topic. In a number of commentaries in the media the EAW has become entwined with arguments about the EU more generally, divisions within the Conservative Party and the rising popularity of UKIP.[4]

10. This Committee will publish its full report on the UK's extradition law and practice in the New Year. The purpose of this interim report is to use the evidence session held with Baroness Ludford and Mr Rees-Mogg to highlight specific arguments about whether the UK should retain the EAW. The intention is that this report will help to inform the debates in both Houses and the vote in the House of Commons on the UK's opt-in. It does not seek to rehearse the arguments already made by the European Union Committee in favour of the EAW, nor does it summarise the criticisms made of the system in the written and oral evidence the Committee has gathered so far.[5]

Evidence session: 5 November 2014

11. The evidence session covered a number of issues relating to the EAW. However, during the discussion it became clear that, when arguing in favour of the EAW, Baroness Ludford was doing so principally on operational and practical grounds. For example:

> "the European Arrest Warrant has delivered big improvements in the speed of extradition through the free movement of judicial decisions in place of traditional inter-governmental relations. That is important for the public interest in bringing criminals to justice and it is also important for victims."[6]

12. On the other hand, central to Mr Rees-Mogg's objections to the EAW were constitutional points. For example:

> "My view of the European Arrest Warrant is that it is of fundamental importance in the creation of the European justice and home affairs competence and, indeed, in the creation of supranational powers over justice and home affairs, with a fundamental implication for the administration of justice in the United Kingdom. I think what is happening at the moment is of the highest constitutional importance and, therefore, it needs to be looked at in those terms as well as in the administrative convenience of a particular form of extradition."[7]

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3 Proposal for a Council Decision determining certain consequential and transitional arrangements concerning the cessation of participation of the United Kingdom of Great Britain and Northern Ireland in certain acts of the Union in the field of police cooperation and judicial cooperation in criminal matters adopted before the entry into force of the Treaty of Lisbon COM(2014)0596 final

4 For example, see 'Tory rebels should avoid war over European Arrest Warrant: the argument over sovereignty should be saved for an in/out referendum', *The Daily Telegraph*, 30 October 2014: http://www.telegraph.co.uk/news/uknews/law-and-order/11196258/Tory-rebels-should-avoid-war-over-European-Arrest-Warrant.html

5 The Committee's written and oral evidence can be found on its website: www.parliament.uk/extradition-law

6 Q 154 (Baroness Ludford)

7 Q 155 (Jacob Rees-Mogg MP)

13. The witnesses came to different conclusions about how the UK should proceed. Baroness Ludford argued that the UK should opt back into the EAW and then work to improve the legislation. She said,

> "there is quite a good basis for us working with sympathetic partners in the European Parliament and the Council, but that obviously is predicated upon our continued participation in the EAW. Like the Government, I believe that anything other than the European Arrest Warrant—while it has flaws that need fixing—is second-best and more cumbersome"[8]

14. One of Mr Rees-Mogg's principal concerns was that opting in necessarily would involve the UK accepting the jurisdiction of the Court of Justice of the European Union. He advocated seeking alternative arrangements with the EU. In his view, the UK was in a strong position to do this:

> "the Prime Minister when threatening to wield a veto managed to get the EU to cut its budget. When you are in a position of refusing to do something, the European Union is a sensible negotiating body … They want to have an extradition agreement with us just as much as, if not more than, we want one with them. We sent them many, many more people than we get back. So it is hugely for the overall advantage of the other Member States to have some arrangement with us.[9]"

15. However, Baroness Ludford questioned whether there would be the political will in the EU to do this saying, "if the UK had just pulled out of the European Arrest Warrant, is everyone going to run around making it a priority to negotiate something where, I think, essentially—because that is the evidence with Norway and Iceland and because you have 27 who are practising the European Arrest Warrant—the content of any treaty is going to be pretty similar to the European Arrest Warrant?"[10]

16. She also said that it may not in any event be legally possible for the EU as a whole to negotiate a treaty with a Member State:

> "I have come across considerable doubt whether the EU can legally sign a treaty with one of its own Member States on behalf of 27 others. The precedents with Denmark were pre the Lisbon Treaty and I think the wording of the Lisbon Treaty now suggests that the EU can only negotiate treaties with non-Member States."[11]

Conclusions

17. **The Committee recognises the flaws that have been drawn to our attention in the EAW and the ways in which it has been implemented. In some cases these flaws have led to miscarriages of justice, although recent amendments to the Extradition Act 2003 should help to remedy at least some of them. If the UK were to opt back in, the Government should work further to amend and improve the system.**

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8 Q 160 (The Baroness Ludford)

9 Q 167 (Jacob Rees-Mogg MP)

10 Q 160 (The Baroness Ludford)

11 Q 154 (The Baroness Ludford)

18. **The Committee is not persuaded that these criticisms alone constitute a compelling case for maintaining the UK's opt-out.**

19. Alternatives to the EAW were discussed but **the Committee notes that there are credible and substantive legal and political questions about their viability.** It may be that these questions could be satisfactorily answered but **so far it is unclear whether the proposed alternatives are legally, let alone politically, achievable**.

20. **On the basis of the evidence we have received, there is no convincing case for disagreeing with the conclusions previously reached by the European Union Committee that "If the United Kingdom were to leave the EAW and rely upon alternative extradition arrangements, it is highly unlikely that these alternative arrangements would address all the criticisms directed at the EAW. Furthermore, it is inevitable that the extradition process would become more protracted and cumbersome, potentially undermining public safety."**[12]

21. A majority of the Committee consider that the UK therefore ought to opt back into the EAW, while a minority argue that the Committee has not heard sufficient evidence to form a definitive view.

[12] European Union Committee, *EU police and criminal justice measures: The UK's 2014 opt-out decision* (13th Report, Session 2012–13, HL Paper 159)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members:

Lord Inglewood (Chairman)
Lord Brown of Eaton-under-Heywood
Lord Empey
Baroness Hamwee
Lord Hart of Chilton
Lord Henley
Lord Hussain
Baroness Jay of Paddington
Lord Jones
Lord Mackay of Drumadoon
Lord Rowlands
Baroness Wilcox

No interests relevant to the subject matter of the report were declared by Members of the Committee

A full list of Members' interests can be found in the Register of Lords Interests http://www.publications.parliament.uk/pa/ld/ldreg.htm

APPENDIX 2: ORAL EVIDENCE TAKEN ON 5 NOVEMBER 2014

Members present

Lord Inglewood (Chairman)	Baroness Jay of Paddington
Lord Brown of Eaton-under-Heywood	Lord Jones
Baroness Hamwee	Lord Mackay of Drumadoon
Lord Henley	Lord Rowlands
Lord Hussain	Baroness Wilcox

Examination of Witnesses

Jacob Rees-Mogg MP and Baroness Ludford

Q154 The Chairman: I extend a warm welcome to Jacob Rees-Mogg MP and Lady Ludford, who are taking part in this hearing as part of a one-off special report that we propose to produce about whether or not we feel Members of both Houses should vote to opt back into the European Arrest Warrant. Each of you has very kindly sent us a brief CV, so we know who each of you is and where you are roughly coming from. Just before we go into the meeting proper, first of all, as far as I know there are no specific interests anybody has to declare on the Committee; and secondly, if you could, just before you start, say who you are for the purposes of getting it into the transcript. We suggested to each of you that it might be appropriate to begin with a concise statement of where each of you is coming from. We have agreed, Lady Ludford, that you will start so let me give you the floor. Would you like to make a brief statement?

Baroness Ludford: Thank you very much, Lord Chairman, and thank you very much for the invitation to give evidence. I am Sarah, Baroness Ludford, and until May I had spent 15 years as a Member of the European Parliament for London. In all of that time my main focus was on justice and home affairs including, but not exclusively, police and criminal justice.

So I had a focus on justice and home affairs, including criminal justice. I should say that does not make me a legal expert or an extradition law expert, although I have paid close attention to those who are and have learnt a lot, particularly because I was the lead author on a report that the European Parliament produced in February. Not least, we had advice from Anand Doobay who, as you know, is a senior extradition law solicitor, and from Professor Anne Weyembergh at the Université Libre de Bruxelles in Brussels. In the course of my work in the last few years I have also been able to hear and read many distinguished people. I should probably mention that I am vice-chair of the NGO JUSTICE and I am also patron of Fair Trials International (FTI). I know certainly that FTI has given evidence to you.

My basic proposition is that the European Arrest Warrant has delivered big improvements in the speed of extradition through the free movement of judicial decisions in place of traditional inter-governmental relations. That is important for the public interest in bringing criminals to justice and it is also important for victims. I think it is very positive that, under the European Arrest Warrant, extradition is purely judicial and not political, which was the case under the pre-EAW system. Indeed, the review by Sir Scott Baker talked about how in the 1990s it became apparent that extradition proceedings were "cumbersome, beset by

technicality and blighted by delay" with an average 18-month procedure in the UK, whereas nowadays under the European Arrest Warrant the average is about 15 days with consent and 48 days without consent. There was a lot of duplication under the 1957 Council of Europe Convention with overlap between the Secretary of State and the courts, delay through appeals and judicial review, and I think the weight of practitioners—of lawyers, police, prosecutors—believe that the old system was cumbersome. I think that the European Arrest Warrant, therefore, helps justice in the sense that Article 6 of the European Convention on Human Rights mandates a "reasonable time" for criminal proceedings. Justice delayed is justice denied, so I think it helps there.

I should also note—somewhat, I have to say, even to my own surprise—that there has been a YouGov poll in the last few days that shows that overall 56% say that the UK should be in the European Arrest Warrant and only 18% disagree. There is more than 60% support among Conservative, Labour and Liberal Democrat voters, and even among UKIP supporters 42% say we should be in and 34% out. So there is a plurality, in fact, of UKIP voters.

I think that if the UK were to withdraw from the European Arrest Warrant it would mean a laborious process of having to negotiate alternative arrangements, almost certainly bilateral treaties with each EU state. I believe it is being suggested by some that the UK could replace the European Arrest Warrant with an extradition deal with the entire EU, but I have come across considerable doubt whether the EU can legally sign a treaty with one of its own Member States on behalf of 27 others. The precedents with Denmark were pre the Lisbon Treaty and I think the wording of the Lisbon treaty now suggests that the EU can only negotiate treaties with non-Member States.

The EU did negotiate an extradition treaty with Norway and Iceland. It took many years to negotiate and has not entered into force eight years after its signature. The other point is that this treaty is almost identical to the European Arrest Warrant. If you had a treaty with the EU—even if that was legally possible—it would not free the UK from compliance with most of the European Arrest Warrant rules. For a critic of the European Arrest Warrant, that would not really improve things, and this is all without the question of whether there is time before 1 December to do that. It is likely that there would have to be bilateral deals with 27 different Member States, which could well take years. I also think having less stringent extradition laws in the UK than in the rest of the EU—they would all have the European Arrest Warrant; we would have the older, slower system—would risk turning the UK into a safe haven for criminals, and perhaps the rest of the EU would become an attractive bolthole for those that we wanted to extradite. You might even bring back the old problem of states not extraditing their own nationals if you went back to the old Council of Europe standards. Altogether, I think it would be a backwards step.

That is not to say that the European Arrest Warrant is at all perfect. My report was done for the European Parliament and I would be very happy to expand on that. It needs considerable improvement in its operation to avoid miscarriages of justice. I have followed quite a lot of those cases as a constituency MEP and as a patron of Fair Trails International, but I do not speak for Fair Trials, obviously. We need to avoid miscarriages of justice, save some of the money that is used up in some of the operational difficulties and make sure that surrender under the European Arrest Warrant is used only as a last resort, not as a fishing expedition, as an investigatory measure. A lot of what was covered in my European Parliament report was about this.

The European Arrest Warrant is based on mutual trust, not blind faith. We should not be dazzled by, "This is an EU measure therefore no one can question the problems". I certainly do not take that attitude. There are problems about the lack of a proportionality check. My report preferred that that should be done in the issuing state. There needs to be an explicit ground for refusal on human rights grounds across the whole EU. There needs to be a standardised consultation mechanism between the courts in the issuing and the executing state. There needs to be recourse to less intrusive and coercive methods. Now that we have the European investigation order, which is hopefully going to be a much more efficient mechanism for getting evidence than anything that has preceded it, we should hopefully be able to avoid misuse of the European Arrest Warrant. There are also traditional mutual legal assistance measures, like summons, video and telephone conferencing, and one does question why these methods are not being used sufficiently now.

Lastly I would mention the whole programme of procedural rights measures and defence rights measures, the so-called roadmap. I was the author of the report on the legislation on the first one, the right to interpretation and translation, and of course that is carrying on. I could perhaps mention that I am sorry the UK has not opted into the directive on the right to a lawyer, because I think we have the gold standard on that in the EU and it is a pity that we do not show leadership on that particular measure. We need to do all of that to try to raise the standards of criminal justice across the EU. We also need to use other measures that are coming into force or have already been in force for some time, such as the Financial Penalties Framework Decision, transfer of probation, transfer of sentences and the European Supervision Order, which is not a guarantee of the issuing state court granting bail but would hopefully avoid the major problem of excessive pre-trial detention that exists.

Perhaps I could just sum up with a quote from Anand Doobay in his study for the European Parliament: "It is possible to envisage a procedure where an accused person is summoned to court by a mutual legal assistance process, charged having appeared by video link and then placed on bail in the Member State they reside in—if this is not a Member State prosecuting them—before surrendering for trial. If they did not surrender for trial then a European Arrest Warrant could be issued". It would be very much a last resort when you have explored all the other mechanisms.

Q155 The Chairman: Thank you for that opening statement. Now, Mr Rees-Mogg, it is your chance.

Jacob Rees-Mogg: Thank you very much for inviting me to appear in front of this Committee. As a Member of the House of Commons, it is a great privilege to come to the smarter end of the building, so I am grateful to be here. I am the Member of Parliament for North East Somerset and a Member of the European Scrutiny Committee. I am not a lawyer but on the European Scrutiny Committee we had the great benefit of learned counsel, Mr Hardy, and so I learnt a little bit of European law from listening to him, the benefit that your Committee is now very fortunate to have.

My view of the European Arrest Warrant is that it is of fundamental importance in the creation of the European justice and home affairs competence and, indeed, in the creation of supranational powers over justice and home affairs, with a fundamental implication for the administration of justice in the United Kingdom. I think what is happening at the moment is of the highest constitutional importance

and, therefore, it needs to be looked at in those terms as well as in the administrative convenience of a particular form of extradition. I think that is a relevant starting point in this context.

Looking at the narrower focus, the administrative operation of extradition, the question is: are there alternative measures that do not raise these important constitutional issues? Here I think the obvious answer is—in spite of what Baroness Ludford has said—doing a bilateral arrangement with the European Union. There is certainly independent legal advice that this is possible under the treaties and that so far the response from the Commission has been a political answer, not a legal answer. They have said that they do not want to do it, not that they cannot do it. I am sure they would have said they could not do it had that been the case. The Government, in some of the answers it has given to the European Scrutiny Committee, has done very little in terms of analysing whether that was a possibility. I think that is a considerable weakness in the Government's position: a failure to explore this in due time and now to say, "There is a great rush". If there is a great rush because you have not done things, that great rush is not the concern of constitutionalists; it is the concern of administrative failures of the Government. I think that would be the preferred option and it would require a separate treaty with Denmark and an opt-in by Ireland, in addition to a treaty with the European Union. It would be a treaty that crucially ensured that the decisions on how extradition operated were ones for the British courts rather than for the Court of Justice of the European Union (CJEU).

A great deal has been made of the protections that have recently been built in on proportionality and in protection of people from undue length of detention. The problem with that is that from 1 December those will be decisions made by the Court of Justice of the European Union; they will no longer be a matter for the British courts exclusively. That is the major change and my major concern. It is the enforceability of the arrest warrant by an action of the Commission taken to the Court of Justice of the European Union and therefore, unlike any other extradition treaty, no longer a matter exclusively of our law.

The issues then arise as to the changes that have been proposed within the arrest warrant itself and the feasibility of achieving those to answer some of our concerns, but it is striking that the Government decided not to do that. In evidence, which I may as well quote, from the Home Secretary to the European Scrutiny Committee, she said: "We had started some discussions with other Member States at an earlier stage as to whether it would be possible to reopen the framework directive on the European Arrest Warrant and perhaps make the changes through that, and we will continue to discuss the overall shape of the European Arrest Warrant directive. However, it became clear that, if we wanted to make some changes within the timescale that we wished to operate, it was easier to do it within our own legislation". What that is saying is that we have introduced our changes unilaterally because we could not get them agreed, in the hope that they would then be accepted by the Court of Justice of the European Union. This seems to me a highly speculative approach to safeguarding the fundamental rights of British citizens who may be subject to arrest.

In that context, I wonder if I may enter into evidence the opinion given by Jonathan Fisher QC in relation to the European Arrest Warrant and habeas corpus. I do not think I need to go through what he is saying other than in summary, which is that there are not protections within the arrest warrant that we would expect for habeas corpus. That comes back to my point that it is a fundamental constitutional issue, not just one of administrative convenience. His

opinion also raises the issue of the European Public Prosecutor's Office (EPPO). Here, once we have signed up the European Arrest Warrant, if a European public prosecutor were to be established that public prosecutor would be able to operate the arrest warrant within the United Kingdom even if we had not joined up to the public prosecutor. So our opt-out of the public prosecutor becomes ineffective in the event that we sign up to the arrest warrant. We are risking the support for a public prosecutor against votes—certainly in the House of Commons; I am not sure if your Lordships have similarly voted—against the referendum guarantee, against government policy, and we are sacrificing some element of protection of habeas corpus. As I say, it seems to me of the highest constitutional importance, and there was and is an alternative that the Government simply has not tried.

I am not suggesting that we go back to the pre-existing arrangements, though many of those still stand, because I accept that they are cumbersome and that we want to have more efficient extradition operations, but I would overlie that by saying that it is of the greatest importance that our extradition arrangements are just in the way that the United Kingdom accepts justice. That is more important, ultimately, than efficiency. It is a fundamental principle that it is better for 99 guilty men to go free than for one innocent man to be handed over. That is why, when it comes to a question of efficiency or justice, justice must win.

Q156 The Chairman: Thank you. One point arising from your remark, which is about the Jonathan Fisher opinion: I gather that mechanically you cannot submit it in written form but if there are any particular bits that you would like to draw to our attention, perhaps you could read them out.

Jacob Rees-Mogg: Sorry, yes. The key bit I have mentioned, on the public prosecutor and how it brings the public prosecutor into operation once it starts—if it starts—but there is a proposal—

The Chairman: That is a proposal. The public prosecutor has not gone beyond the proposal stage that nobody has yet agreed, is that not right?

Jacob Rees-Mogg: There is a proposal for enhanced co-operation so it may go ahead with a small number of states. Even with a small number of states going ahead, an arrest warrant from the public prosecutor issued by a Member State that had joined the enhanced co-operation would be effective in the United Kingdom, so then the—

The Chairman: Under the provisions of the EAW it was a Member State prosecution and not a European Union prosecution, is that correct?

Jacob Rees-Mogg: No, the public prosecutor would have the right to direct a Member State to issue an arrest warrant. It would be directly from the public prosecutor to a Member State that had signed up, which would then have immediate effect in the United Kingdom. It removes our opt-out from the public prosecutor. That is the one key part of this. There has been—

The Chairman: Tell us what you would like to.

Jacob Rees-Mogg: The other is on habeas corpus and it says: "In short, the protection afforded by the amendment to section 11 of the Extradition Act 2003 does nothing to meet the requirement enshrined in the historical writ of habeas corpus that where challenged to justify an arrest sufficiency of evidence will be considered by an independent judicial authority—domestic or foreign—in a public hearing within a reasonable period—days rather than weeks—after an EAW has been executed in the UK. In this connection, the Minister of State's lack of confidence is noted. When explaining the impact of the amendment, the Minister

stopped short of an assertion that the problems in the extradition of Andrew Symeou would not be repeated but rather carefully saying that the purpose of the new legislation was 'to try to stop' repetition of a situation where a UK citizen is remanded in custody in an EU Member State for a lengthy period before the sufficiency of evidence is judicially considered. These aspects, together with the significant impact of the establishment of the EPPO and its ability to make use of the EAW arrangement as outlined in the opinion will be matters which Parliament will almost certainly wish to take into account when determining whether to use the opt-out". That is the relevant bit. I am sorry I cannot give you the full—

The Chairman: No. I was told by my support that that was the right way to deal with it.

Jacob Rees-Mogg: Thank you very much.

The Chairman: Thank you. Does anybody have any questions for either of them before we go on to Lady Jay?

Lord Brown of Eaton-under-Heywood: Could we not have the whole opinion? What is wrong with that?

Jacob Rees-Mogg: I would be delighted to give you the whole opinion. If I give it to your Lordship, you then might be able to enter it yourself. I do not know.

The Chairman: It is published elsewhere. It can be circulated but it cannot be published evidence to us.

Jacob Rees-Mogg: In your formal minutes?

The Chairman: Yes.

Jacob Rees-Mogg: Yes.

The Chairman: By all means. We will get it copied.

Lord Henley: Lord Chairman, does that mean that we would be allowed to see it?

The Chairman: Yes, it does. Everybody will be allowed to see it. Does anybody have any questions for either of them before we go on to Lady Jay?

Q157 Lord Rowlands: Mr Rees-Mogg, first of all, the role of the EPPO is related strictly to the question of a fraud in European finances.

Jacob Rees-Mogg: At the moment.

Lord Rowlands: It is not a general prosecutor's office.

Jacob Rees-Mogg: At the moment.

Lord Rowlands: Yes, but that is the proposal.

Jacob Rees-Mogg: That is the proposal.

Q158 Baroness Jay of Paddington: First of all, thank you very much, both of you, for an extremely comprehensive outline of your positions. I think that has covered quite a few of the questions that we were intending to raise, although I am sure people will want to pursue the detail. Notwithstanding Mr Rees-Mogg's very important points about this being a fundamental constitutional issue, I wonder if we could just look at what you have described as the administrative potential of what would happen if we did opt out of the arrest warrant, because Baroness Ludford suggested that a way forward was to try to reform the arrest warrant. That is obviously a very practical path, but I think, Mr Rees-Mogg, you were simply saying that the only real practical alternative was to have individual

treaties with all of the individual states. Could I ask you both to develop the position? If we do opt out in December, what should we do next? What is the most sensible way forward? Mr Rees-Mogg, perhaps you could begin, simply because Baroness Ludford began last time.

Jacob Rees-Mogg: Certainly. No, I was saying that the most straightforward thing is to do a bilateral treaty with the European Union. This would then require additional treaties with Denmark and an opt-in by Ireland, and that is just to be pedantic about the situation.

Baroness Jay of Paddington: I understand that.

Jacob Rees-Mogg: I think that would be easier than individual bilateral treaties. In the interim, there are transitional measures. Protocol 36, Article 10(4) sets out, without any detail, what transition measures could be. There is some discussion as to their effectiveness and as to whether they would work in the transition to a new system rather than simply opting back in, but there is certainly a respectable opinion that this would apply in the transition to setting up a new system as well as to opting in. The Home Secretary said, in relation to the transition measures, that she did not believe there would be an operational gap in transition terms because, "The transitional powers are such that we would not have the operational gap". The Home Secretary—and this is evidence to the European Scrutiny Committee in October last year—was confident that the transition powers were quite wide and says as much. My solution would be to use the transition powers, although I would caveat that by saying that the Government could have got its act together earlier. We have had four plus years for this Government to have worked out how to do this and to say that we are all in a great panic because it is happening on 1 December seems to me to indicate a lack of competence rather than a need for people, like your Lordships, to be harried or cowed, although I am sure you will not be cowed into submission to anything. Governments that try to make things urgent that have only become urgent because of their own fault are not on very strong ground. I think we should use the transition mechanisms, and then overwhelmingly the preferred option is a bilateral treaty with the EU, bearing in mind that that would not then have to be subject to the CJEU. It could remain a matter for our courts as to its interpretation or we could—as Denmark does—allow the interpretation by the CJEU. But it would not be under the 1972 European Communities Act so it would not necessarily have automatic force of law in this country. It would be more like the recommendations of other international tribunals, so that ultimately the protection of extradition would be a matter for domestic politicians and judges.

Baroness Jay of Paddington: I understand the wish to preserve the standards of British justice, of course, but you talked in your opening statement about the potential uncertainty of some of the proposals that have been put forward. Surely what you are suggesting is extremely uncertain, in terms both of the extent of the transitional arrangements and indeed—probably more importantly—the reality of negotiating a single treaty with the Union.

Jacob Rees-Mogg: I think the single treaty ought to be relatively straightforward. Between 2009 and 2013 we asked back an average of 125 people a year and we were sending to Europe a huge multiple of that number. The EAW has worked to the benefit more of European nations than it has to the United Kingdom in terms of the raw numbers, so I think they have quite a strong interest in ensuring that there is some continuation of an agreement and, therefore, there is the ability for them to continue either with the transition mechanism or by agreeing a joint treaty. There is also the ability to fast-track EU legislation under the main justice

and home affairs section of the EU treaties, as was used in a different context by the previous Government, which wanted the UK to be bound by several EU directives in social and employment law before dedicated EU competence on this had been extended to the UK by treaty change. I am confident—on the basis that the EU also wants to have extradition with the UK, which I think is a fairly reasonable assumption—that it is possible, even with this tight timeframe, to keep arrangements in place that do not make life enormously easy for serious criminals after 1 December.

Q159 Lord Rowlands: Is it realistic to believe that the European Commission will negotiate with the United Kingdom a very different set of rules that change dramatically the arrangements they have among themselves through the European Arrest Warrant? How realistic is that?

Jacob Rees-Mogg: When becoming Commissioner, the new Commissioner said that he recognised that the UK had a particular relationship with the European Union and this had to be addressed, so I am taking him at his word. We have different arrangements with the EU on a whole host—

Lord Rowlands: But not at the expense of causing enormous problems with other Member States by creating an arrangement of the kind you are suggesting, so different from the one that prevails in the European Arrest Warrant.

Jacob Rees-Mogg: It is hard to see why this is such a problem for other Member States when the alternative is for us to pull out altogether. It is a lesser problem than the other one. We must not be too weak in understanding the strength of our own negotiating position: they want something from us as much as we want something from them. This should all have been done by now.

Lord Rowlands: It has not been done.

Jacob Rees-Mogg: No, indeed it has not, but I do not think we should allow the incompetence of the Government to allow us to take constitutional steps that we do not want to take; otherwise Governments can always get what they want by idleness.

Q160 The Chairman: Can I come in at this point and say that we are arguing slightly hypothetically, and I would like to ask each of you what evidence you have seen to support the approach. Mr Rees-Mogg is saying, "They are going to be terribly keen to negotiate with us", and I think, Lady Ludford, you told us earlier that you thought that this was really rather a sanguine view. What evidence—

Baroness Jay of Paddington: We have not had a response—because Mr Rees-Mogg has been so interesting on the first point—from Baroness Ludford about my original question.

Baroness Ludford: Thank you very much, Lady Jay. I do not believe that the Government has been negligent; I think the Government has been persuaded that the most effective and efficient form of extradition arrangements with the other 27 Member States is the European Arrest Warrant, which is why it is on the list of 35 that they are recommending to opt back in to so anything else is second-best. Why opt for something that is slower and more cumbersome and would require the legal capacity, which I doubt? I have no evidence that the EU is capable of negotiating such a treaty with one of its own Member States. I look forward to seeing such legal advice, but the discussions that I have had suggest that the wording in the Lisbon treaty suggests that the EU can only negotiate treaties with

non-Member States, not with one of its own Member States. I do not know where the idea comes from that the EU has such a legal capacity.

Then you have the question of the political will to do so. If the UK had just pulled out of the European Arrest Warrant, is everyone going to run around making it a priority to negotiate something where, I think, essentially—because that is the evidence with Norway and Iceland and because you have 27 who are practising the European Arrest Warrant—the content of any treaty is going to be pretty similar to the European Arrest Warrant?

Also, I do not understand the point—and I am open to legal rebuttal—that there would be no jurisdiction by the CJEU, because I would have thought that there was. We would still be a Member State even if we are not in the European Arrest Warrant, so the ability of the court to have judicial oversight of this, I would have thought, remained. By the way, I do not see the oversight of the European Court of Justice (ECJ) as some great bogey. After all, it is a protection in many ways, not only for individuals but also for Member States. That is why UK Governments have never been afraid of CJEU or ECJ jurisdiction in the single market, for instance. We see it as a way to make sure that other Member States live up to their obligations and, to be honest, I quite look forward to the court being able to address the question of excessive pre-trial detention in some other Member States. This could help solve some of the problems.

If I could pick up this point of whether we can hope for reform, my understanding is that the Home Secretary tried to persuade a group of other Member States, which is still possible, to agree to put forward a proposal and did not get sufficient interest. However, I think what we achieved in the European Parliament was a big majority across all the sensible political groups—including the group the British Conservatives belong to, the ECR—to support that report and we called on the European Commission to put forward a proposal for reform. If we could get the Council of Ministers and the European Parliament to have a sort of pincer movement on the Commission, I think other Member States would prefer a Commission proposal. There is a certain fear of a Pandora's Box and I think the UK Government has to be seen as committed to the European Arrest Warrant, not as a saboteur. I think once we have opted back in then we should try to work with the European Parliament and with partners in the Council to persuade the European Commission, and I think that some of the flanking measures will help.

To the extent that there remain problems that need fixing in the terms, the European Parliament has preferred what is called a "horizontal instrument" to address all the mutual recognition criminal measures: a proportionality measure, a human rights refusal and a consultation procedure. We have the consultation procedure and the human rights refusal, thanks to European Parliament negotiating clout, in the European Investigation Order, which is the EAW for evidence. I think there is quite a good basis for us working with sympathetic partners in the European Parliament and the Council, but that obviously is predicated upon our continued participation in the EAW. In a sense, I would not start from here to think of alternatives. Like the Government, I believe that anything other than the European Arrest Warrant—while it has flaws that need fixing—is second-best and more cumbersome.

If I may say so, I think there is a particular concern in Ireland. I have seen a reference by Naomi Long, the Alliance Party MP, to concern from both the Northern Ireland Justice Minister and the Irish Justice Minister about bringing back the politicisation that used to exist in extradition arrangements between the Republic and the UK. I think we should bear that in mind.

The Chairman: We are slipping timetable-wise, so I urge everyone to be concise. If I can try to help steer the debate, Mr Rees-Mogg, your principal objection, the main point that lies behind what you are arguing in the context of this particular proposal is essentially a constitutional point, is it not?

Jacob Rees-Mogg: Yes.

The Chairman: Lady Ludford, I think you are principally focusing on the operational implications in what you do now. Is that right?

Baroness Ludford: Yes. I think the European Arrest Warrant is a good instrument but its operation could be made better.

The Chairman: Yes, and, however good it was, you still would have very serious reservations about it because of the constitutional aspect.

Jacob Rees-Mogg: Because of the constitutional aspects, but on a practical level the different levels of justice across the European Union. It is not true to say that every Member State has the same standard of justice.

Q161 Lord Mackay of Drumadoon: Can I you ask this question that to some extent you may have answered: if the United Kingdom does not opt back in to the European Arrest Warrant, is there anything either of you wish to add to what you have already said as to the alternative extradition arrangements that might be introduced with a view to guarding against the United Kingdom becoming a safe haven for criminals?

Jacob Rees-Mogg: I would just reiterate that the best option would be a bilateral treaty using the transition arrangements. To stop us being a haven for criminals is a matter for our own domestic law, so that we can arrest and throw out of this country people that we choose to. We can set out domestic law to do that and, if necessary, pass emergency legislation to enforce it.

Lord Mackay of Drumadoon: Lady Ludford, is there anything you wish to add?

Baroness Ludford: I think I have said mainly that I think anything else is second class—

Lord Mackay of Drumadoon: It is not easy to answer the question.

Baroness Ludford: There is also the time issue of what happens on 1 December. We surely do not want, from any point of view, to be in a sort of legal vacuum.

Q162 Lord Jones: I will be brief. What is your response to the support expressed by senior police and law enforcement representatives for the EAW and their doubts about the practicality of any alternative arrangements for cross-border co-operation?

Baroness Ludford: I listen very closely to what they say; I listen with humility. They are experienced. We know we have an extremely serious challenge of major and organised crime. Some accounts of the threats that we face are hair-raising: various kinds of drug trafficking, human trafficking, smuggling, cybercrime and so on. We surely cannot afford to take a lax view of the law enforcement aspect.

As I have said, at the same time as listening to the law enforcement experts I listen to both sides, not least because of the interest I mentioned at the beginning and as a parliamentarian. Andrew Symeou is one of my constituents. His was a horrendous case and a shocking example of miscarriage of justice. But if the police come along and say, "Anything else is going to hamper our ability to get people into prison", then I listen very closely to them. We know that in the exercises,

particularly with Spain, Operation Captura and so on, we have had some spectacular successes in bringing people back. Hussain Osman, the would-be July 2005 bomber, is now serving 40 years in prison and he came back within days from Italy, whereas Rachid Ramda took 10 years to extradite to France. That is justice for victims as well as a result for law enforcement and it is important for all of us as citizens, so I believe they know what they are talking about.

Q163 The Chairman: Mr Rees-Mogg, what is your steer on this?

Jacob Rees-Mogg: They would, would they not? The police wanted 90 days' detention. The police always want more powers for the police. If I were a policeman I would want more powers for the police. Politicians want more powers for politicians, judges want more power for judges, and policemen want more powers for policemen. It is what you would expect them to say, and I would then question the proportionality. I have already said that between 2009 and 2013 on average 125 people were brought back into this country under the arrest warrant. That compares to an average of 400,000 indictable offences. So the argument that the arrest warrant is essential to the carrying on of British justice is simply not correct. The numbers do not support it.

The Chairman: Can you elaborate on how you get to that conclusion from the comment you made?

Jacob Rees-Mogg: So 125 arrest warrants have been used to bring wanted criminals back into this country, against 400,000 indicted offences on average in the same period.

The Chairman: In this country?

Jacob Rees-Mogg: In this country.

The Chairman: Surely the point about the 125 is these were the king villains.

Jacob Rees-Mogg: They happen to include the parents of a child who gets taken out of the country for medical treatment.

The Chairman: If I may say so, that was a mistake by the prosecuting authorities, which is accepted on all sides.

Jacob Rees-Mogg: What I would say is, even if you say these are the most important criminals in the country and there are more than 125, even then—and the number of murders are, what, about 800 in this country a year—the numbers are very small. We get told that the arrest warrant is essential to catch terrorists and paedophiles and murderers. We then discover, first of all, that it is used mistakenly to get back the parents of a five year-old child who is ill. So it is not used for terrorists, murderers, or paedophiles in that case. We have two or three examples that we are given over the six- or seven-year life of this arrest warrant. We are not given hundreds of examples. We are given one terrorist brought back from Italy, again and again. I am simply saying that the police are saying that this is convenient because they would, but the numbers do not back it up as being this key tool of law enforcement. It is a minor aid to law enforcement that could be replaced by other ones. But we should not get too carried away about how essential it is to the security of this nation. It is a minor convenience to the police and no more than that.

Q164 Lord Rowlands: Let us just take the Spanish cases. There were 63 cases of British criminals free in Spain for years and years. They were not romantic robbers; they were murderers, they were committing fraud, and they were

trafficking in drugs, besides the horrible case that the Home Secretary mentioned. It is not a question of efficiency, Mr Rees-Mogg. It is a question of justice.

Jacob Rees-Mogg: It is a question of very small numbers. This is not essential to the safety of the nation. We get told it is, but that is propaganda.

Lord Rowlands: It is essential to justice.

Jacob Rees-Mogg: Not necessarily, no.

Lord Rowlands: If I was a member of a family of someone who had been murdered by one of these criminals, and then watched them get away with it for years, I would consider that a matter of justice not efficiency.

Jacob Rees-Mogg: It is not essential to justice if it suspends habeas corpus. Habeas corpus is more essential to justice than getting back 63 people from Spain, and there are other ways of doing it as well.

Q165 Baroness Hamwee: On the 125 that you have obviously looked at, has somebody done a breakdown of the types of crime? I do not mean murder or drugs or sex trafficking or whatever, but so that they can be categorised as which might be organised crime.

Jacob Rees-Mogg: I have not, but I am sure the proponents of the arrest warrant would have come up with those figures if they were helpful.

Lord Brown of Eaton-under-Heywood: Has it occurred to you that there might be more than 125 if you did not have a system for bringing them back?

Jacob Rees-Mogg: I do not follow the question. If you do not have a system for bringing them back there would not be any.

Lord Brown of Eaton-under-Heywood: There would be more who are escaping justice by going abroad in order to escape trial in this country.

Jacob Rees-Mogg: I am in favour of having a system, I am just in favour of having a different system that is not coming under the competence of the European Union and, therefore, it remains a matter of UK law rather than—

Lord Brown of Eaton-under-Heywood: That is a separate point. Your real problem is not that there should not be a system, as there plainly should.

Jacob Rees-Mogg: There plainly should be a system.

Lord Brown of Eaton-under-Heywood: Exactly. So whether there are 125 or 500 is not your real point.

Jacob Rees-Mogg: No, I was—

Baroness Ludford: May I add a brief point to that, which is that the real point is your political constitution, is it not? We can argue until the cows come home about the different extent of the practicalities of it, but this is not really, from your perspective, a criminal justice issue.

Jacob Rees-Mogg: It is quite important because the answer needs to be given to the police. The police say, "This is absolutely essential". If the future of the nation were at stake there comes a point at which you say, "Realistically, we have to make compromises on the constitution". Pitt the Younger suspends habeas corpus because he believes the security of the nation is dependent upon it. We do much the same during the Second World War. There are circumstances under which you feel that the constitution has to be put second. But for 125 criminals a year I do not think that is the case. So there becomes a practical element within the

constitutional element. There must be a degree of proportionality, even for the starchiest constitutionalist.

Baroness Ludford: There are also the criminals that we ship out. We surely do not want them to stay here if we have more difficult extradition arrangements. I do not have the figures of the European Arrest Warrants that we execute in this country. I cannot remember them off the top of my head. If I may say so, the ultimate logic of Mr Rees-Mogg's approach seems to be that we do not really mind too much whether we have extradition at all, either incoming or outgoing. It has long been recognised in legal and public policy in this country, even under international law arrangements, that there is an interest in bringing criminals to justice across borders. I find an attitude that says that constitutional objections override the interests of justice rather odd and I do not agree on habeas corpus. Abuse of process arguments are still available to our courts and I would have thought habeas corpus was also still available. For instance, we have legislated in this country in the 2003 Extradition Act originally to have Section 22, which allows a court to refuse surrender if it would breach Convention rights, so I do not understand that habeas corpus point. I am all in favour, which is why the report we did for the European Parliament said that we should generalise that ability, hopefully as a last resort, to refuse extradition on grounds of human rights breaches. Do not let us pretend that the Emperor has clothes if the Emperor in a particular case does not have any clothes.

The Chairman: Lady Hamwee, do you have anything else you would like to ask?

Baroness Hamwee: I think probably the questions about the impact on the criminal justice system, prison population, legal aid and so on may be implicit in the answers that we have already had.

Q166 Lord Hussain: The figures demonstrate that since 2009 only 4% of the surrenders from the UK in response to EAW requests have been British nationals. What impact does the EAW have on British citizens?

Baroness Ludford: If they are genuinely wanted criminals, a European Arrest Warrant is the appropriate instrument because it is for the purposes of prosecution, which is very important under the European Arrest Warrant, although of course there are differences between common law and civil law jurisdictions about the point at which you charge or try to charge. Amendments have been made to UK law recently and it is going to be interesting to see how that pans out in terms of finding out about when a charge and a trial are imminent. But certainly in the work we did in the European Parliament we were very keen that it should be ascertained that a case is trial-ready before someone is extradited under the European Arrest Warrant. If it is still at an investigation stage then you should use other instruments: a witness summons, video conferencing, telephone conferencing and so on. But if someone is a wanted criminal genuinely for trial then they should face justice, whether they are British or another nationality. Of course if they are non-British nationals then it is quite right that we should co-operate with the countries in which they are wanted.

In the 15 years that I have been an MEP, I have worked all the time—and very laudable work has been done, particularly by some NGOs and academics, whose work I follow with interest—to make sure that the rights of the defence are not overruled. That is why in all the work that has been done in the EU on the procedural rights measures, which I mentioned earlier, there was an attempt made in the mid-2000s to have a comprehensive procedural rights instrument. I think that did not get support in London. So, to cut a long story short, a new attempt

was made after 2009 to have a piece by piece set of instruments. This is the attempt to make sure that, in every Member State of the EU, the fundamentals of a proper defence are in place.

I agree that there are problems in some Member States, which is particularly why I want the UK—which on the whole has an extremely well regarded justice and law enforcement system—to take leadership in this area, because we will not be able to defend the rights of British citizens, as well as make sure that they are properly brought to trial, if we are not fully participating and engaging on this question. Our voice is potentially a very effective and well respected one. But if we are just on the sidelines then we cannot be as effective in ensuring British citizens get justice, both as victims and as the public, and that criminals are brought to justice, if we do not fully participate.

The Chairman: Mr Rees-Mogg, do you have any response to Lord Hussain?

Jacob Rees-Mogg: It is 217 people, but I think Britons who commit crimes may reasonably be extradited—I would not try to stop that—but it should be just. I think we provide better justice for them not by trying to rearrange the European furniture for arrest warrants but by protections under our own domestic law. The Andrew Symeou case is tremendously important—

The Chairman: That was the well-known miscarriage of justice?

Jacob Rees-Mogg: That is right, where he was held in prison for two years. But the thing is the Greeks would have said when they asked for him they were trial-ready. He said this himself in evidence he gave to a House of Commons Select Committee. So there are already failures to protect people, and the protections brought in as the amendment to the 2003 Extradition Act will not necessarily—and even the Government admits this—be effective after 1 December when they are justiciable in front of the CJEU. So I am not particularly worried about the 4% being British because I think that if we have dangerous criminals in here and a just process I am not against them being extradited, but I think it is tremendously important that we protect them under domestic law.

The Chairman: You are telling us that the EAW system is an unjust process, is that right?

Jacob Rees-Mogg: I think it can be unjust, yes. I think the protections we put in may turn out to have remarkably little effect because they are under UK domestic law and this is an EU competence from 1 December.

Q167 Lord Brown of Eaton-under-Heywood: Of course I understand your constitutional objection—a root and branch objection—to the whole furniture, as you put it. Although I do not necessarily agree with you, I understand your objection to the European Court of Justice taking jurisdiction in these matters. Assuming that you are reconciled to having a system for extradition, can you see other or different improvements to it from those that were identified by Baroness Ludford in the report, where she was the rapporteur, made to the European Commission on the whole future of this?

Jacob Rees-Mogg: I think the improvements that we have brought in to British domestic law are very sensible, although one might push them a little bit further and strengthen them a bit. But unfortunately they do not stand after 1 December, or they may stand. It becomes a matter of speculation whether they stand or not. That is why I think it would be better to continue with a bilateral system where the ultimate protections are our own and then, crucially, if we find something that

goes wrong, it is within the ability of the British political system to put it right in future, not a matter for these endless negotiations.

It is important in this context because I think this Committee was given evidence by Jacqueline Minor. In her evidence she said that from the Commission's point of view it is appropriate at present not to reopen the legal measure but to seek to make it more effective by flanking and complementary measures, including the rules on procedural law but also including non-legislative action. So there does not seem to be a great willingness to make fundamental improvements within the European Union to it. We all know that the reason for that is that it is much harder to make changes in the European Union than it is in domestic law.

Lord Brown of Eaton-under-Heywood: Given that, why are they going to crumble in the course of a bilateral agreement with us? Why would they do that if they are not prepared to deal with the scheme overall?

Jacob Rees-Mogg: Lord Inglewood asked for evidence. The evidence I would give is that the Prime Minister when threatening to wield a veto managed to get the EU to cut its budget. When you are in a position of refusing to do something, the European Union is a sensible negotiating body.

The Chairman: Does that work the other way around?

Jacob Rees-Mogg: They want to have an extradition agreement with us just as much as, if not more than, we want one with them. We sent them many, many more people than we get back. So it is hugely for the overall advantage of the other Member States to have some arrangement with us.

Baroness Ludford: I do not understand this point about the EU having—I am not persuaded of it—the legal capacity to make a treaty with one of its own Member States. Even if that was true I do not understand that you would escape the jurisdiction of the European Court, the CJEU, because it would be an EU treaty and you would have 27 Member States. So this idea that only British courts would be able to exercise judicial supervision of a system in which you have the EU and one of its own Member States, I do not understand that at all. You would end up with the same substantive bundle but with fewer rights because you are not a full member of the European Arrest Warrant itself, so I think moving the boundaries like that is not effective.

On reform, one of my regrets of not being in the European Parliament recently was not being able to press the candidate for Justice Commissioner on this point, but questions were put to her. If I may say so, Claude Moraes—the British Labour MEP who is the chairman of the justice and home affairs committee, the LIBE Committee—I think shares this interest in reforming the European Arrest Warrant, so I hope and believe there will be a continuing interest in the European Parliament in pursuing this. If we can persuade the Council to put pressure on the Commission, it is not unknown for the Commission to react to political pressure to produce a proposal for a legislative measure. But then if that does not happen there is the possibility that you could get a quarter of Member States to agree that. Although it did not succeed when the Home Secretary tried, perhaps it would be a more formal attempt. So I am not discouraged by the idea of getting a reform, and I think it is better to have a uniform reform so that every Member State is doing a proportionality check and the issuing state has mandatory refusal on human rights grounds and so on. I am not opposing that measures be taken in this country, but I think it could be far better and less obviously open to challenge if it was enshrined in the EU legal instrument itself.

Jacob Rees-Mogg: As to the point on the jurisdiction of the CJEU on a bilateral treaty, like any other international treaty, that would have the dispute resolution mechanism set out in the treaty. So it could be the CJEU or EU or it could be any other body. But the judgment that came forth would be like the judgment of the European Court of Human Rights, one that a British Parliament may then wish to enact, may usually enact, but would not have the force of law as judgments of the CJEU do when they are under the European treaties brought into British law through the 1972 European Communities Act. So that is why it would be fundamentally different and would remain a political decision of the United Kingdom rather than a full European competency.

Q168 Lord Henley: I was going to come on to numbers, because I think numbers are quite relevant in terms of what Mr Rees-Mogg was saying about possibly renegotiating and trying to find a new solution. You talked about 125 over a certain period coming back here. I think you then said a very much larger number were going out and, therefore, it was in their interests. But we do not have a figure for that other than the one you mentioned—but again I do not know if it is over the same period—217.

Jacob Rees-Mogg: It is 217 from 2009 to date, so that is not the same.

Lord Henley: So it is not the same period. But your 125 I presume is over—

Jacob Rees-Mogg: It is 2009 to 2013.

Lord Henley: So over a number of years, but a much larger number going back, presumably foreign nationals. We heard evidence earlier on that an awful lot are from Poland, presumably a great many of them for relatively minor offences. I do not know whether you want to comment on that as to whether there are appropriate safeguards for them. But I would be quite interested to know what the numbers are, and whether you have any evidence or whether you can provide any for the Committee at a later date.

Jacob Rees-Mogg: I can provide the figures because they have been provided by the Home Office. They include some wonderfully minor things. Somebody was deported back to Poland for being drunk in charge of a bicycle. Those are now subject to the safeguards in UK law, but it is not known whether those safeguards will be applied by the Court of Justice of the European Union after 1 December if we opt back in. That will then be a matter for the Polish authority issuing an arrest warrant for a minor offence, us then not implementing it, taking us to the European Court and finding out what happens.

Lord Henley: Would that then apply the different safeguards in Poland or Slovenia or Slovakia or wherever?

Jacob Rees-Mogg: I imagine the safeguards would be applied uniformly across the European Union. It is worth saying that I had a Parliamentary Answer on this from the Home Secretary, or from the Home Office, which simply said that it would only be the most minor of offences that would be protected by the safeguards. So I think we could still expect a fair number of pretty trivial offences to be covered.

Lord Henley: Down as low as drunk in charge of a bicycle?

Jacob Rees-Mogg: I suppose they would hope to get rid of the ones that were so absurd that it allowed people like me to use them as a means of attacking the system. But I am not sure they would go much higher than that.

Q169 The Chairman: Do you expect the CJEU to rule that our domestic arrangements are in fact in breach if, given that, we would opt back with them in place?

Jacob Rees-Mogg: It is very hard for me to speculate on what the CJEU will do, but you have to bear in mind that it would require them to rule that an arrest warrant issued by a legitimate authority—being another Member State—was invalid. It is not as simple to say that they would be attacking the UK. Their decision one way or another would be attacking one Member State. The general push of the CJEU is to create an ever closer union and that underpins a lot of their work and it is in the treaty, so why would it not? I think if they thought the arrest warrant met the strict terms of the treaties or regulations they would expect it to be implemented.

Q170 Lord Rowlands: As we understand it, since 2009–10 there have been 1,205 requests for them to do that, and it has been averaging at about 240 to 250 a year. Those are the actual figures.

Baroness Ludford: I think we have extradited around about 1,000 a year. The figures I have here are that we surrendered 922 in 2011–12 and 1,173 in the previous year. There has already been a drop in the issue of requests from Poland. A year ago in the European Parliament we heard from a senior Polish official about the changes they were making, through soft law measures, training judges and so on. They have a very decentralised system and they do not have such well-trained extradition courts as we do. They also have—and my head has gone blank about the term—no discretion in their legal system about the issue. If they can issue a domestic warrant they have to issue a European Arrest Warrant. So they are making changes and I think they have changed the penal code to have a proportionality check. It has to be in the interests of justice to issue a European Arrest Warrant, so it is already coming through in the figures. They have been very sensitive to the criticisms. Although every country feels that its own domestic law is okay, as I say, they have made both these administrative changes and these legislative changes, which should see a considerable drop in the requests from Poland. Notwithstanding that, the European Parliament still thinks that you should have enshrined in EU law this necessary proportionality check in the issuing state, as you now have in a European Investigation Order. That should be generalised across all mutual recognition instruments, notably the European Arrest Warrant.

Lord Rowlands: You listed a series of changes needed in your report. There is not a chance that any of them are going to be in place before the Houses of Parliament have to make a decision to opt in or stay out.

Baroness Ludford: No.

Lord Rowlands: On the presently unreformed European Arrest Warrant, would you vote that we opt in, even to this arrest warrant?

Baroness Ludford: Definitely, and then work hard with the good persuasive powers I believe we have in the justice and home affairs team—

Lord Rowlands: Despite all the problems you identify in your—

Baroness Ludford: Yes, because I think the glass is three-quarters full and we can improve on things. I am absolutely clear-eyed about the problems there have been and scandalised that there have been miscarriages of justice, which is why I have wanted to work in this area, both as a constituency MEP and as a

parliamentarian and legislator more generally. I have listened, as I say, extensively to the experts, both the lawyers and the police.

Lord Rowlands: It is non-reformable?

Jacob Rees-Mogg: Even if it were reformable, a year ago the Home Secretary could not get a quarter of Member States to act together to put forward reforms. You have had evidence to this very Committee saying that the European Commission is not looking to make these reforms. So I think it is deeply speculative to think that those reforms will come through in any reasonable timeframe.

Q171 The Chairman: I think one of the characteristics of the debate we have had is there has been a fair amount of speculation in all kinds of directions. I think the time has come when we ought to draw the proceedings to an end. Is there anything either of you would like to say in conclusion? I would just like to ask Mr Rees-Mogg: as I understand it, the thrust of the argument you have given is that the European Union is a constitutional abomination that this country should have no part of. The *Daily Telegraph* in its leader on 30 October argued that you should get out of the European Union and, in the meantime, you should remain in the arrest warrant because that is the practical way of ensuring that we have some sort of system to deal with these matters in the interim. Have you any comments about that?

Jacob Rees-Mogg: First of all, that is not my position. I think that the European Union is a body of which we could remain a member. I think the Prime Minister's proposals for renegotiation are perfectly respectable. I do not think we should have changed the structures pre-Lisbon relating to justice and home affairs to maintain both unanimity and them being essentially intergovernmental, because I think justice and home affairs are fundamentally about the creation of a state in a different way from your trade arrangements. So I have a particular constitutional objection to the arrest warrant but I do not happen to agree with the *Telegraph* on this occasion, wise and learned journal that it is. Our relationship with the European Union is salvageable, though that may be difficult. But it makes absolutely no sense to say, "We want to get powers back. We want to reform our relationship with the European Union, but in the meantime we are going to give you something of fundamental importance and that is how our citizens can be arrested".

Baroness Ludford: I would add that often the example of Norway is mentioned. Norway is popularly known in the trade as "the fax democracy" because they take their instructions by fax from Brussels. They have no say in how EU law develops, no Members in the European Parliament and no representation in the Council or the Parliament. As far as I can understand this idea, which I come back to—and which I do not believe could happen legally—if the EU was to negotiate a treaty with one of its own members presumably then we would just be passive recipients of whatever the other Member States decided to do in the future with the European Arrest Warrant. As I contend, I suspect that that treaty—if it could exist, theoretically—would essentially contain the elements of the European Arrest Warrant but we would simply be passive recipients of that. I do not think that is a position that the UK should be in and would want to be in with our heritage and our experience. Remember that next year is the 800th anniversary of Magna Carta. We are looked up to, we are respected in this area, and I do not think that for us to just passively accept what the other Member States decided in a treaty, or in changing the European Arrest Warrant and then changing this treaty, is either a

functional or a respectable position for the UK to be in. We would be worse off than we are at the moment, where at least we have some hope of changing the European Arrest Warrant in the future.

Jacob Rees-Mogg: I think Lady Ludford is objecting to a proposal that nobody has made.

Baroness Ludford: Parliament has suggested it.

Jacob Rees-Mogg: But not from the British point of view—

The Chairman: We are not arguing this morning about a proposal that nobody has made, so perhaps this is the moment to draw to a conclusion and say thank you to both of you. I suspect that, if on nothing else, you can agree with the advice the Queen gave to the Scottish people: those who are taking these decisions should think carefully about it.