

Timothy Kirkhope: The UK's Home Affairs opt-out was the correct choice, but carping about it will endanger British lives

Writing for PoliticsHome, Timothy Kirkhope MEP backs the decision for the UK to opt out of European Justice and Home Affairs legislation, but he warns it would be “naive at best” to believe this will solve all the UK’s legal and immigration issues.

The decision has been made: the UK will be opting out. Whilst I believe it to be the right choice, the real challenge is what we do next.

The way in which the last Labour government negotiated the Lisbon Treaty meant the UK had to decide whether or not it wanted to opt into the entire Justice and Home Affairs area of the European Union or into nothing at all. The UK will no longer be able to choose to adopt EU laws in these areas on a one-by-one basis. By opting out we will no longer be able to use the agencies, shared databases, funding and instruments in law enforcement created by the EU. Instead the UK will have to make bilateral arrangements with each European Member State.

The UK was presented with little choice as to which path to take - by opting into the EU JHA area the UK would have to adopt a common European asylum and immigration area, and sign up to the future possibility of a common criminal justice system, and a European Public Prosecutor which would be controlled by the European Court of Justice. Accepting the authority of the European Courts would be incompatible with the UK's Common law system and legal traditions which have been developed over hundreds of years. We simply do not have a legal system which is based on the Napoleonic and Romanic codes, like the rest of Europe.

However, expecting this decision to be the end of the story, and believing it to be a silver bullet for all the UK's legal and immigration problems is naive at best. We cannot sign up to the full body of EU law, but the signals we send to our European partners in exercising our opt-out will be crucial if we wish to have the luxury of cherry-picking our way back into those areas that are to our benefit; and there are a number. Quite frankly, we need some of these measures to ensure our safety, and if we alien-

ate other European leaders by using this opt-out as an opportunity to brow beat, then we will only be betraying our country's best interests.

Let us not be in any doubt that our two-way cooperation with our European allies has been - and will continue to be - imperative to protecting our country, apprehending serious criminals, and managing migratory flows on our doorstep. Likewise, it is important to point out that the intelligence and cooperation of the UK in this area is equally vitally important for other EU Member States.

Of course, these more positive elements of cooperation are not ones you will read about in most newspapers, and you will rarely hear them in a debate in the House of Commons. But they are incalculable. We will be able to find a great deal of common ground with other countries if we exercise this opt-out in a calm and reasonable manner both in Brussels, and for our domestic audience. However, in my experience of European politics, the one thing that stirs up resistance against a country is when it grandstands in front of its domestic audience and then comes cap in hand to Brussels trying to act as though there is a media blackout around the rest of Europe.

If the UK doesn't attempt to create an atmosphere of willing and good cooperation, the door could very easily be shut in our face, and so the shared data, cooperation in apprehending criminals, and coordinated efforts to control immigration pressures, will all stop overnight. At present the Director of Europol is British, the Chairman of Eurojust is British. In many pieces of legislation the standard template is based on the British standard. The influence we have, the positions we hold in areas of great interest to us could all end. But if presented in the right way, 2014 could present itself as a very real opportunity to positively redefine the UK's relationship with the European Union, and to create for ourselves a central role as a key player in future developments and negotiations in order to instigate reforms which are still needed. We can achieve nothing watching powerless, and voteless sitting in the wings of decision making.

Take the European Arrest Warrant (EAW) as one example which is often raised in the media. Yes, there are cases where the EAW has not been used for the original intention of catching serious organised criminals and terrorists. That is why a proportion-

ality clause is needed. The UK is one of the biggest recipients of EAW requests in the EU and it is true that some of these cases are comparatively menial - such as someone not paying for petrol. There have also been too many cases where it appears injustices are being done. By the way, such injustices are not exclusive to EU extradition procedures.

However, we also make use of the EAWs for major criminals and terrorists ourselves. You may not hear about them on a daily basis because of security restrictions but I doubt any Home Secretary could honestly say that these warrants have not been critical in bringing to justice people who mean major harm to our country.

I believe we would need to opt back in to the EAW. However, we should also use the opportunity as a means of negotiating reforms that address justified concerns. Let's leverage the fact that the UK is the recipient of 4,000 requests every year from other Member States, to push for reform. I believe this is possible if we adopt the right tone and build alliances. If we carp, we will be presented with three options by other European leaders: take it, leave it, or forget about it. None of these options would serve our interests.

The European Arrest Warrant is just one of any number of data sharing agreements in place that our government relies upon to control who enters our country and to track terrorists through their financial movements and their flights. This is further complimented by the Visa information System, parts of the Schengen Information System, the European Criminal Records Information System, and EUROPOL.

The loss of these systems will not only lead to a blackout of data on which many of our domestic security systems rely, it will also require us to set up new systems and mechanisms to replace those that we have lost. The costs have yet to be identified but discussions that I have had suggest that even to replace one system - the Schengen Information System - would cost several hundred million Pounds. Surely we have enough priorities for taxpayers' money in these hard-pressed times

Beyond catching criminals the European Union does much to protect British citizens. The EU has created a set of rights for European citizens, which protects them across the Union if they are ever accused of a criminal offence. This provides for a letter of rights, the right to translation and interpretation, and access to legal representation

and consular protection. We hear a great deal in the press about people from other Member States who commit crimes in the UK, yet there is little reflection upon the fact that 2, 000 British citizens are arrested in Spain every year, and who without such legislation and protections may struggle to get a fair trial.

David Cameron was right to announce that the UK will opt out in 2014. What is important now is that he deals with this in the right way. As politicians we should stand up and say that we need Europe too, and instead of sidelining ourselves from the big negotiations, and diminishing our influence and power in order to gain cheap domestic political points, we should be working hard to guarantee reforms, better value for money, and to fight crime and illegal immigration.

We need to make this decision with humility both at home and overseas, recognising that the UK sees enormous added value in cooperating, and stating without a hint of arrogance that we also add value to the EU's common initiatives by our participation. Officials in the European Commission and across EU governments have televisions, Google alerts and newspapers. They will see how we present this opt-out back home and if they feel we are doing our utmost to be defiant then they will simply close the door to our officials and Ministers. We will all suffer as a consequence.

Timothy Kirkhope MEP is the Conservative spokesman on Justice and Home Affairs in the European Parliament. He was a Home Office Minister in the Major Government.