

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

European Committee B

EUROJUST

Monday 14 January 2019

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The Committee consisted of the following Members:

Chair: JOAN RYAN

† Dakin, Nic (*Scunthorpe*) (Lab)
Davies, Geraint (*Swansea West*) (Lab/Co-op)
† Green, Chris (*Bolton West*) (Con)
† Hair, Kirstene (*Angus*) (Con)
† Hopkins, Kelvin (*Luton North*) (Ind)
† Hurd, Mr Nick (*Minister for Policing and the Fire Service*)
† Lewer, Andrew (*Northampton South*) (Con)
† McDonald, Stuart C. (*Cumbernauld, Kilsyth and Kirkintilloch East*) (SNP)

† Masterton, Paul (*East Renfrewshire*) (Con)
† Maynard, Paul (*Lord Commissioner of Her Majesty's Treasury*)
† Smith, Eleanor (*Wolverhampton South West*) (Lab)
† Thomas-Symonds, Nick (*Torfaen*) (Lab)
† Tomlinson, Michael (*Mid Dorset and North Poole*) (Con)

Jeanne Delebarre, *Committee Clerk*

† **attended the Committee**

European Committee B

Monday 14 January 2019

[JOAN RYAN *in the Chair*]

Eurojust

4.30 pm

The Chair: I will briefly outline the procedure. First, a member of the European Scrutiny Committee may make a five-minute statement about that Committee's decision to refer the document for debate. The Minister will then make a statement for no more than 10 minutes; questions to the Minister will follow. The total time allowed for the Minister's statement and the subsequent question and answer session is up to one hour. Once the questions have ended, the Minister will move the motion and debate will take place. We must conclude our proceedings by 7 pm.

I call Kelvin Hopkins to make a brief explanatory statement on behalf of the European Scrutiny Committee.

4.31 pm

Kelvin Hopkins (Luton North) (Ind): It is a pleasure to serve under your chairpersonship this afternoon, Ms Ryan.

Eurojust is an EU agency based in The Hague that provides practical support for member states that are investigating or prosecuting crimes with an international dimension. The UK has participated in Eurojust since its creation in 2002.

In 2014, the Government opted out of a number of EU police and criminal justice measures, but decided that the UK should remain part of Eurojust, stating:

"The complex nature of cross-border cases can involve obstacles (including differing legal and procedural systems and languages) but Eurojust provides the facilities, language skills, legal expertise and goodwill required for effective cross-border cooperation. Eurojust also provides expertise and support to law enforcement agencies and prosecutors wishing to set up JITs"—

joint investigation teams. They therefore concluded that bilateral co-operation outside the Eurojust framework would be more costly, time-consuming and inefficient in complex cross-border cases.

Despite that positive assessment of Eurojust, the coalition Government decided not to opt into the European Commission's proposal for a new Eurojust regulation in 2013. They feared that proposed changes to the powers given to Eurojust national members, seconded by member states, would cut across the separation of powers between the police and prosecuting authorities—a fundamental feature of the UK's criminal justice system. They were also concerned that provisions on co-operation between Eurojust and the proposed European public prosecutor's office might undermine their decision not to take part in the EPPO.

The Government made it clear, however, that they would review UK participation in Eurojust once negotiations had concluded. A motion agreed to by the House in October 2013 stated that the UK should not opt into the proposed Eurojust regulation, but

"conduct a thorough review of the final agreed text to inform active consideration of opting into the Eurojust Regulation, post adoption, in consultation with Parliament".—[*Official Report*, 29 October 2013; Vol. 569, c. 892.]

Following five years of negotiation, the new Eurojust regulation was adopted last November. The Government consider that the concerns that prevented the UK from opting into the Eurojust proposal in 2013 have been addressed; they now wish to opt in, even though the regulation will apply only from 12 December 2019. Given the imminence of the UK's exit from the EU and continued uncertainty about the terms of the UK's withdrawal, as well as the risk that the UK might leave without a deal, the European Scrutiny Committee considers that the House should have the opportunity to question the Minister on the Government's reasons for recommending that the UK opt in at this late stage in the Brexit process.

The report agreed by the European Scrutiny Committee in December raises several questions. Can the Minister tell us whether the Government's assessment of the operational value of Eurojust has changed since they published a detailed impact assessment on police and criminal justice measures in 2014? What views have the UK law enforcement and prosecution authorities expressed about the Government's opt-in recommendation? Will the UK be at risk of ejection from Eurojust if it does not opt in? What impact would that have on cross-border operational capability to investigate and prosecute serious crime?

While opting in would secure the UK's participation in Eurojust during a post-exit transition or implementation period, what type of relationship do the Government envisage with Eurojust after transition or in the event of a no-deal exit? How would operational co-operation on standard third country terms compare with the UK's current level of co-operation with Eurojust? What assessment have the Government made of the impact on cross-border investigations and prosecutions?

I look forward to hearing the Minister's response and to an informed and lively debate.

4.35 pm

The Minister for Policing and the Fire Service (Mr Nick Hurd): It is a great pleasure to serve under your chairmanship, Ms Ryan, and I welcome the opportunity to debate this issue, despite competing attractions in the main Chamber. I will do my best in my opening remarks to try to address the specific issues raised by the hon. Member for Luton North.

As the hon. Gentleman said, Eurojust is the EU agency for judicial co-operation. It enables member states to do that—co-operate—by co-ordinating investigations and prosecutions in specific cases, encouraging the agreement of a unified approach to tackling criminal prosecutions, including decisions on where to prosecute and, where appropriate, supporting the establishment of joint investigation teams.

I can confirm that the UK continues to value the role of Eurojust in helping law enforcement and prosecution agencies to co-ordinate investigations into cross-border organised crime and terrorism, and is an active contributor to the work that Eurojust undertakes to tackle transnational crime that affects all EU citizens.

To give the Committee some flavour of our participation in Eurojust, in 2017 UK support was requested 290 times—the second highest number of requests to a state after Germany—and the UK desk requested support from other EU member states 82 times. We are a very active participant in this co-operation platform and agency, and we value it highly.

We are a member of the agency by virtue of the 2009 Council decision establishing Eurojust. The coalition Government decided to opt back into the 2009 Council decision as part of the Protocol 36 decision in 2014. The Commission brought forward a proposal to replace the existing Council decision with a new Eurojust regulation in 2013. At that time, the Government decided—as the hon. Gentleman made clear—not to opt in pre-adoption, due to concerns about the original proposed text, but they also indicated that they would consider opting in post-adoption if those concerns could be met during negotiations.

The original text of the regulation retained Eurojust's key roles and functions but included new provisions about which the UK Government had significant concerns. First, it made granting certain powers to direct operational activity mandatory for all national members, which removed the discretion available in the existing legislation to not apply certain powers where to do so would conflict with fundamental aspects of a member state's criminal justice system. For example, the proposals included the power to order investigative measures and the ability to issue or execute mutual legal assistance or mutual recognition requests, such as a European arrest warrant.

Secondly, there were many operational, management and administrative links with the parallel proposal to create a European public prosecutor's office, or EPPO. There was no clear articulation of the effect on member states that will not or cannot participate in the EPPO. The UK was concerned that some elements of this proposal could undermine the discretion of non-participating states to decide how they chose to work with the proposed new body. Thirdly, the requests and decisions of Eurojust acting collectively as a college would be binding on member states' law enforcement and prosecution agencies.

These concerns were shared with several other member states. The UK Government were active participants in the negotiation process and we are now satisfied that our concerns have been addressed in the final text and that the regulation in its adopted form is acceptable to the UK. Specifically, the regulation addresses the concerns of the UK and other member states about the powers of national members, by stating that national members can only act to the extent they are competent to do so under their national law. Furthermore, Eurojust cannot order that member states begin investigations.

Additionally, the regulation provides the desired clarity about the relationship between Eurojust and the EPPO, providing—as we see it—a clear separation of functions between the two institutions. We are satisfied that the EPPO will not be funded by UK Eurojust contributions, and that the work of the two institutions will not become interdependent. That is reinforced by the EPPO being based in Luxembourg while Eurojust remains in The Hague.

Given that our concerns have been sufficiently addressed, the UK Government believe that it is right that we opt into the Eurojust regulation. To be clear, if we decided

not to opt into the regulation, we believe that we would be unable to participate in Eurojust. We believe that it would be impossible for the EU to have an agency set up under two sets of rules—voting rules, funding mechanisms and so on—one for the UK under old legislation, and one for other member states under the new regulation.

We therefore believe that the UK would be unable to participate in Eurojust during the proposed implementation period if we do not opt in. As I have said, the UK values the role of Eurojust. Not opting in would jeopardise current investigations that the UK is involved in and mean reverting to time-consuming and expensive processes of judicial co-operation through bilateral channels.

Furthermore, the decision over whether to opt into the Eurojust regulation must be seen against the backdrop of EU exit. Although the UK will leave the EU on 29 March 2019, until exit negotiations are concluded, the UK remains a full member of the European Union. The Government will therefore continue to implement and apply EU legislation until that date, and beyond into any implementation period, including considering the operational, political and legal benefits of opting into new EU legislation.

That approach aligns with the UK's unconditional commitment to European security in the future. The Government are clear that in any scenario, effective co-operation with EU member states on security and policing will continue to be a top UK priority. In a modern, interconnected world, crime is increasingly international and does not respect borders. After the UK exits the EU, it is a priority for the UK both to preserve the capabilities currently offered by Eurojust and to maintain our current level of contribution to the agency.

Opting into the Eurojust regulation will ensure that we continue to work in line with our European partners in the lead-up to exit day and into the planned implementation period. If we do not opt in, we would drop out of Eurojust, and we judge that negotiating a new model of co-operation as outsiders trying to gain access would be significantly more difficult than remaining active members of Eurojust. It puts the UK in the strongest possible position for beginning negotiations, and positively signals our intention to continue practical law enforcement co-operation with EU partners after we leave.

In conclusion, it is the Government's view that opting into the regulation is the right thing to do. The regulation as it stands means that remaining in Eurojust continues to be in the national interest while we are still in the EU. In the implementation period, it will bolster our negotiating position for the future security partnership, and will help to support a smooth transition as we leave the European Union.

The Chair: We now have until 5.35 pm for questions to the Minister. I remind Members that questions should be brief. It is open to a Member, subject to my discretion, to ask related supplementary questions.

Nick Thomas-Symonds (Torfaen) (Lab): It is a pleasure to serve under you as Chair, Ms Ryan. With your leave, I will ask the Minister a number of questions. First, I thank members of the European Scrutiny Committee

[Nick Thomas-Symonds]

for their observations, the hon. Member for Luton North for opening the debate, and the Minister for not only his remarks today but the letter dated 11 January, which talks about the interrelationship between this opt-in decision and the withdrawal agreement as it stands.

I agree with the Minister that it is very important to send a signal that Britain is determined to maintain a very strong, mutually beneficial security relationship with the EU27 whatever the outcome of the next few weeks. I would like the Minister to deal with three matters specifically. Paragraph 88 of the political declaration states:

“The Parties recognise the value in facilitating operational cooperation between the United Kingdom’s and Members States’ law enforcement and judicial authorities, and will therefore work together to identify the terms for the United Kingdom’s cooperation via Europol and Eurojust.”

First, can the Minister confirm the progress that has been made on that? What planning has been put in place for our position in Eurojust beyond the transition period? Secondly, more specifically, can the Minister identify the model of co-operation for the UK’s participation in Eurojust that the Government are seeking to emulate? The EU’s chief negotiator, Michel Barnier, has made it clear that the UK would be a third country in such circumstances. How exactly do the Government intend to reconcile that with participation?

To give a specific example, an executive committee is created in the measure. Do the Government want to maintain full voting rights on that committee? Do they want observer status? Do they want to be on the committee without voting rights? It would be good if the Minister gave some sense of what the Government are looking to do about those kinds of practical questions, even if he cannot specifically answer them at this stage.

Finally, Eurojust, Europol, the European arrest warrant and data collaboration all form the ecosystem—or the tools, to change the metaphor slightly—of the security apparatus available to us, yet neither the Schengen information system, SIS II, nor the European criminal records information system even appear in the political declaration. Can the Minister set out the Government’s plans to streamline the process by which data can continue to be exchanged in a secure and expedient manner for the safety of people here and in the EU27?

Stuart C. McDonald (Cumbernauld, Kilsyth and Kirkintilloch East) (SNP): It is a pleasure to serve under your chairmanship, Ms Ryan. I, too, 100% welcome the Government’s decision to opt into Eurojust, but I have a couple of quick questions. The first is a simple, practical one: has the Minister had any indication about when we might expect a decision from the European Commission? In particular, will it be before or after the proposed Brexit date?

My second question might seem like a bit of a lawyer’s question, but it arises from what the European Scrutiny Committee has said, if I understand it correctly—forgive me if I have not. In its report, the Committee posed a question about whether the terms of the withdrawal agreement would prevent the UK from opting in, if a decision on the opt-in was eventually made after Brexit, because it would amount to enhanced co-operation. If I

understand the Minister correctly, however, he said in his letter that he does not think that it would be enhanced co-operation. Could he say more about how the Government distinguish between enhanced co-operation and something that is essentially different?

If the Committee is right about that, or if, during the two-year transition or implementation period, a new justice and home affairs measure amounts to enhanced co-operation, do the Government believe that the terms of the withdrawal agreement will indeed preclude the United Kingdom opting into those measures? If so, what do the Government have planned to try to get around any difficulties that that might cause—for example, the ejection of the UK from existing measures if it cannot opt into enhanced measures?

Mr Hurd: I am struck that there appears to be a level of cross-party consensus on this matter that I have yet to witness in the main Chamber on Brexit. I welcome that. Underlying that is, I think, a recognition that no party or Member of Parliament wants to risk losing capability when it comes to security and the No. 1 priority of any Government, which is the enforcement of the law and the protection of our citizens. I welcome both sets of questions and the recognition of the positive decision to opt in and of the wider agenda to try to secure a security partnership that, as far as possible, maintains our existing capabilities. That is our explicit objective.

The hon. Member for Torfaen asked about planning for the next phase. At the moment, as he would expect, the immediate priority is planning for a no-deal scenario, because the risks have risen and the consequences are potentially severe in terms of loss of capability. He will understand and I hope appreciate that the priority of the Government is to prioritise no-deal planning, not least an agreement on Eurojust or any of the other co-operation mechanisms on security, so that we have more time to establish that. A green light and a signal from the Commission is also required to start to engage in the negotiations, and, for reasons we understand, that has yet to materialise. It is fair to say, if the starting point is a standard third country agreement, that we would hope to do better than that.

I make the same point as I do in the context of Europol, for example, where there are some parallels by virtue of our long history inside the agencies and our weight within them. I gave data that made it clear how important we were in Eurojust, in terms of both requests for support and requests for support from other states, and in Europol we are the second biggest contributor of data. We start those conversations with, “What does the deal look like after we leave? Are we third country or third country plus?” We will argue for third country plus. I have spoken to a number of interior Ministers on this journey, and it is clear to me, certainly in the case of Europol, that there is a clear desire for as much continuity as possible, in recognition of the weight and the important value that the UK adds to those agencies.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East raised an extremely important point about whether we can do this and how consistent it is with the withdrawal agreement. Our position is that we can. As noted by the Committee, article 127(4) provides that the UK,

“shall not participate in any enhanced cooperation in relation to which authorisation was granted after the date of entry into force of this Agreement”.

However, article 4 of the opt-in protocol provides that the procedure for approval set out in article 331 of the treaty on the functioning of the European Union on enhanced co-operation applies *mutatis mutandis* to the UK opt-in request. Therefore, the UK may only opt in if the Commission or Council approves the request. Here is the essence of it: article 4 uses the process set out in article 331, but this does not in itself constitute enhanced co-operation. We therefore consider that article 127(4) of the withdrawal agreement would not affect the operation of article 4 of the opt-in protocol. That is our understanding and we believe that is the understanding of the Commission; we are just waiting for that in writing, but it forms the basis of why we are proceeding as we are.

The hon. Member for Cumbernauld, Kilsyth and Kirkintilloch East asked about timing. Assuming there is an implementation period, our interpretation is that the Commission has four months to confirm the UK's request to participate in the Eurojust regulations. That would obviously take us into the period after 31 March, but, for the reasons that I have set out, we think that what we propose is entirely valid, and that, in our view, is the view of the Commission as well.

Michael Tomlinson (Mid Dorset and North Poole) (Con): It is a pleasure to serve under your chairmanship, Ms Ryan. I want to pick up points raised by all three contributors, and especially to echo my colleague on the European Scrutiny Committee, the hon. Member for Luton North, and to pick up two of the points made by the Committee in the summary of its conclusions on page 5, paragraph 1.18.

I am grateful to the Minister for his letter, which arrived over the weekend. First, how will operational co-operation differ in practice once we have left? How will it compare with the UK's current level of co-operation with Eurojust? He has touched on that point, but if he can expand on his comments, I would be grateful. Secondly, will opting in make it more likely that we will secure better terms than other third countries once EU law ceases to apply? If he could address those two points, I would be grateful.

Mr Hurd: I thank my hon. Friend for those additional questions. I welcome his contribution and, indeed, the Committee's scrutiny of the process and the calling of the debate. It is extremely important that these decisions and processes are scrutinised properly and that the Executive are held to account, particularly at this pivotal, highly emotive stage of the negotiations and the reshaping of our relationship with our European partners.

The key word here is “co-operation”. We are seeking to maximise continuity, and these are co-operation mechanisms that work. They are valued by our partners and are an integral part of our collective effort to protect our citizens and pursue justice. We have invested a lot of time and money over the years in building these mechanisms, and it is our shared desire to continue them. That is my experience from direct conversations with other interior Ministers. I have yet to meet one who does not want to continue the way we are. Obviously, politics might override that in the short term; none of

us can know how this will work out. In seeking to opt in, the UK Government's primary motive is to seek continuity in the existing arrangements. We recognise that if we opted out, we would be out, and we feel that the opportunity costs of that are too high.

My hon. Friend and others asked about operational co-operation on standard third country terms and about what that might look like in the future. Our White Paper, published in July 2018, outlined that if the UK's participation in Eurojust were limited to the existing third country terms, there would be a reduced capability for the UK and the EU to co-operate in tackling serious cross-border and organised crime. We would have a reduced role in operational activity at Eurojust, and there would be limitations to the extent to which Crown Prosecution Service and Crown Office prosecutors could work with and at Eurojust.

It would not be a disaster—other areas of our security participation toolkit would be more damaged by our being limited to third country status—but our starting point is that we should try to maintain, as far as possible, the capabilities that we have, because that is where we have a mutual interest with our European partners. We will therefore go into these negotiations with a determination to move beyond standard third country status. We are not a standard third country: we helped to build these platforms, we helped to fund them and we are core to their success. That will be the core of our argument to the Commission as and when we get to that point.

Kelvin Hopkins: I am not a lawyer, but we pick up some understanding of these things from our lawyer friends over time. In reading the European Scrutiny Committee statement, I touched on some of the differences between the legal and policing systems across the EU. There are some fairly profound differences in the history of our legal systems: ours derives from common law, and continental systems derive largely from Roman law, which is quite different. How helpful has Eurojust been in bridging that cultural gap?

Mr Hurd: My understanding is that Eurojust has been extremely valuable. The value of having 28 representatives of criminal justice agencies of member states in the same building, working together, with access to the files and the ability to co-ordinate prosecutions and criminal justice processes, cannot be underestimated in an age in which the crime that we are pursuing and investigating is becoming increasingly complex—crossing borders and requiring that degree of co-ordination. The simple virtue of having people in the same building, sharing information and working together in that way, has been extraordinarily valuable.

The proof lies in the facts and figures, our participation, the volumes of requests for support and the levels of co-ordination meetings. As of 6 July 2018, the UK desk had 544 live cases. As of January 2019, the UK was participating in 50 live joint investigations—the highest number of any desk at Eurojust. It is a mechanism that a lot of information and co-ordination is flowing through in the increasingly complex world that we are trying to police. Therefore, as a nexus of co-operation it has already proved its value. That is why the Government have reached a very clear view that that co-operation is a capability that we want to maintain.

Kelvin Hopkins: I thank the Minister for his answer. I have another question. Does he agree that entering an international arrangement voluntarily is very different from having an arrangement imposed by a supranational body, and that if one can voluntarily join something one could choose to leave if it did not suit over time? Does he agree that there is a profound difference, and that one is much more democratic than the other?

Mr Hurd: As the hon. Gentleman framed it, it is hard to disagree. I sound cautious. Being a bear of limited brain, I am not quite picking up the undercurrent, but I know that there is one.

Coming back to the hon. Gentleman's earlier comments, I would say that the British Government did have some profound reservations about what was being proposed before, because it crossed some borders as far as we were concerned in terms of the power at national level versus the power at pooled level. We were very uncomfortable about losing operational autonomy, not least for our police service, so we pushed back on that in a way that I hope he agreed with. We got support from

EU member states and got the changes that we wanted, not least in a very clear separation of duties with the EPPO proposals.

Having made those arguments and, frankly, won those arguments, we are now comfortable with opting in to regulations, the primary motivation being to maintain the continuity of the existing arrangements, which work well.

Motion made, and Question proposed,

That the Committee takes note of Regulation 2018/1727 of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA; endorses the Government's decision to request to opt in under Protocol 21 on the Position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice annexed to the EU Treaties; and supports the Government's assessment that Eurojust provides a valuable service to the UK and that opting in would enable us to maintain operational continuity and minimise disruption for UK law enforcement and prosecution authorities during the proposed Implementation Period.—(Mr Hurd.)

Question put and agreed to.

5.4 pm

Committee rose.