

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

European Committee B

EUROPOL

*Monday 12 December 2016*

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**Friday 16 December 2016**

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**The Committee consisted of the following Members:**

*Chair:* MR GRAHAM BRADY

† Arkless, Richard (*Dumfries and Galloway*) (SNP)  
† Atkins, Victoria (*Louth and Horncastle*) (Con)  
† Berry, James (*Kingston and Surbiton*) (Con)  
† Brown, Lyn (*West Ham*) (Lab)  
† Dakin, Nic (*Scunthorpe*) (Lab)  
† Dowden, Oliver (*Hertsmere*) (Con)  
† Green, Kate (*Stretford and Urmston*) (Lab)  
† Griffiths, Andrew (*Lord Commissioner of Her Majesty's Treasury*)

† Lewis, Brandon (*Minister for Policing and the Fire Service*)  
† Selous, Andrew (*South West Bedfordshire*) (Con)  
† Umunna, Mr Chuka (*Streatham*) (Lab)  
† Warburton, David (*Somerton and Frome*) (Con)

Gavin O'Leary, *Committee Clerk*

† **attended the Committee**

## European Committee B

Monday 12 December 2016

[MR GRAHAM BRADY *in the Chair*]

### Europol

[*Relevant document: European Scrutiny Committee, 21st Report of Session 2016-17, HC 71-xix.*]

4.30 pm

**The Chair:** Before we begin, it may be helpful if I remind Members of the procedure in a European Committee. The whole proceeding must conclude no later than two and a half hours after we start. I shall begin by calling a member of the European Scrutiny Committee to make a brief statement about that Committee's decision to refer the documents for debate. I shall then call the Minister to make a statement, which will be followed by questions for up to an hour, although I have discretion to extend that by up to half an hour—if there is an appetite for it. The Committee will then debate the Government motion, and I shall put the question on that motion when the debate or the time available is exhausted—whichever comes first.

Does a member of the European Scrutiny Committee wish to make a brief explanatory statement about the decision to refer the documents to this Committee?

4.31 pm

**David Warburton** (Somerton and Frome) (Con): It is a pleasure to serve under your chairmanship, Mr Brady. Europol is at the forefront of the EU's response to international crime and terrorism. As we know, it provides analytical and operational support to national law enforcement authorities in all 28 member states, enhancing their capacity to tackle cross-border security threats. The UK has participated in Europol since its creation in 1995. Although the coalition Government decided in 2014 to opt out of several EU police and criminal justice measures, they decided that the UK should remain part of Europol and opted back into the 2009 Council decision establishing Europol. They concluded that the UK's continued participation in Europol would be more cost-effective than establishing a complex system of bilateral agreements and liaison networks with each member state and would enable the UK to maintain access to Europol's cross-border data-sharing systems, analytical resources and expertise, and contribute to Europol's forward-looking threat assessments, which set the agenda for EU action to combat serious organised crime and terrorism.

Despite that positive assessment of Europol, the coalition Government decided not to opt into the Commission's proposed new Europol regulation in 2013. A new regulation is necessary as the Lisbon treaty requires Europol to be based on a regulation adopted jointly by the European Parliament. The Government feared that a strengthening of member states' obligation to provide information to Europol and Europol's right to request the initiation of a criminal investigation might undermine the operational independence of the police. The Government's recommendation that the UK should not opt in was

debated on the Floor of the House in July 2013. However, the Government made it clear that they wished to "remain part of Europol" and intended to

"play an active role in negotiations".

The motion passed by the House stated that

"the UK should opt into the Regulation post-adoption, provided that Europol is not given the power to direct national law enforcement agencies to initiate investigations or share data that conflicts with national security."—[*Official Report*, 15 July 2013; Vol. 566, c. 878-883.]

Following three years of negotiation, the new Europol regulation was adopted in May. This debate concerns the Government's recommendation that the UK should opt in so it can participate fully in Europol when the regulation takes effect on 1 May next year. This is undoubtedly the most significant opt-in decision that the Government have taken since the referendum in June. If the Government's decision not to opt into the Commission's proposal in 2013 merited a debate on the Floor of the House, their decision to opt in now, shortly before they intend to trigger article 50 negotiations about the terms of the UK's withdrawal from the EU, surely merits exposure and scrutiny in a debate on the Floor of the House. I therefore ask the Minister to explain why the Government have disregarded the European Scrutiny Committee's clear recommendation that there should be such a debate.

The European Scrutiny Committee has asked the Minister to address several questions during this debate. Is he satisfied that the regulation contains sufficient safeguards to ensure the operational independence of the police? What impact will the jurisdiction of the European Court of Justice have on the ability of UK police forces to set their own operational priorities, and what views have UK law enforcement authorities expressed on the Government's opt-in recommendation?

The European Scrutiny Committee also asks the Government to make clear the consequences of not opting in to the regulation. How great a risk is there that the UK will be ejected from Europol next May if it does not opt in before then? Will Denmark remain part of Europol, even though it cannot participate in the new regulation? Will the new regulation make it easier or harder for the UK to establish a close working relationship with Europol once it has left the EU?

The Secretary of State for Exiting the European Union told the House in October that the Government's aim during Brexit negotiations would be

"to keep our justice and security arrangements at least as strong as they are."—[*Official Report*, 10 October 2016; Vol. 615, c. 55.]

Does that mean that the Government will seek to preserve the access to Europol's databases and analytical information once the UK has left the EU as it currently enjoys as a member and, if so, will that require a bespoke model of co-operation, beyond that envisaged in the regulation?

I thank the Minister for being here to answer those questions and I very much look forward to his response and to an informed and, I hope, lively debate.

**The Chair:** Before I call the Minister to make an opening statement, I remind the Committee that interventions are not permitted during the statement.

4.36 pm

**The Minister for Policing and the Fire Service (Brandon Lewis):** It is a pleasure to serve under your chairmanship, Mr Brady. I will take a few minutes to outline, and hopefully deal with, some of the issues that my hon. Friend the Member for Somerton and Frome has raised and then we will have time for questions about anything else.

We are in a modern interconnected world where organised crime is increasingly international and does not respect borders. In that context, we can hopefully all agree that Europol provides a valuable service to the UK, both within the EU and in collaboration with non-EU partners. After all, we must remember that the United States has a substantial partnership with Europol. Until exit negotiations are concluded, the UK obviously remains a full member of the EU, with all the rights and obligations that membership entails. We seek to opt into the new regulation in line with our right to do so as an EU member state, and that is part of “business as usual” activity while we remain an EU member.

Operationally, Europol is a vital tool in helping UK law enforcement agencies to co-ordinate investigations involving cross-border serious and organised crime, to keep our public safe. Opting in means that as long as we remain a member of the European Union we can continue to benefit from the co-operation and the operational advantages of being a member of Europol. We would not be able to do that as a non-participating member state. Not opting into the new measure while we remain in the EU could risk our being ejected from Europol, which would have serious consequences for our law enforcement operations.

As my hon. Friend rightly pointed out, this is not the first time that Parliament has examined the regulation. Many will recall the original opt-in debate in March 2013, and my hon. Friend is right that the general consensus at that time was that although we supported the overall aim and the objectives of Europol—and we made it clear that we did—certain elements of the draft text were not acceptable and the Government would not take the risk of opting into an unacceptable text. We had two main concerns about that text, first, that it would interfere with the operational independence of UK policing and, secondly, that it would increase the UK’s obligation to provide data to Europol, even when such provision conflicted with national security or endangered ongoing investigations or an individual’s safety. As such, we decided not to opt in at that point, at the start of negotiations, but we made it clear that a post-adoption opt-in would be considered, if we were able to address those concerns in negotiations.

During the negotiations, we worked hard with other EU members to do just that. The UK and like-minded member states successfully negotiated a much more balanced regulation, which maintains the status quo regarding Europol’s relationship with member states. That is explicitly set out in article 3 of the regulation:

“Europol shall not apply coercive measures in carrying out its tasks”,

clearly dealing with the first point. The Government believe that the new regulation defends national interest while allowing Europol to consolidate its position in supporting member states to combat serious cross-border crime and terrorism.

I will set out what the new legislation does. In broad terms, the new regulation maintains the existing relationship between member states and Europol while updating the way in which Europol operates and its relationship with the EU institutions. The new regulation expands Europol’s tasks in a number of positive ways. It sets out a clear mandate for the EU internet referrals unit, which is based at Europol and replicates the UK’s approach to tackling online terrorist propaganda. Importantly, it does not expand Europol’s work in a manner that would lead to competence issues.

The new regulation establishes a framework for joint investigative and operational actions between member states’ competent authorities, for example via joint investigation teams. The framework supports and strengthens the actions of member states. It also ensures that we retain control, as Europol would need our consent to undertake any actions in the UK. Europol’s capacity to undertake operational actions is likely to be helpful in regard to its role in tackling organised immigration crime via joint operational team Mare.

The new regulation formalises co-operation with EU bodies, and the provision of information and support to EU crisis management structures, such as for the migration crisis in the Mediterranean. It also clarifies the mandate of the existing European cybercrime centre as a centre

“of specialised expertise for combating certain types of crime”.

That is welcome, as we in the UK participate in the joint cybercrime action taskforce.

Much of the new legislation is about putting existing practice on a comprehensive legal footing. Europol’s remit remains squarely focused on enhancing law-enforcement co-operation between member states. As I have outlined, Europol’s actions remain fundamentally in support of member states, not the other way round, which means that Europol will continue to add value to UK law enforcement without in any way reducing national control of law enforcement-activity in the UK. I suspect that that is why every single police chief I have met throughout the country, along with the National Police Chiefs Council, has been explicit about their desire that we should ensure that we took the opportunity to opt in.

As I have set out, Europol is a vital tool to help UK law-enforcement agencies co-ordinate investigations in cross-border serious and organised crime. Our operational partners, such as the National Crime Agency, have made it clear that they value our continued membership of Europol while the UK remains in the EU. The deputy director-general of the National Crime Agency made that clear in his evidence to the EU Home Affairs Sub-Committee in October. The NPCC lead, Sara Thornton, has also been clear about that.

We cannot, however, ignore the fact that we are leaving the EU. My hon. Friend therefore asks a fair question: why opt into the new regulation now? Opting in means that, for as long as we remain a member of the EU, we can continue to benefit from the co-operation and operational advantages of being a member of Europol. Failure to opt into the new measure might risk our being ejected from Europol which, in my view, is something we should seek to avoid while we remain in the EU. My hon. Friend mentioned the experience of Denmark, but I might add that Denmark still has hurdles to overcome. Its situation is such that it does not have the full benefit, as we do, of being a member of Europol.



[Brandon Lewis]

In practical terms, the measure will ensure that our liaison bureau at Europol is maintained and that law-enforcement agencies can continue to access Europol systems and intelligence. Our operational partners have made it clear that continued operational capabilities are crucial to keeping our people safe.

I should make it clear, however, that this does not represent the start of our exit negotiations. The issue before us is not how the UK will work with the EU after we leave; opting into the new regulation does, however, put us in the strongest possible position entering into negotiations. It signals our intention to continue practical law-enforcement co-operation with EU partners after we leave. It also means that we can negotiate the new model of co-operation, whatever form that may take, as active participants rather than outsiders trying to gain access to something.

In conclusion, the Government's view is that opting into the regulation now is the sensible thing to do. The regulation as it stands means that remaining in Europol continues to be in the national interest while we are still in the EU. Opting in maintains operational continuity while the UK remains in the EU, and it helps support a smoother transition as and when we leave. Again, I want to stress that this decision is without prejudice to the discussions on the UK's future relationship with Europol. The Home Office is exploring all options for co-operation once the UK has left the EU, but it is too early to speculate on what future arrangements may look like. This measure is about what is right for our country today.

**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 Members, subject to my discretion, to ask related supplementary questions.

**Kate Green** (Stretford and Urmston) (Lab): I very much welcome what the Minister has said. I absolutely appreciate that the position is for today while we remain full members of the European Union and it is not in any way a pre-judgment on how the negotiations to exit may take place. However, by opting in, how will our Europol systems and habits of operating and sharing intelligence and information on crimes that need to be dealt with on a cross-border basis, because they occur on a cross-border basis, be appropriately replicated and provided for after we leave the European Union? For example, is the Minister thinking of setting up shadow systems as a safety net for the post-Brexit world? If not, what other contingencies are the Government putting in place to ensure that today's Europol protections that the Minister outlined are continued after we leave the European Union?

**Brandon Lewis:** The hon. Lady makes an important point. It is right to opt in at the moment. We have been working with Europol, a lead partner, for some considerable time. About 40% of everything that Europol does is linked to work that is either provided or requested by the United Kingdom. The hon. Lady tempts me to give a running commentary on our Brexit negotiations, but I will resist that temptation because we are at the start of negotiations, not the end. However, hon. Members and hon. Friends should bear in mind the fact that there are

other countries that have partnership agreements with Europol. In fact, the United States has one of the biggest liaison offices. It is obviously not a member of the EU, but it has come to an agreement to work with Europol. It sees the benefit and has found a way to do that. Opting in now puts us in a strong position from which to be able to negotiate what is right for us when Brexit comes, but we will see how that goes in the negotiations.

**Richard Arkless** (Dumfries and Galloway) (SNP): It is a pleasure to serve under your chairmanship, Mr Brady. I do not think you will have any call to cut me off early, as you were forced to do the last time I spoke before you.

Like the hon. Member for Somerton and Frome, we welcome the Minister's announcement, and we appreciate his position in not giving a running commentary. However, it appears to be fairly clear, given the submissions made, that Europol is valued. It keeps us at the forefront; it enhances capacity. According to the Secretary of State for Exiting the European Union, justice and security arrangements should stay as they are. We have participated in Europol since its creation. Every police chief has made it clear that they want it. Can the Minister confirm that it is the Government's position that we want to remain in Europol after we leave the European Union?

**Brandon Lewis:** The Home Secretary said on the Floor of the House that she did not think anybody voted in June to be less safe. It is important to do everything we can to ensure that all our residents are safe. It is important to work with our partners across Europe on cross-border issues, whether it is around terrorism, cybercrime or other forms of crime. It is important to work with our partners around the world to make sure we do everything we can to keep people safe. As tempting as it is to outline where we might be at the end of the negotiations, I will resist that temptation. As I said earlier, it is right that we opt in at the moment. Europol plays an important part for our law enforcement agencies and the security of this country. Countries that are not members of the EU have found positive ways to work with Europol. The other 27 countries that are members of the EU will want to continue with that, but that is part of the negotiations yet to come.

*Motion made, and Question proposed,*

That the Committee takes note of Unnumbered European Union Document, a Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA; endorses the Government's decision 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 Europol provides a valuable service to the UK and opting in would enable us to maintain our current access to the agency, until we leave the EU. —(Brandon Lewis.)

4.49 pm

**Lyn Brown** (West Ham) (Lab): It is a pleasure to serve under your chairmanship, Mr Brady. I am grateful for your clear explanation as to the process. I obviously needed that today and I am dead pleased that you are in the Chair.

The Minister did not answer the question about why we are not having this debate on the Floor of the House, which the Opposition would welcome. We have argued consistently that participating in Europol helps to keep Britain safe. It is a vital tool in the fight against terrorism and serious organised crime. Opting into Europol's revised governance framework will allow Britain to continue to participate in Europol and strengthen Europol's capacity to help to tackle serious crime. We therefore support the Government's decision to opt in.

Europol's role is to facilitate the rapid exchange of criminal intelligence and security information between EU member states. Europol supports more than 40,000 international criminal investigations each year, and many of those cases are vital to British security. In 2011, police were able to identify links between an investigation in Northern Ireland and an investigation in Portugal after basic checks of Europol systems. That led to a large investigation of a west African organised crime group operating across Europe, west Africa and south America. There have subsequently been 25 co-ordinated arrests and seizures across Europe, and that gang has been well and truly broken up.

In 2012, a law enforcement agency received intelligence regarding a threat against an individual's life in another EU member state and a probable suspect in a third member state. Checks of Europol systems enabled the speedy identification both of the intended victim and of the potential suspect, and law enforcement authorities were able to take swift action and save a life.

If I go on much longer, our Whip is likely to pull me down, but those two small cases show that Europol co-operation means that criminals and terrorists cannot easily use European borders to evade the intelligence and oversight of law enforcement authorities. Europol is a vital tool for ensuring that national Governments, not international crime organisations, are in control. In May, the European Council and Parliament adopted a new set of regulations, which updates Europol's governance structure, objectives and tasks and will take effect on 1 May 2017. Those regulations make some important changes, and I will briefly outline the benefits of those.

As we know, cybercrime is one of the greatest challenges that our police face. It pays no attention to national borders, and the activity of an individual in one country may have perilous consequences for citizens in another. The European cybercrime centre estimates that cybercrime costs EU member states €265 billion a year. The new regulations will make it easier for Europol to help member states tackle cybercrime by giving that centre a clear mandate as a Union centre of "specialised expertise for combating" crime. Similarly, the regulations give the EU internet referral unit a clear mandate to tackle online terrorist propaganda.

I stress that the regulations do not allow Europol to mandate national investigations. Article 4 of the regulations states:

"Europol shall not apply coercive measures in carrying out its tasks."

Article 3 makes it clear that Europol "shall support" national security forces rather than lead them, and national Governments are not required to share data if they think that would threaten their "essential interests" or jeopardise current operations. Taken together, those measures preserve Europol's status as an information

and data-sharing hub rather than a supranational crime agency. Indeed, the European Scrutiny Committee concluded that it is

"satisfied that the outcome achieved respects the division of competences between Member States and EU institutions".

Although the benefits of the changes that I have outlined are important, the nub of the issue is that the regulations bring about substantive changes to Europol's governance arrangements. Having spoken to the House of Commons Library staff and studied the European Scrutiny Committee report, I understand that if we do not agree to the regulations, Britain's participation in Europol could be called into question altogether. There is indeed a process for ejecting us, or anyone, from Europol if the Commission and Council agree that our opt-out renders co-operation inoperable.

Put plainly, we could find ourselves out of Europol by May next year when Brexit negotiations will only just have begun. Indeed, the Minister implied the same thing on the 14 November when he notified the European Scrutiny Committee of the Government's intention to opt in:

"Opting in will maintain operational continuity for UK law enforcement ahead of exiting the EU...and that law enforcement agencies can continue to access Europol systems and intelligence."

Given the enormous benefits that Europol participation brings to Britain, the Opposition would not want to bring about any risk of the UK being ejected from Europol on 1 May. We therefore support the Government's decision to opt into the new regulations.

As I am sure the Committee will know, the current director of Europol is a British man called Rob Wainwright. He took over Europol after a career serving major British security institutions such as NCIS and the Serious Organised Crime Agency. His career shows how European co-operation allows for British influence to spread abroad. Director Wainwright tweeted that the Government's decision to opt in is

"Good for Britain's security, great for police co-operation in Europe."

I agree entirely with Director Wainwright. International crime did not stop on 23 June 2016 and, sadly, the threat of international terrorism persists. That is why I want us to remain part of Europol if and when we leave the European Union, and I want Britain to continue to lead the way in furthering police co-operation across the continent.

Unfortunately, the Government cannot guarantee our continued participation in Europol after Brexit. The Secretary of State for Exiting the European Union has offered warm words about maintaining security arrangements. In fact, he said that he wants us to "maintain or even strengthen" co-operation, as we have heard, but when he has been pushed as to whether that means we will continue to be a member of Europol he has not been able to make that guarantee. Instead he told the House that the Government will seek to

"preserve the relationship with the European Union on security matters as best we can."—[*Official Report*, 5 September 2016; Vol. 614, c. 45.]

**James Berry** (Kingston and Surbiton) (Con): Does the hon. Lady agree that, whatever our Government want to do, the other 27 Governments would have to agree to our remaining in Europol? They would in fact

[James Berry]

have very good reason to do so, since we provide about 40% of the intelligence on which they rely. We are an extremely valuable and massive net contributor of the intelligence and information that they enjoy through their membership of Europol.

**Lyn Brown:** I am not going to disagree with the hon. Gentleman. I am not even going to play party politics with this. I am going to move on gently and seamlessly to say that I think that the Minister for Policing and the Fire Service is a competent and loyal advocate of Government policy, so I am sure he will say exactly the same thing as the hon. Gentleman. However, I must say that I do not find a pledge to do the “best we can” particularly reassuring when we are dealing with matters as fundamental as national security and the lives of British citizens.

I would press the Minister to go a bit further today, and say that preserving our security arrangements and maintaining British influence over security matters will be a top priority for the Government in their exit negotiations. I do not think that is too much to ask. Keeping citizens safe should always be the first priority of any Government. Europol and other forms of European security co-operation such as the European arrest warrant are vital tools to keep our citizens safe.

Whatever else the Government do in the negotiations, they must not leave us in a situation in which we fall out of Europol and start to co-operate less with our European partners on security matters. If that were to happen, the Government would be letting the British people down. Their ability to tackle crime and keep citizens safe would be diminished. The Government would be ceding control to serious criminals.

5 pm

**Richard Arkless:** I will keep my comments brief. To be clear, we support the revised Europol co-operation framework and we acknowledge that it is to preserve membership of Europol at least until we leave the European Union.

To pick up on a point made by the Opposition, we not only think that it is vital to have the UK within the Europol regime, but it makes sense for the whole of Europe. Police Scotland and law-enforcement agencies in Scotland are given comfort, in the short term at least, that we continue to exchange the information that allows them to catch the bad guys. The solution is, however, only temporary, as has been alluded to.

Beyond leaving the European Union, it is unclear whether we will be in Europol and whether we will have the benefit of being able to exercise the European arrest warrant. I know that the Government do not want to give away their negotiating hand, but as I alluded to in

my question, it is fairly clear what the Government’s position is. I welcome that, because it is good that the Government are making positive noises about staying in Europol beyond leaving the European Union. I sincerely hope that they take those comments and that sentiment into negotiations to ensure that the UK remains a member of Europol, because if it does not, as the hon. Member for West Ham rightly identified, we will be letting down people right across these islands.

5.2 pm

**Brandon Lewis:** I have a couple of points to make. The hon. Member for West Ham rightly raised the issue about the Floor of the House—I hope this will answer the question of my hon. Friend the Member for Somerton and Frome as well. However, that does a disservice to this Committee, because any Member may attend and take part in it, so they have all had the opportunity to be present today, to ask questions and to join the debate. As we can see from the fact that I am making the closing speech, we have had discussion, questions and debate with plenty of time to spare within the allotted time. Members could have come to take part. I hope that that indicates that across the House—this is my view from speaking to Members informally—there is recognition of the importance of Europol. While we are full members of the European Union, opting in—with the negotiations we have managed to secure the changes, in particular on the coercive issue—is the right thing to do for this country.

I will pick up the hon. Member for West Ham on one minor matter. When she was paying me a kind compliment, I could feel a “but” coming, and there was a small “but” in there. She was talking about what happens if or when we leave the EU. I need to make it clear that there are no ifs or buts: we will leave the European Union, and our job is to ensure that we do so in the way that is best for the United Kingdom. Security is clearly a priority—one of our priorities to ensure that we keep our residents safe. At this point in time, while we are members of the EU, UK law-enforcement agencies must continue to benefit from and contribute to the work that Europol undertakes, without prejudging in any way, or without prejudice to, the negotiations that will go ahead in time.

The negotiations that have led us to where we are today, with this opt-in decision, are negotiations that have delivered a very good outcome for UK law enforcement and Europol more generally. Without doubt, the organisation is good and strong. As the hon. Lady said, the chief exec has great experience in the field. Without doubt, opting into the measure is in our country’s best interests, until such time as we will need a new agreement from our position outside the EU. For now, I commend the motion to the Committee.

*Question put and agreed to.*

5.4 pm

*Committee rose.*