

House of Lords Justice and Institutions Sub-Committee Inquiry
into EU Criminal Procedure
Evidence submitted on behalf of the CLLS (Corporate Crime and Corruption Committee)

A. Introduction

(i) Individuals.

Criminal procedure rules in the UK already provide comprehensive safeguards for the rights of citizens who are subject to UK rules and there is no need for the UK to have additional procedural rules. We have gold plated legislation resulting from EU Directives, for example, our anti money laundering regime is one of the strictest in the world. However, in other Member States where criminal protections for the accused and/or the victims may not be as robust, having a “minimum” EU standard could be beneficial -- especially for British citizens who travel to or live in other Member States.

(ii) Corporate Crime

2.1 Establishing EU criminal procedural rules in corporate criminal law may be beneficial. While natural persons are less likely to move across borders to benefit from more lenient criminal laws/procedures, a corporate body may evaluate the laws of various jurisdictions and may choose to establish its principle place of business (or do business in) only jurisdictions that have more lenient criminal laws/procedures and sanctions or in jurisdictions that do not effectively enforce relevant laws.

2.2 The EU Paper “Towards an EU Criminal Policy” states that one of the goals of EU-wide law is to “reduce the degree of variation between the national systems and to ensure that the requirements of ‘effective, proportionate, and dissuasive’ sanctions are indeed met in all Member States.” Reducing variations between Member States will create a more level playing

field for businesses that operate in different jurisdictions and may prevent corporations from jurisdiction shopping.

B. The questions posed by the Sub-Committee.

1. Is an `EU system of criminal procedural law desirable?

Q: It is said that national criminal justice systems reflect the societies in which they have developed. Can the EU establish a system which adequately reflects all the constituent societies within the EU?

A: A major difficulty with having one system for so many countries is the difference between the adversarial, common law model, and countries that have the Civil Code. There are many differences, including in relation to bail, disclosure, trial process, and the role of investigating judge and prosecutor. Each system has its own positive and negative qualities, but we cannot see a case for wholesale change. The EU should concentrate on certain minimum standards and measures which aim at cross border cooperation.

Q: Are EU instruments necessary to safeguard the rights of citizens involved in criminal proceedings, in addition to the European Convention on th Human Rights, the EU Charter of Fundamental Rights and the other multilateral and bilateral agreements?

A: No, in our view the ECHR gives more than adequate protection.

Q: To what extent does existing EU legislation affect national criminal systems?

A: UK – ECHR, Arrest Warrant, Data Protection, AML, Competition, many others.

Q: To what extent does existing EU legislation and proposed legislation go further than the existing EU or international instruments, or UK law?

A: We see that criminalising financial markets is one suggestion. It is crucial for the UK regulator that it has the discretion to decide whether to use its civil regime, and when to be a criminal enforcer, we cannot imagine that it would welcome this discretion being threatened . Reference to “Euro Crimes” – what is justified? UK domestic law deals comprehensively with all these crimes.

Q: What is the effect of importing the jurisdiction of the Court of Justice of the EU? Will the Court of Justice be able to cope with litigation arising from EU legislation?

A: We believe the existing system of the criminal process in national Courts and ECHR to Strasbourg, is best left as it is.

Q: Are there other areas of criminal procedure which should be covered by EU legislation and, conversely, are there areas which are covered unnecessarily?

A: No views

2. Does the EU legislation in the areas within scope add value?

Q: What practical benefits does EU legislation bring – for citizens, law enforcement authorities, courts?

A: We can think of examples like the money laundering (AML) regime and Mutual Legal Assistance, with cross border cooperation. Communications between EU police and regulators.

Q: Do the benefits of EU legislation outweigh the disadvantages?

A: No views

Q: Does EU legislation promote mutual trust between national authorities and facilitate judicial and policy cooperation in practice?

A: Yes

Q: Should EU minimum standards for criminal procedure apply only to cross-border cases?

A: Yes.

3. The impact of the UK opt in

Q: To what extent should the UK opt in to legislation in this area?

A: Where is the benefit?

Q: What factors should inform the UK Government's decisions on opting in?

A: Benefit to UK citizens and companies. There should be an analysis of benefit and burden before any further steps are taken. With the Extradition/EU Arrest Warrant debate and vote in Parliament on 5th December, minds are concentrated on why the UK should espouse further international obligations, which may arguably harm its citizens and businesses.

Q: Will the fact that the UK has not opted in to some EU legislation undermine the trust of authorities of other Member States in the UK criminal justice system? If so how will this affect UK nationals involved in criminal proceedings in other Member States and the ability of the UK authorities to investigate and prosecute cross-border crimes.

A: Opt ins should not undermine trust, of other member state authorities or prejudice UK nationals in other EU states, or ability of UK authorities to investigate. Good level of cooperation already.