The EAW opt-in – another government omnishambles and a very dangerous one

Has anyone in the government come out well from the fiasco in Parliament last Monday over the European Arrest Warrant (EAW)? Certainly not Prime Minister David Cameron or Theresa May, the Home Secretary.

When the Lisbon Treaty was signed, the UK secured an opt-out on 133 law and order measures, but Mrs May stated her intention for the UK to opt back into 35 of them, including DNA sharing and the EAW. These 35 are the important ones. The other 100 or so are of little importance. A number of Tory MPs have long been concerned about the impact of the opt-in and have pushed hard for the House of Commons to be allowed to vote on the opt-in. It was very clear to Mrs May that a substantial number of MPs opposed the opt-in. However, subsequent one-to-one talks halved the number of "rebels" from 100 to about 50. With Labour support, the measure could have gone through, but at the last minute, it was announced that the only vote to be allowed last Monday would cover 11 of the measures but not the EAW. The Speaker, John Bercow, called it "sorry saga" and Jacob Ress-Mogg, a staunch opponent of the EAW, said this was "fundamentally underhanded". Another Tory MP, Sir Richard Shepherd, stood on his feet and asked why the MPs were there, and what was the purpose? The parliamentary session on Monday descended into an angry farce.

A number of senior policemen have argues that the EAW is essential to protect the public from criminals. So why were so many Tory MPs uncomfortable? Simple. Surrendering more power to Brussels is too high a price to pay for making it easy to extradite criminals to and from other countries. Prior to the Lisbon Treaty, all EU crime and policing laws were dealt with

“inter-governmentally”. However, the architects of the Treaty were keen to place these measures under the remit of the European Court of Justice (ECJ) and the enforcement powers of the European Commission. In spite of apparent concessions which the government claims to have gained, there is still a threat that UK citizens may be extradited to another country and charged for an offence that is not a crime in our country. We cannot be confident that the legal process in some other EU member states operates to the standards to which we have been accustomed, even though the presumption of innocence is written into the Charter of Fundamental Rights of the European Union. The EAW is likely to see more incidents like the fiasco in 2001 when 12 innocent British aircraft spotters were arrested in Greece on a charge of spying. Do we want any more UK citizens to go through the ordeal faced by Deborah Dark? This victim of European “justice” was arrested at gunpoint while on holiday in Turkey in 2007, as the French authorities had issued an EAW seeking her extradition on drug smuggling charges of which she had been acquitted 18 years earlier. She was released and returned to the UK, but although Westminster magistrates refused a subsequent extradition request from France, believing there was no case to answer, she could face re-arrest if ever she travelled on the Continent. Only a couple of weeks ago, Rory Gray found himself in court courtesy of the EAW after being sued by a foreign doctor. In 2008 an inquest found that Mr Gray’s father, David Gray, was unlawfully killed in 2008 after Dr Daniel Ubani, a Nigerian-born Germany citizen who was working as an out-of-hours locum GP, fatally administered 10 times the normal dose of diamorphine. The doctor was struck off the medical register in the UK. Mr Gray and his brother, Stuart, interrupted a medical conference in Germany, calling Ubani a “charlatan”, “killer” and “animal”. Now a court in Lindau, Germany, has ruled that Gray must pay three-quarters of the legal costs, running into thousands of pounds, and to write Ubani a letter promising never to call him an animal again. It has also threatened him with a £200,000 fine if he repeats the insult. Thanks to the

EAW, more such absurdities could happen in the future.

If more people were aware of how many safeguards in our legal system are absent in those of many European countries, last Monday's rebellion would have been even worse. In the UK, we are far better protected against false accusation, arbitrary arrest and wrongful imprisonment than our continental neighbours. Under our Common Law, defendants have a right to silence. No one may be tried *in absentia* – in other words without being present in court. Press coverage is restricted when a case is *sub judice* so as not to prejudice a fair trial. Most importantly, except where terrorism is involved, any person who is arrested must be charged in open court within 24 hours of arrest. Crucially, the 'charge' has to be backed by *prima facie* evidence as opposed to hearsay. Even when the suspect is thought to have committed murder, detention without charge may only be extended, with the permission of magistrates, to a maximum of 96 hours.

Even the Pro-EU Open Europe think tank has pointed out that by maintaining an opt-out, the government "could have provided the basis for Britain to negotiate a new deal, perhaps using a bilateral UK-EU treaty, thus solving some of the underlying concerns." In the short term, again to quote Open Europe, we would have had to "fall back on previous arrangements that were slower, less reliable and therefore may allow some criminals to escape justice." But were the previous arrangements so bad? Petrina Holdsworth, the Chairman of CIB and a lawyer by profession, doesn't think so. "It was perfectly straightforward," she said. "If we were satisfied that we had an extradition treaty with the requesting country, the correct person, evidence to support a *prima facie* case against that person and the offence for which the suspect was sought was an offence in the UK then the suspect was extradited. The suspect had the right to be represented and the Stipendiary Magistrate had the duty to consider all the legal arguments put before him by both sides. OK it took up a

bit of court time but it worked and we all felt that it was a proper system."

CIB's President, George West, was recently told by a policemen that "we wouldn't be supporting these powers if politicians didn't keep pushing free movement and EU expansion."

David Cameron has not come out well from this fiasco. He promised a vote to MPs, and then denied them the chance of voting on the measure which really counted. Once again "Cast-Iron Dave" has broken his word. He cannot be trusted, although in a sense, his behaviour comes as no surprise. A while ago, he also talked of wanting to renegotiate our relationship with the EU so that "UK police forces and justice systems are able to protect British citizens, unencumbered by unnecessary interference from the European institutions" but he and his Home Secretary have pursued a totally opposite course. Political objectives, no doubt accompanied by sheer laziness on the part of senior policemen and MPs have allowed the EU to drive another nail into our ancient liberties. Labour has announced that it will attempt to stage a fresh vote on the warrant on the day before the Rochester & Strood by-election – a cynical ploy as much as anything. Also, a legal challenge has been mounted by Stuart Wheeler and Jacob Ress-Mogg. "The failure of the Government to give the vote it promised makes it easier for the courts to judge against [the warrant's] legality because there was no clear endorsement by Parliament. Courts in general don't like to go against what Parliament has voted on", said Mr Rees-Mogg. CIB wishes them well, but if the court case is thrown out, the only way out of this dangerous impingement on our liberties is for us to leave the EU. Only thus can our police once again be the protectors of our liberties. They are currently slowly being converted into the agents of a foreign state.