

Political agreement to hold a referendum on the JHA opt-out

On 10 December 2014 the Danish government reached a political agreement with the Liberal Party (Venstre), the Conservative Party (Det Konservative Folkeparti) and the Socialist People's Party (Socialistisk Folkeparti) to hold a referendum on the Danish opt-out on Justice and Home Affairs in order to change it into an opt-in (see Annex to Protocol 22 to the Lisbon Treaty). The parties agreed that the referendum will take place after the next general election and no later than 31 March 2016.

In the agreement it is stated that Denmark wants to be as close to the core of the European Union as possible, and that Denmark in the future shall have fewer opt-outs.

Currently, the Council negotiates a revision of the regulation on Europol. Once adopted under the new rules of the Lisbon Treaty, Denmark can no longer participate in this cooperation. The perspective of Denmark having to leave Europol is the main reason behind the agreement to hold a referendum. This would also allow Denmark to participate in other areas of Justice and Home Affairs. Denmark already participates in several pieces of legislation on an inter-governmental basis (Dublin III, Eurodac, Brussels I, Service of documents in civil or commercial matters). Participation within these fields will be upheld. Also, Denmark will continue to be part of the Schengen area and participate in all Schengen-related legislation. Danish participation in legislation in the field of asylum and immigration will not be changed as the political agreement makes clear that status quo within this field will be upheld, and that Danish policy regarding asylum and immigration will continue to be decided in Denmark.

The Danish opt-out from EU legislation on Justice and Home Affairs stems from 1993 and was agreed amongst Member States after the Danish population initially rejected the Maastricht Treaty in a referendum in 1992. The opt-out relates to all JHA-acts adopted by application of the so-called 'community method', entailing powers to the European Commission and the European Court of Justice.

With the Lisbon Treaty matters which were previously dealt with by inter-governmental agreement, such as judicial cooperation in criminal matters and police cooperation, are now governed by the community method. In effect, any revision of legislation in the justice and home affairs area in order to update it to the post-Lisbon conditions will mean that Denmark no longer will be able to participate in the cooperation under the current arrangement.

The government has undertaken a technical analysis of the files covered by the current Danish opt-out, which will prepare the decision by the political parties in the beginning of 2015 on which legislative files, Denmark will opt-into immediately if the referendum turns out positive. The analysis will be finalized by February 2015 in order for the political parties to reach final agreement before 1 march 2015.