



# HOUSE OF LORDS

European Union Committee

House of Lords  
London  
SW1A 0PW

Tel: 020 7219 6083  
Fax: 020 7219 6715  
euclords@parliament.uk  
www.parliament.uk/lords

Rt Hon Nick Hurd MP  
Minister of State for Policing and the Fire Service  
Home Office  
2 Marsham Street  
London SW1P 4DF

13 March 2019

## Security cooperation in the event of a 'no deal' Brexit

Dear Minister,

I am writing to you following an evidence session held by the EU Home Affairs Sub-Committee on 27 February on 'no deal' Brexit planning for security cooperation. This letter also follows on from your recent correspondence with Lord Boswell of Aynho, Chairman of the EU Committee, on the *Brexit: the proposed UK-EU security treaty* report.

At this hearing on 27 February, we heard evidence from representatives of the Metropolitan Police, the National Crime Agency (NCA), Border Force, and the Home Office on efforts to mitigate the UK's loss of access to EU security tools and databases by moving security cooperation to alternative, non-EU mechanisms. A full transcript of the session is available on our website: <https://www.parliament.uk/euhome-affairs-subcommittee>.

Witnesses reported that the Home Office and UK police and security agencies have been implementing 'no deal' contingency plans for security cooperation since July 2018, and we note Rebecca Ellis' reassurance that, "since that point, if something needs to be being done at a certain stage it has been being done." Nonetheless, we remain concerned by the extent to which the effectiveness of, as Ms Ellis put it, the "plumbing" put in place by the UK to move cooperation to non-EU mechanisms is "dependent on the position of other member states". Whatever the extent of the UK's preparations, it is not at all clear that our European partners would be ready to cooperate with us on the basis of the alternative mechanisms the Government intends to rely upon in a 'no deal' scenario.

We were also concerned by witnesses' admission that the contingency plans they discussed would, at best, "close the gap" compared to current cooperation arrangements, and were in no way "like-for-like replacements" for EU mechanisms. As we concluded in the *Brexit: the proposed UK-EU security treaty* report, it is clear that "operational continuity and the security of both the UK and the EU would be seriously undermined were there to be an abrupt end to cooperation in March 2019 ... we all stand to gain from agreement, and we all stand to lose if negotiations fail." Despite the EU's current position that "no deal means no deal at all", we reiterate our call in that report for both sides to focus on "finding common ground and making pragmatic compromises, in order to achieve the over-riding objective of protecting the safety of UK and EU citizens in years to come."

In addition to registering the above concerns, the Committee would be grateful for your response to the following points:

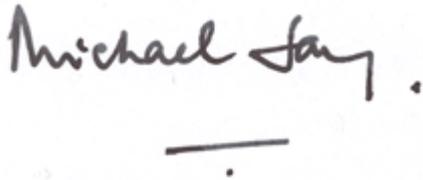
1. DAC Richard Martin, of the Metropolitan Police, explained that the contingency measure for the European Criminal Records Information System would be the Council of Europe Convention on Mutual Assistance in Criminal Matters. He noted that, under this arrangement, “some countries do not have to apply timescales” and there was the “potential for 27 member states to interpret [the Convention] in a slightly different way”. What assessment has the Government made of the extent of these risks, and how are you working to mitigate them?
2. Steve Rodhouse, of the NCA, commented: “EU member states make more use of the European Arrest Warrant than we do.” Rebecca Ellis also suggested that EU member states were a “net beneficiary of the UK’s involvement of the European Arrest Warrant”, as the UK extradited eight people for every one person sent back to the UK. We were concerned by this transactional approach to assessing the value of the European Arrest Warrant. Would you not agree that, in removing significant numbers of potentially dangerous criminals from UK soil, the UK also benefits from extraditing “more people to the EU than come the other way”? We would also be grateful for further information on the UK’s current operation of the Council of Europe Convention on Extradition – which witnesses indicated would be the “fallback” mechanism for future cooperation on extradition with EU countries – with countries such as Norway.
3. Rebecca Ellis highlighted Passenger Name Record (PNR) data sharing as an area where there would be no fallback mechanism. We would like to know what progress has been made in “rolling over” the application of the US, Canada and Australia Agreements with the EU on Passenger Name Records to the UK after Brexit. In the context of the EU Committee’s work scrutinising Brexit-related international agreements, we would also be grateful for an update on progress made in transitioning other EU JHA agreements listed as “engagement ongoing” on GOV.UK: the Iceland Norway Mutual Assistance Agreement, US Umbrella Agreement, and Readmissions Agreements.
4. During the session, we were told that EU member states broadly recognised the “value of maintaining at least the existing levels of cooperation and data-sharing”, and that there were good relationships between UK and European police and security agencies. Nonetheless, witnesses acknowledged the limitations of bilateral channels and relationships in replicating the “volume of information” that passed through EU systems, such as SIS II, and the implications of the UK being outside the framework of EU data protection rules. To what extent could information-sharing in support of security cooperation continue to take place through bilateral channels, and how would this be restricted by EU data protection rules?
5. As an EU Member State, the UK has had a strong leadership voice in EU security institutions, such as Europol, and we understand that the UK could maintain this cooperation as a third country through the conclusion of a strategic or operational

agreement. Steve Rodhouse suggested it may even be possible, in a 'no deal' scenario, to come to some kind of "working arrangement, which would still mean that the UK would physically be within Europol", in a reduced role. How realistic a prospect is this, and how quickly do you think such an arrangement could be reached? Are you working to strengthen UK involvement in other international security networks to help mitigate the impact of a 'no deal' Brexit?

Whatever the outcome of the votes due to take place in the House of Commons later today, the prospect of a 'no deal' Brexit scenario will remain a real and significant risk. I would therefore be grateful for your response to this letter within 10 working days.

I am copying this letter to Sir William Cash MP, Chair of the Commons European Scrutiny Committee; Jessica Mulley, Clerk to the Commons Committee; Arnold Ridout, Legal Adviser to the Commons Committee; Les Saunders, Department for Exiting the EU; and Alex Bernal, Home Office.

Yours sincerely

A handwritten signature in dark ink that reads "Michael Jay". Below the signature is a horizontal line with a small dot underneath it, serving as a separator or underline.

Lord Jay of Ewelme

Chairman of the EU Home Affairs Sub-Committee