



HOUSE OF LORDS
European Union Committee

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The Rt Hon Nick Hurd MP
Minister of State for Policing and the Fire Service
Home Office
2 Marsham Street
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3 May 2018

Dear Nick,

On 18 April 2017 the House of Lords EU Home Affairs Sub-Committee held an evidence session with two witnesses, Professor John Spencer CBE, Professor Emeritus of Law, University of Cambridge, and Nick Vamos, Partner, Peters and Peters Solicitors LLP and former Head of Extradition at the Crown Prosecution Service. A full transcript, to which the quotations and question numbers in this letter refer, is available at the EU Home Affairs Sub-Committee website, <https://www.parliament.uk/eu-home-affairs-subcommittee>.

The aim of the session was two-fold: first, to investigate the potential ramifications of Article 168 of the draft Withdrawal Agreement for extradition to the United Kingdom during the Brexit transition or implementation period, and second, to explore how extradition between the UK and EU might function after that period. This letter focuses on extradition during the transition or implementation period, and consists of a series of questions.

Article 168 of the draft Withdrawal Agreement

1. Article 168 of the draft Withdrawal Agreement states that “the Union, in respect of any of its Member States which have raised reasons related to its fundamental structures, may declare that, during the transition period, that Member State will not surrender its nationals pursuant to Framework Decision 2002/584/JHA to the United Kingdom; in such a case, the United Kingdom may declare, no later than 1 month after the receipt of the Union declaration, that it will not surrender its nationals to that Member State”.

By our understanding, this Article did not appear in earlier drafts of the Withdrawal Agreement. Why was it included in the final draft text? In addition, the text is currently in yellow, meaning that negotiators have agreed on the policy objective but not the text itself. In your estimation, is the text likely to change substantially in the final Withdrawal Agreement?

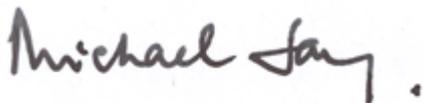
2. Have you made any assessments of which Member States would not extradite their own nationals during the transition or implementation period, and what affect this would have on the ability of the UK to extradite people from those countries?

3. Our witnesses told us (Q31) that certain Member States have already suggested that they will be reluctant to extradite citizens to Norway and Iceland, once the extradition agreement between the EU and those countries comes into force. Do you think that Member States will be similarly reluctant to extradite their citizens to the UK during the transition or implementation period, and in the future?
4. Have you made any assessments of the likelihood that Germany will amend its constitution at some point before or during the transition or implementation period to be able to extradite its citizens to the UK, and whether there will be enough time to achieve this? (See Q31)
5. Has the Home Office assessed whether criminals might take advantage of Member States' ability to refuse to extradite their own nationals to the UK during the transition or implementation period, and return from the UK to those Member States in order to escape justice in the UK?
6. Article 168 would allow the UK to reciprocate in kind, and refuse to extradite its own nationals to any Member State refusing to send its nationals to the UK. One of our witnesses, Professor John Spencer, suggested that this would be "a piece of useless gesture politics" (Q33). Does the Government agree?
7. Have you considered what arrangements should apply if an arrest warrant were issued before Brexit day, but not yet executed?
8. Do you agree with Nick Vamos that Article 168 of the draft Withdrawal Agreement (Q40) is drafted in a way that might encourage Member States not to transfer their nationals?

I look forward to hearing from you within 10 working days.

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

Yours sincerely,



Lord Jay of Ewelme
Chairman of the EU Home Affairs Sub-Committee