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Lord Jay of Ewelme,
Chairman, EU Home Affairs Sub Committee
House of Lords
London
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Dear Lord Jay,

Thank you for your letter of 3rd May about the European Arrest Warrant (EAW) and Article 168 of the draft Withdrawal Agreement. You asked a series of questions about extradition during the implementation period.

The draft Agreement reached with the European Commission in March means internal security, law enforcement and criminal justice cooperation with the EU will continue through the implementation period to December 2020. This will enable the UK to continue making a valuable contribution to the security of all Member States during the implementation period. We will be looking to secure a comprehensive new treaty on internal security cooperation which can take effect directly after.

You asked why the new language included in Article 168 was included in the draft text and whether, in my estimation, the text is likely to change substantially in the final Withdrawal Agreement.

You are correct that the language in Article 168 of the Withdrawal Agreement was not included in earlier drafts. The text in this Article is not yet agreed and is therefore marked amber. Discussions on this matter will continue; I am not in a position to prejudge the outcome of these negotiations.

You asked whether I had made any assessment of which Member States would not extradite their own nationals during the implementation period, what effect this would have on the ability of the UK to extradite people from those countries, whether Member States would be reluctant to extradite their citizens to the UK in the future, and about the likelihood of change to the German Constitution.

As the text in Article 168 is not yet agreed, I would not wish to speculate at this stage on the effect that the agreement may have on the extradition of own nationals to the UK during the

implementation period or the likelihood of changes to EU Member States' constitutions. We believe it is in the interests of both the UK and EU Member States that current capabilities are preserved during the implementation period and we will continue to make this case.

You asked if the Home Office had assessed whether criminals might take advantage of such provisions in order to escape justice.

A range of approaches currently exist to tackle criminals who seek to escape justice by becoming fugitives. The UK will continue to work with European partners with the objective of reducing the risk of impunity for such criminals.

You asked about the ability of the UK to reciprocate in refusing to extradite our own nationals to EU Member States.

It has consistently been the case that the UK does not discriminate between 'own nationals' and non-nationals when it comes to consideration of extradition to other jurisdictions to face justice subject, of course, to due process and human rights considerations as considered by the courts in EAW cases. Impunity for criminals benefits no one, and the UK, as mentioned above, wishes to continue its current level of cooperation as far as possible.

You asked whether I had considered what arrangements should apply if an arrest warrant were issued, but not executed, before "Brexit day".

The UK's objective is to secure an ambitious and comprehensive security partnership with the EU and effective extradition arrangements will be an important part of this. However, Title V of the Withdrawal Agreement sets out how ongoing police and judicial cooperation in criminal matters which may be ongoing when the transition period ends, including the EAW, will be resolved or 'wound down'.

Finally, you asked whether I agreed with Nick Vamos' assertion that Article 168 is drafted in a way that might encourage Member States not to transfer their own nationals.

Member States will take their own view on how they wish to proceed in light of the text, but I would reiterate that Article 168 of the draft Withdrawal Agreement is not yet agreed. We believe it is in the interests of both the UK and EU Member States that current capabilities are preserved during the implementation period and we will continue to make this case.

I would like to thank you for the engaging oral evidence session which I attended last week. There were further matters which I offered to write to the Committee on, and I will do so in due course.



RT HON NICK HURD MP