

Government response to the European Union Select Committee, Home Affairs Sub-Committee, report: 'Brexit: the proposed UK-EU security treaty'.

Introduction

The Government would like to thank the Committee for its report published on 11 July 2018.

The Committee's report has examined in detail the Government's proposal to negotiate an internal security agreement with the European Union (EU), examining the current cooperation between the UK and EU, security cooperation during the implementation period, current models of security cooperation between the EU and third countries, and implications for Northern Ireland.

The Committee has made a number of recommendations and we are grateful for the valuable scrutiny it has provided. The Government's response to specific conclusions and recommendations are below.

Conclusions and recommendations 1 – 4: Internal security: a shared aim

- 1. Both the UK Government and the European Commission have publicly confirmed that there is a deep shared interest in maintaining the closest possible security cooperation between the UK and the EU after Brexit. Protecting the safety of millions of UK and EU citizens must be the overriding objective. (Paragraph 21)**
- 2. Security is thus not a 'zero sum game': we all stand to gain from agreement, and we all stand to lose if negotiations fail. We therefore agree wholeheartedly with the EU Commissioner for Security Union, Sir Julian King, that security cooperation should be "unconditional". (Paragraph 22)**
- 3. Neither side, however, has yet approached the negotiations in this spirit. The UK Government's 'red lines', and the EU's response, appear to have narrowed the scope for agreement. While we do not underestimate the difficulty of the issues facing both sides, the current mindset urgently needs to change. (Paragraph 23)**
- 4. Time is now short: the UK and EU need to agree within the next three months on a political declaration, which will be annexed to the Withdrawal Agreement, and which will determine the shape of future negotiations on security. But the distance between the UK and EU positions is considerable. Negotiators on both sides need to focus now 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. (Paragraph 24)**

Government response:

The Government agrees with the Committee's observation that protecting the safety of millions of UK and EU citizens must be the overriding objective. We believe our approach should be guided by a single overarching aim: affording maximum protection to our citizens. While the UK accepts that our relationship will change as a result of leaving the EU, it is our firm view that working together through different structures should not be at the expense of protecting the public.

The Prime Minister has made clear, including in her February Munich speech¹, that the UK remains unconditionally committed to maintaining Europe's security. As the Committee has observed, security is not 'a zero-sum game' – Europe's security has been and will remain the UK's security. We would disagree with any suggestion that the UK has not approached the negotiations in this spirit.

The UK has commenced discussions with Task Force 50 on our future relationship. On the basis of the proposal set out in the White Paper², the UK's negotiating team will continue to engage with the EU at pace, in order to reach agreement on a framework for the future relationship and to finalise the Withdrawal Agreement by the autumn.

We agree with the Committee's conclusion that pragmatism is required from both sides. While our relationship with the EU will change as a result of leaving the EU, we believe that the UK's proposals - as set out in the White Paper³ - are not only practical and pragmatic, but also provide the best way of protecting the safety and security of citizens across the continent.

Conclusions and recommendations 5 - 7: Current UK-EU security cooperation

5. In our December 2016 report, *Brexit: future UK-EU security and police cooperation*, we concluded that the arrangements currently in place to facilitate police and security cooperation between the UK and EU Member States were "mission-critical" for the UK's law enforcement agencies. That conclusion remains valid today. (Paragraph 40)

6. Police and security cooperation are also mission-critical for the EU and its 27 remaining Member States. As the Director of GCHQ, Jeremy Fleming, said in a statement released on 19 June, intelligence provided by UK agencies saves European lives. (Paragraph 41)

7. Given the UK's significant operational dependence on EU systems and databases, we welcome the Government's decision to opt into the proposed Regulation on interoperability between EU information systems. (Paragraph 42)

Government response:

The Government agrees with the Committee's observations on the importance of current security, law enforcement and criminal justice cooperation between the UK and the EU. The shared tools, measures, and capabilities that have been developed over the last 40 years have been proven to save lives.

¹ Published 17 February 2018 - <https://www.gov.uk/government/speeches/pm-speech-at-munich-security-conference-17-february-2018>

² Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

³ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

Conclusions and recommendations 8 – 12: Security cooperation during the transition period

8. 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 therefore welcome the agreement of both the UK Government and the EU that UK participation in those JHA measures in which the UK currently participates should be extended during the transition period. We note, however, that the draft Withdrawal Agreement would prevent the UK from opting into new JHA proposals, unless these build on or amend existing measures. (Paragraph 52)

9. The transitional arrangements contained in the draft Withdrawal Agreement would also disbar the UK from retaining a governance role in Europol, Eurojust and on the boards of JHA data-sharing frameworks. From this diminished position, the UK will be unable to influence policy and decision making, and this in turn could make it more difficult to secure long-term access. (Paragraph 53)

10. In our July 2017 report, Brexit: judicial oversight of the European Arrest Warrant, we expressed concern over how the issue of own-nationals would be addressed in any transition period. That concern has now materialised, and the inclusion of Article 168 of the draft Withdrawal Agreement, which would allow EU27 States to refuse to extradite their nationals to the UK during the transition period, in accordance with domestic constitutional requirements, is significant, illustrating the disengagement in police and judicial cooperation between the UK and EU27 that will begin on the day that the UK leaves the EU. (Paragraph 62)

11. At the same time, the practical impact of Article 168 upon the UK's extradition requests is unclear. We therefore urge the Government to ascertain the precise effect of Article 168 of the Withdrawal Agreement on the UK's extradition arrangements, including on cases pending on the date of the UK's withdrawal. We shall look again at this issue in coming months, and in the meantime recommend that the Government publish a contingency plan, addressing the effect of any disruption to the UK's extradition arrangements. (Paragraph 63)

12. We agree with our witnesses that it would be counterproductive for the Government to retaliate against any EU Member State that decided not to extradite own-nationals to the UK by refusing to extradite British citizens to that country, as provided for by Article 168 of the draft Agreement. Such a course of action might appear politically opportune in the short term, but could be detrimental to the UK's security. It could also jeopardise the good will that will be needed if a successful outcome is to be achieved in negotiations on the long-term security relationship. (Paragraph 64)

Government response:

The UK and the EU have reached an in principle agreement on the terms of the implementation period, that will start on 30 March 2019 and last until 31 December 2020. The draft Withdrawal Agreement, published on 19 March⁴ and endorsed at the March European Council, includes the agreed legal text. This will enable the UK to continue making a valuable contribution to the security of all EU Member States during the implementation period.

During the implementation period, the UK will continue to participate in Europol and other existing EU Justice and Home Affairs (JHA) tools and will also be able to choose to take part in any measures amending or updating them. The UK can also be invited to cooperate in any new EU tools and measures that are introduced during the implementation period.

The UK will no longer be an EU Member State during the implementation period. However, as set out in the agreement reached in March, common rules will remain in place and representatives or experts from the UK may continue to participate in the meetings of EU agencies and bodies where the presence of the United Kingdom is necessary and in the interest of the Union, or where the discussion concerns acts addressed to the UK and its citizens. The exact nature of the UK's participation is a matter for further discussion.

The draft Withdrawal Agreement will allow the UK to remain part of the European Arrest Warrant (EAW) during the implementation period. However, the UK will no longer be a member of the EU at this point. As the Committee notes, the Withdrawal Agreement will address this issue by taking account of constitutional barriers in some Member States to the extradition of their own nationals to countries that are not in the EU.

It will be a matter for those Member States with constitutional barriers to decide how they intend to implement the Withdrawal Agreement. However, Article 168 of the Withdrawal Agreement has not yet been finalised. We believe it is in the interests of both the UK and EU Member States that important operational capabilities, including swift and effective extradition arrangements provided for by the EAW, are preserved during the implementation period.

Conclusions and recommendations 13 – 20: The UK as a third country—
consequences for security cooperation

13. In our 2016 report on Brexit: future UK-EU security and police cooperation, we argued for an arrangement with Europol that went further than existing operational agreements between Europol and third countries, which would represent a significant diminution in the UK's security capacity. We therefore support the Government's aim to secure a future relationship with Europol that as far as possible maintains the operational status quo. (Paragraph 93)

14. Such a relationship would be in the EU's interest, as well as the UK's. As Rob Wainwright, the then Director of Europol, told us, the UK has been "the lead Member State" in coordinating "highly complex, large-scale multinational operations"—the EU can ill afford to lose access to UK expertise. The volume

⁴ Published 19 March - <https://www.gov.uk/government/publications/draft-withdrawal-agreement-19-march-2018>

of data exchanged between the UK and Europol is such that it is imperative for both sides that early agreement is reached, to support continuing cooperation in the fight against trans-national crimes such as people trafficking, drug smuggling, fraud and terrorism. (Paragraph 94)

15. We are concerned, however, by the Minister's transactional approach to negotiations on Europol: the UK is indeed a major contributor of data, but the Government should not for that reason underestimate the impact that UK withdrawal will have upon its role and influence in Europol, as in other EU institutions. (Paragraph 95)

16. This impact is illustrated by the fact that the House of Commons and House of Lords will lose the right to membership of Europol's Joint Parliamentary Scrutiny Group. We call on the Government, in its negotiations with the EU on ongoing security cooperation, to have regard to the ongoing role of the UK Parliament in ensuring democratic oversight and accountability. In the meantime, this Committee looks forward to continuing, as far as possible, to work with other national parliaments and the European Parliament in the JPSG and other interparliamentary fora. (Paragraph 96)

17. The closer the integration that the UK seeks with Europol, the more compromises the Government will have to make. As we acknowledged in our 2016 report, Europol is accountable to the CJEU, and any operational agreement will have to take this into account. Moreover, any agreement is likely to require the UK to remain aligned with EU data protection legislation, and—depending on the level of access to Europol that the UK achieves—to pay into the Europol budget. (Paragraph 97)

Government response:

As the Committee has observed, the Government has proposed an agreement on internal security which preserves our shared capabilities, whilst allowing the UK and EU to continue to work together in future to combat fast evolving security threats. We agree with the Committee's observation that it would be in the interests of the UK and the EU – and indeed Europol – for the UK to maintain its ongoing role in the agency.

As outlined in our White Paper⁵, and reflected in the evidence to the Committee⁶, the UK is one of the biggest contributors of data, information and expertise to Europol. For example, in 2016 the UK was the highest contributor to Europol serious and organised crime analysis projects, and the highest contributor of information in relation to firearms, child sexual exploitation and abuse, money laundering, cyber, and modern slavery. UK liaison officers offer valuable expertise in dealing with other countries' policing systems and helping progress EU wide investigations.

⁵ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

⁶ 'National Crime Agency written evidence to Home Affairs Committee inquiry into UK-EU security cooperation after Brexit (PSC009)', Home Affairs Committee, February 2018 – <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/home-affairs-committee/home-office-delivery-of-brex-it-policing-and-security-cooperation/written/78338.html>

We want to continue making a significant contribution to the work of the agency. However, as the Committee's conclusion (and our own analysis⁷) has outlined, an arrangement based on existing third country agreements with Europol would not permit this. Our White Paper highlighted that existing third country agreements with Europol do not provide direct access to Europol's databases and the streamlined exchange of data; do not allow national experts to be embedded within Europol and do not enable the third country to initiate activity in the same way. The UK would not be able to maintain its current contribution to Europol on the basis of an agreement along those lines, in part due to the sheer volume of activity the UK participates in and the data that the UK shares. We therefore agree with the Committee's conclusion about the importance of the UK continuing to contribute to the work of Europol.

However, we disagree with the Committee's assessment that our approach to negotiations is 'transactional'. The UK accepts that our relationship will change as a result of leaving the EU, but working together through different structures should not be at the expense of protecting the public. It is right that the Government outlines the impact and consequences of different precedents for cooperation in this area and seeks a comprehensive agreement which will safeguard mutually beneficial operational capabilities which keep UK and EU citizens safe.

In regard to parliamentary scrutiny, our White Paper outlined the Government's proposal for regular and formal dialogue between the UK and EU Parliaments. This would enable legislatures, where they saw fit, to share views and expertise on a wide range of issues, including the functioning of the future relationship and its development, as well as to specific legislative changes that might be relevant. It should also build on the existing precedents for cooperation between Parliamentary Committees and their counterparts in the European Parliament and Member States. The relationship between Parliament and other legislatures is of course a matter for both Houses to determine.

The Committee also noted that the UK may be required to pay into the Europol budget, and would need to take account of Europol's accountability to the CJEU. The Government accepts that where the UK participates in EU bodies or agencies, this would involve a number of commitments. It may be appropriate for the UK to make a financial contribution – as noted by the Committee, the form and structure of this financial contribution would depend on the type of working relationship agreed. The UK would also respect the rules under which those bodies or agencies operated. In regard to the CJEU, the UK would respect the remit of the CJEU such that if there was a challenge to a decision made by an agency that affected the UK, this could be resolved by the CJEU, noting that this would not involve giving the CJEU jurisdiction over the UK.

18. In respect of extradition, the Government has been clear only that it wishes to retain all the benefits of the European Arrest Warrant. There is, however, no precedent for a non-EU Member State securing extradition arrangements equivalent to the EAW. Even the EU's agreement with Norway and Iceland (which has yet to be brought into force) allows for an 'own-national' exemption, analogous to that proposed for the UK during the transition period. It also provides an indirect but influential role for the CJEU. (Paragraph 106)

⁷ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

Published 24 May 2018 - <https://www.gov.uk/government/publications/technical-note-on-security-law-enforcement-and-criminal-justice>

19. But to fall back on cumbersome pre-EAW extradition arrangements such as the 1957 Council of Europe Convention would lead to delay, higher cost, and potential political interference. This would be a bad outcome for both the UK and the EU. (Paragraph 107)

20. As recently as April 2014 the Prime Minister, then Home Secretary, made a considered case that it was in the UK's national interest to maintain participation in the European Arrest Warrant. The underlying national interest remains, and by the Government's own admission, the UK is seeking an unprecedented level of cooperation with the EU. However, there is little sign yet of the realism that needs to go alongside this ambition. The Government needs urgently to commission a full impact assessment of the various possible outcomes of the negotiations, to build up a credible evidence-base for taking what will be difficult, but unavoidable, decisions. (Paragraph 108)

Government response:

The Committee's conclusions are consistent with the Government's assessment that existing extradition arrangements between the EU and third countries do not provide the same level of capability as the EAW. Our White Paper⁸ and technical note⁹ noted that the agreement with Norway and Iceland, once implemented, will leave a capability gap relative to the EAW, including additional grounds for refusal to surrender. Likewise, reverting to the Council of Europe Convention on Extradition would result in cumbersome, slow and significantly more expensive arrangements between the UK and the EU (relative to the EAW), delaying justice and reducing shared capabilities to keep citizens safe.

The Government acknowledges that we are seeking a comprehensive agreement which goes beyond existing precedent. However, there is no legal or operational reason why this could not be achieved. The UK also starts from a position of strong cooperation with EU Member States and full alignment in our current extradition rules, as well as consensus among EU Member States that practical cooperation between operational partners should continue. Therefore, we consider that a pragmatic solution on our future extradition relationship is in the interests of both EU Member States and the UK.

The Government has been clear that direct jurisdiction of the CJEU in the UK will end. The EU's agreement with Norway and Iceland provides for an equal relationship between the case law of the CJEU on the one hand and the competent courts of Norway and Iceland on the other. It would be unprecedented in an international agreement for one party's courts to be solely responsible for dispute resolution.

21. We are concerned that, by mid-May, the UK and EU negotiators had spent little more than an hour discussing the future internal security relationship, despite the obvious mutual interest in making rapid progress. The safety of UK and EU citizens demands that the negotiators turn urgently to this vital task. We call on the Government, with immediate effect, to report regularly to Parliament on progress towards securing agreement on this fundamental aspect of the future relationship. (Paragraph 112)

⁸ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

⁹ Published 24 May 2018 - <https://www.gov.uk/government/publications/technical-note-on-security-law-enforcement-and-criminal-justice>

Government response:

The UK has commenced discussions with Task Force 50 on our future relationship. On the basis of the proposals set out in the White Paper¹⁰, the UK's negotiating team will continue to engage with the EU at pace, in order to reach agreement on a framework for the future relationship and to finalise the Withdrawal Agreement by the autumn.

In regard to the Committee's recommendation that the Government regularly report to Parliament on negotiations, the Government is already doing so. Following each European Council, the Prime Minister makes a statement to the House of Commons and the Secretary of State for Exiting the European Union regularly reports to Parliament on the progress of negotiations. These statements are regularly repeated in the House of Lords. This is in addition to the updates provided to Parliament by other departmental ministers through day-to-day business, including oral evidence to various committees.

Conclusions and recommendations 22 – 37: A security treaty?

22. We support the Government in prioritising three areas for future UK-EU security cooperation: extradition; access to law enforcement databases; and partnerships with EU agencies such as Europol. (Paragraph 124)

23. Witnesses to this inquiry presented arguments both for and against the Government's preferred option of negotiating a single, comprehensive treaty to cover all these areas. On balance, however, we consider that the Government's objective is unlikely to be achievable, given the time that has been taken to negotiate EU agreements with third countries in the past, and the range and complexity of the available models and precedents. We also note that the principle that 'nothing is agreed until everything is agreed' increases the risk inherent in seeking to negotiate a single security treaty. In effect, all the eggs would be in one basket. (Paragraph 125)

24. In addition, there would be a strong temptation, within a security treaty, to prioritise a few achievable and significant goals, and some of the synergies between the various instruments in the EU toolkit could be lost. (Paragraph 126)

25. The Government therefore needs to adopt an evidence-based approach. It should analyse on a case-by-case basis the value of maintaining access to each of the tools that it has already opted into, making its findings public wherever possible. (Paragraph 127)

26. The Government also needs to be realistic about what it can achieve, not least because the EU has given little indication that it will be prepared to negotiate a bespoke treaty instead of a series of agreements on security. Whatever the approach adopted, any UK-EU agreement will be judged less on its form than on its success in protecting the security of the UK and EU27. (Paragraph 128)

¹⁰ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

27. The best should not be the enemy of the good: if a comprehensive treaty cannot be agreed, the safety of the people of the UK and EU27 means that a series of ad hoc security arrangements could help to mitigate reduced operational capacity. Time is short, and both sides urgently need to show pragmatism and flexibility if they are to reach agreement. (Paragraph 129)

28. We note that a comprehensive security treaty could be deemed to be a 'mixed agreement'. While this would not have important consequences domestically, it would result in a more complex, time-consuming and risky process of ratification by the EU and its Member States. We call on the Government to explain what consideration it has given to this issue in bringing forward its proposals for a comprehensive security treaty. (Paragraph 151)

Government response:

The Committee concludes that it would be preferable for the Government to seek a number of 'ad hoc' security agreements, rather than a single, comprehensive agreement. The Government disagrees with this conclusion.

The capabilities developed by the EU and its Member States are mutually reinforcing, from the initial stages of identification and investigation of a suspect, through to arrest, prosecution and prisoner management. Together, they prevent criminals from using international borders to avoid detection and justice, safeguard against threats to public security and protect citizens and victims of crime.

As the Committee has highlighted there are 'synergies' between these tools – many work together to provide an integrated operational system to identify, pursue and prosecute criminals and terrorists. Therefore, the Government considers that a piecemeal approach which could arise from 'ad hoc' (tool-by-tool) agreements would have more limited value than an overarching, strategic approach. That is why the UK has proposed a coherent and legally binding agreement on internal security that sets out respective commitments and protects the integrated operational capabilities that the UK and the EU share.

We have set out detailed case-by-case analysis behind our reasoning in our technical note on security, law enforcement and criminal justice (published in May).¹¹

We would also expect a comprehensive agreement of the kind the Government is proposing to help ensure that a dynamic relationship is maintained to meet the shared, evolving threats faced by the UK and the EU. In contrast, ad-hoc agreements on individual capabilities would likely be static. In regard to timings, the UK's proposals would allow cooperation to take place on the basis of existing EU measures, with negotiations focusing principally on the overarching provisions and safeguards in a comprehensive agreement. This would in our view lead to a faster and more efficient negotiation.

The UK's negotiating team will continue to engage with the EU at pace, in order to reach agreement on a framework for the future relationship and to finalise the Withdrawal Agreement by the autumn.

¹¹ Published 24 May 2018 - <https://www.gov.uk/government/publications/technical-note-on-security-law-enforcement-and-criminal-justice>

29. Continued data-sharing is critical for future UK-EU security cooperation. Were the UK to lose access to the EU's security databases, information that today can be retrieved almost instantaneously could take days or weeks to access, creating not only a significant hurdle to effective policing but a threat to public safety. (Paragraph 152)

30. We support in principle the Government's objective of securing a crosscutting agreement on data protection. But this means that the sequencing of the negotiations will be vital: if future security cooperation is to be effective, the Government must reach an agreement on data before agreeing a security treaty. (Paragraph 153)

31. We note also that negotiations on data-sharing are notoriously complex. So while we acknowledge the advantages of a cross-cutting agreement on data protection, we stress that this should not come at the expense of an agreement on security. (Paragraph 154)

Government response:

We agree with the Committee's conclusion on the importance of continued data sharing. The EU, with the UK and its Member States, has established unrivalled mechanisms which allow Member States to exchange data for law enforcement purposes on a daily basis. The ability of law enforcement agencies to transfer data is crucial in our efforts to fight cross border crime and prevent terrorism. It would be detrimental to the UK and EU Member States if this capability was not protected.

In regard to the UK securing an agreement with the EU, the UK and the EU start from a position of trust in each other's standards and regulatory alignment on data protection. The UK's recent Data Protection Act 2018 strengthened UK standards in line with the EU's General Data Protection Regulation (GDPR) and the Law Enforcement Directive, providing a unique starting point for an extensive agreement on the exchange of personal data that builds on the existing adequacy framework.

We believe that the EU's adequacy framework provides the right starting point for the arrangements the UK and the EU should agree on data protection. The UK is ready to begin preliminary discussions on an adequacy assessment so that a data protection agreement can be in place by the end of the implementation period at the latest, to provide the earliest possible reassurance that data flows can continue for both security, law enforcement and commercial purposes.

We recognise that an agreement on security will need to operate in parallel to that separate UK-EU agreement on the exchange and protection of personal data, which we hope will underpin both the security, law enforcement and economic partnerships.

32. Given the hurdles ahead, we are concerned that there is no mechanism in the draft Withdrawal Agreement for extending it, either in whole or in part, beyond the end date of 31 December 2020. We call on the Government and the EU to consider options for allowing such an extension, at least in respect of key security measures, where any interruption to ongoing operational cooperation could cost lives. (Paragraph 155)

33. In the meantime, internal security practitioners should prepare for the possibility of an operational cliff-edge. We commend the contingency planning undertaken by the Crown Prosecution Service, the Metropolitan Police and the National Crime Agency, in case the UK loses access to databases and other frameworks for security cooperation at the end of the transition period. (Paragraph 156)

Government response:

Both the UK and the EU agree that the implementation period has to be time-limited and the legal text sets an end date of 31 December 2020. We are working at pace to ensure that all the necessary arrangements are in place for 31 December 2020.

The continued safety and security of both UK and EU citizens remains our top priority. That is why we are preparing for all eventualities – including the unlikely scenario in which the current mechanisms we use to cooperate with EU Member States are not available when we exit the EU in March 2019.

We are co-ordinating the preparation of robust contingency plans for our security, law enforcement and criminal justice cooperation with EU partners. We continue to work closely with operational partners – including the Crown Prosecution Service, the police and the National Crime Agency - as well as with the Devolved Administrations, to put those plans into action and ensure that we transition our cooperation with European partners, and continue to work together through alternative channels to protect the citizens of the UK and the EU.

34. Setting aside the arguments for and against retaining the European Charter of Fundamental Rights in UK law, any perceived reduction in the rights enjoyed by criminal suspects in the UK could have a significant operational impact on those working to protect the country's security. This is underlined by the European Commission's latest slides on police and judicial cooperation, which identify continuing UK adherence to the European Convention on Human Rights (and compliance with relevant judgments of the European Court of Human Rights) as key safeguards for any UK-EU agreements in this area. (Paragraph 157)

35. The Government needs urgently to explain how fundamental rights will be protected after Brexit, and how these protections will cohere with the proposed security treaty. Otherwise it risks delaying an agreement on internal security, leading to an operational cliff-edge. (Paragraph 158)

36. We welcome the Prime Minister's statement that the UK will "respect the remit" of the Court of Justice with regard to EU agencies, including those in the field of internal security. Time is now short, and the security of the UK and EU demands flexibility. A security treaty that required the UK courts to take account of decisions of the CJEU (and vice versa) might be more acceptable to the EU—and might therefore be negotiated more quickly— than an entirely bespoke solution. (Paragraph 159)

Government response:

The White Paper¹² outlined that our future security relationship should be underpinned by appropriate safeguards, including respect for human rights, comprehensive data protection arrangements and robust, appropriate governance arrangements. The UK is committed to membership of the European Convention on Human Rights (ECHR) and we believe an agreement should include a mutual commitment to individuals' rights, noting that the UK will remain a party to the ECHR after it has left the EU.

The White Paper outlined in detail the UK's proposals for a new set of robust institutional and governance arrangements, which will include a mechanism for addressing disputes through a Joint Committee so they can be resolved fairly and quickly. The Joint Committee would also keep under review the case law of both the senior courts of the UK and the CJEU, where this was relevant to the interpretation of the future agreement. If significant divergences were found between respective courts' interpretation of the agreements, the Joint Committee could be empowered to act to preserve the consistent interpretation of the agreements.

In respect to agencies, the UK would respect the remit of the CJEU such that if there was a challenge to a decision made by an agency that affected the UK, this could be resolved by the CJEU (noting that this would not involve giving the CJEU jurisdiction over the UK).

37. We note also that continuing dialogue, at all levels, will be needed to support the future UK-EU security relationship. This will require an increased emphasis on cultivating relationships, both formal and informal, to compensate for the UK's absence from decision-making bodies. We call on the Government to explain the means by which it intends to support such dialogue and embed it in the UK-EU security relationship. (Paragraph 160)

Government response:

The Government agrees that continuing dialogue is an important aspect of our future cooperation. The White Paper¹³ outlined in detail the UK's proposals for a new set of robust institutional and governance arrangements, including new forms of dialogue. Dialogue between the UK and the EU will mean that the relationship itself can evolve and respond to changing circumstances. This could be, for example, in response to a new shared threat, which requires joint working to exchange time-sensitive information or new capabilities.

As the Committee has identified, this dialogue will need to take place at different levels, and in different formats. The UK proposes that the framework should also facilitate many of the different forms of dialogue that would manage and administer the relationship. We envisage that this dialogue would happen through a Governing Body at leader and ministerial level; through a Joint Committee, including sub-committees where relevant, at a technical level; through formal consultation between experts on regulatory issues and legislative changes; and through exchanges between the UK Parliament and the European Parliament.

¹² Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

¹³ Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>

Our proposals would enable the UK and the EU to coordinate responses to new challenges or to change approach in response to shifting objectives over time.

Conclusions and recommendations 38 - 19: Northern Ireland and the proposed security treaty

38. Security forces in Northern Ireland and the Republic of Ireland have a decades long history of cooperation in combating terrorism and cross-border crime, and over recent years in particular the Police Service of Northern Ireland and An Garda Síochána have developed ever greater mutual confidence and respect. While we are confident that this informal cooperation will continue, we also note the evidence of the Police Service of Northern Ireland that EU instruments, databases and agencies have become increasingly important in providing formal mechanisms for cooperation. (Paragraph 169)

39. It is thus vital for both sides that any UK-EU treaty or agreements should support ongoing security cooperation, including (particularly in light of the ongoing case before the CJEU) effective extradition arrangements between the UK and Ireland. Here, perhaps more than in any other aspect of security cooperation, the negotiations should not be treated as a ‘zero sum game’, but as an opportunity to develop a partnership that will benefit both sides. (Paragraph 170)

Government response:

We agree with Committee’s conclusion regarding the importance of EU mechanisms for cooperation between the UK and the Republic of Ireland, and in particular, cooperation between Northern Ireland and the Republic of Ireland.

With regard to extradition, we consider that the EAW continues to play a vital role in police cooperation between Ireland and the UK (including Northern Ireland). The Government’s assessment¹⁴ has been clear that existing extradition arrangements between the EU and third countries do not provide the same level of capability as the EAW.

That is why the UK is committed to a comprehensive security partnership with the EU and its Member States, including Ireland, that will allow the Police Service of Northern Ireland to continue to tackle security threats, including the severe threat from dissident republicans, and serious and organised crime. We are clear that this security partnership should maintain effective extradition arrangements that underpin wider justice and security cooperation on the Island of Ireland.

We agree with the Committee that negotiations should not be treated as a ‘zero-sum game’. Security should not be regarded as a privilege extended to one side or the other – it is about safeguarding mutually important operational capabilities which keep our citizens safe.

¹⁴ Published 24 May 2018 - <https://www.gov.uk/government/publications/technical-note-on-security-law-enforcement-and-criminal-justice>

Published 12 July 2018 - <https://www.gov.uk/government/publications/the-future-relationship-between-the-united-kingdom-and-the-european-union>