

Home Affairs Committee

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News Desks, Political, Home Affairs Correspondents

Brexit negotiations must increase focus on security and policing cooperation to avoid sleepwalking into a crisis

A report published today by the Home Affairs Committee warns of serious legal, constitutional and political obstacles in the way of achieving continued close policing and security cooperation after Brexit. It cautions that these issues need urgently to be resolved, or the UK's future policing and security capabilities will be seriously undermined.

The report welcomes the Government's objectives for a Security Treaty to replicate current cooperation on Europol, the European Arrest Warrant and criminal data sharing, but criticises the Government for complacency over the timetable and warns about the complexity of the negotiations.

It calls for security and policing negotiations to begin immediately, and calls on the UK Government and the European Commission to show flexibility. The Committee argues that the EU should not try to restrict cooperation to existing third country models, and that the UK should not be rigid about artificial red lines, especially on the CJEU. It argues that both parties should be ready to extend the transition period, as it is likely to take longer than two years to resolve new legal arrangements for extradition and data sharing.

The Committee warns that the Government risks sleep-walking into a crisis, by appearing to assume that the shared UK-EU interest in security cooperation will lead to swift and easy agreement of complex legal and constitutional problems.

The Chair of the Home Affairs Committee, Rt Hon Yvette Cooper MP, said:

"Given the scale of cross border crime, trafficking and terror threats, we need security and policing cooperation more than ever. But there is a serious risk we will lose some of the vital data and extradition arrangements if there isn't urgent work by both the UK and EU to deal with the trickiest issues.

"We agree with the Government that the European Arrest Warrant, Europol capabilities and database access should be replicated in full, and that is in Europe's interests too.

"But just because we all want something, it doesn't mean it will happen, unless enough work is put in in time to overcome the genuine legal, constitutional and political obstacles we have uncovered.

"We are extremely concerned that neither the Government nor the Commission is focusing enough attention on this area of Brexit, to sort these problems out in time.

“Yet the consequences of running out of transition time before the Security Treaty is in place are immensely serious – both for the UK and Europe. Losing or weakening extradition arrangements could mean being unable to extradite rapists like Zdenko Turtak, who fled back to Slovakia but, using the European Arrest Warrant, was returned to face a long prison sentence. Losing or weakening data access could prevent the police from getting the vital information they need to catch dangerous criminals or keep victims safe.

“The Prime Minister appears to have eased the ECJ red line when it comes to security cooperation – that is welcome and essential, if we are to be able to replicate current cooperation after Brexit. But other tricky problems remain unresolved, and we need much more detail and flexibility from both the Government and the Commission.

“Much more urgency needs to be given to this whole area. Otherwise, we risk sleepwalking into a crisis. That is why the Committee is ringing the alarm bell before it is too late.

“Policing cooperation, extradition arrangements and data sharing are too important to lose or diminish. The costs of failure are unthinkable.”

The Committee concludes:

- The UK should seek to maintain its security capabilities in full after Brexit – including Europol membership, replicating the provisions of the European Arrest Warrant, and retaining full access to EU data-sharing mechanisms – and the Government is right to aim to secure those in a Security Treaty, separate from the other negotiations.
- The Government should be honest about the complex technical and legal obstacles to achieving such a close degree of cooperation as a third country. It is crucial that the negotiations in this area start imminently, and the Government and the EU must be ready to extend the transition period for security arrangements beyond the proposed end-date of December 2020.

Europol

- With growing cross border crime, there can be no substitute for UK access to Europol's capabilities and services - maintaining this should be a key priority in the Brexit negotiations.
- Current EU proposals for the UK to lose its role on the Europol board during the transition period are a real concern. Disrupting Europol's governance arrangements next March, in advance of a wider negotiation the new relationship, would not benefit anyone's security or safety.
- The UK and EU should work to negotiate a bespoke relationship – existing Europol models for cooperation with non-EU countries would involve a reduction of security capabilities. The Prime Minister's willingness to accept the CJEU is welcome and essential to securing the closest possible partnership.

European Arrest Warrant

- The efficiency and effectiveness of the European Arrest Warrant is beyond doubt. Being forced to fall back on the 1957 European Convention on Extradition after Brexit would be a catastrophic outcome.
- Establishing a new extradition agreement that replicates the EAW is vital but faces serious legal and constitutional obstacles. For example, Germany and Slovakia currently have constitutional bars against extraditing their own citizens to a non-EU country – that would have shielded Zdenko Turtak from extradition from Slovakia to face trial and imprisonment for a violent rape in Leeds two years ago.
- The Norway-Iceland surrender agreement has significant deficiencies compared with the EAW as it does not require countries to extradite their own citizens, includes an exemption for crimes that are political in nature, and it still hasn't been ratified or implemented.

Data gathering and sharing

- We agree with the Government that the sharing of criminal data, including full access to the Second Generation Schengen Information System (SIS II) and other EU databases must continue after Brexit.
- However, the Committee is concerned that there are likely to be significant judicial and legal obstacles and delays to securing a data adequacy agreement, and reaching the data protection standards needed to maintain access to those databases. This could include increased examination by the EU of our surveillance and interception regime, as we will no longer benefit from the national security exemption for Member States. The Government could also encounter problems because of its decision not to incorporate Article 8 of the EU Charter of Fundamental Rights into UK law, to exempt immigration cases from the Data Protection Bill.
- In summary, the Committee is concerned that the Government is worryingly complacent about the UK's future access to EU data.

Contingency planning

- Given the uncertain prospects for a comprehensive deal on law enforcement cooperation, there is no alternative to contingency planning for the loss of some or all EU security measures. The Government should dedicate a substantial proportion of the £3 billion Brexit planning fund to policing and security cooperation, including publishing detailed impact assessments of different scenarios, along with fully costed plans for contingency arrangements.

The Committee argues that success in this area of Brexit will require pragmatism on both sides. The EU should not be so inflexible that it confines cooperation to existing models, but the UK should not be rigid about its own red lines, including the future jurisdiction of the CJEU.

The Committee agrees with the Home Secretary that a no deal outcome in security should be unthinkable, but is not convinced that the Government has a clear strategy to prevent the unthinkable from becoming a reality, and it expresses serious concerns about the apparent lack of investment and interest in contingency planning in this area.

The report concludes that it is time for the Government to flesh out the details of the 'bespoke deal' it says it hopes to secure in this area, and to be open with the public and Parliament, by explaining how it proposes to address the potential pitfalls and obstacles that the Committee has identified.

Copies of the report will be available on the Committee's website from the time of publication.

Inquiry information:

[Home Office delivery of Brexit: policing and security cooperation](#)

Media bids and information:

George Perry: perryg@parliament.uk; 078341 72099

Committee Membership is as follows:

Rt Hon Yvette Cooper MP (Chair, Labour, Normanton, Pontefract & Castleford)
Rehman Chishti MP (Conservative, Gillingham and Rainham)
Sir Christopher Chope MP (Conservative, Christchurch)
Stephen Doughty MP (Labour, Cardiff South and Penarth)
Kirstene Hair MP (Conservative, Angus)
Sarah Jones MP (Labour, Croydon Central)
Tim Loughton MP (Conservative, East Worthing and Shoreham)
Stuart C. McDonald MP (Scottish National Party, Cumbernauld, Kilsyth and Kirkintilloch East)
Douglas Ross MP (Conservative, Moray)
Naz Shah MP (Labour, Bradford West)
John Woodcock MP (Labour, Barrow and Furness)

Specific Committee Information: homeaffcom@parliament.uk; 020 7219 2049

Committee Website: www.parliament.uk/homeaffairscom

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