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UK-EU security cooperation after Brexit: Follow-up report

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Report, together with formal minutes relating to the report

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Home Affairs Committee

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Committee staff

The current staff of the Committee are Phil Jones (Clerk), Harriet Deane (Second Clerk), Simon Armitage (Committee Specialist), David Gardner (Senior Committee Assistant), Mandy Sullivan (Committee Assistant) and George Perry (Senior Media and Communications Officer).

Contacts

All correspondence should be addressed to the Clerk of the Home Affairs Committee, House of Commons, London SW1A 0AA. The telephone number for general enquiries is 020 7219 6856; the Committee's email address is homeaffcom@parliament.uk.

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1 Background to this report

Introduction

1. Following the result of the referendum on the UK's membership of the European Union, our predecessor Committee launched an inquiry into future UK-EU security cooperation. This was resumed after the 2017 General Election, and we published a report, *UK-EU security cooperation after Brexit*, on 21 March 2018. The Government has not yet responded.

2. This report follows up our previous inquiry. We provide a summary and set out our conclusions on developments in the security aspects of the Brexit negotiations since March; the negotiating mandate of the EU27—as communicated by the Article 50 Taskforce of the European Commission and by the EU's Chief Negotiator, Michel Barnier, on 18 and 19 June; the security and dispute resolution elements of the Government's recent Brexit White Paper; and contingency planning for a 'no deal' Brexit in security.

3. We express serious concerns about the lack of progress in the negotiations to date; the impact on security cooperation of the Government's 'red lines', including the jurisdiction of the ECJ; the disappointingly rigid EU negotiating position; and the very real prospect of the UK losing access to the Second Generation Schengen Information System (SIS II), which is vital to our law enforcement and border security capabilities. We believe that both the EU and the UK Government need to show more flexibility, and give greater priority to getting an early agreement that continues existing policing and security cooperation; otherwise, they will recklessly undermine security in both the UK and the EU, and will let the public down badly. It is not in the interests of any nation for policing and security cooperation to be undermined.

4. We are grateful to Sir Rob Wainwright, former Director of Europol; Claude Moraes MEP, Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE); and Camino Mortera-Martinez, Research Fellow and Brussels Representative for the Centre for European Reform, for giving oral evidence to us in July.

Our previous report

5. Our previous report detailed a number of key EU internal security measures in which the UK participates. It focused on:

- Europol, an EU agency which coordinates cross-border police cooperation between Member States and operational partners;
- The European Arrest Warrant, which facilitates speedy extradition of wanted individuals between Member States of the EU, underpinned by the 'mutual recognition' of judicial decisions; and
- EU databases and data-sharing tools, including the Second Generation Schengen Information System (SIS II), which enables authorities to enter and consult 'real time' alerts on missing and wanted individuals and lost and stolen objects; the

European Criminal Records Information System (ECRIS); the Prüm Decisions, the Passenger Name Record Directive (PNR); and the Europol Information System (EIS). These are described in detail in the report.

6. We outlined precedents for participation by non-EU countries in those measures, scrutinised the Government's negotiating goals in this area, explored issues relating to the transition period, and considered potential obstacles to UK-EU security cooperation after Brexit, including data protection law, UK surveillance powers and the jurisdiction of the Court of Justice of the European Union—hereafter referred to as the ECJ (European Court of Justice). We made 34 recommendations and conclusions. Those of particular relevance to this report are set out in the box below.

Box 1: Key recommendations and conclusions from our previous report

- The Government must be honest about the complex technical and legal obstacles to achieving such a close degree of future security cooperation with the EU as a third country, and provide more detail about its negotiating objectives;
- The Government and the EU must remain open to extending the transition period for security arrangements beyond the proposed end-date of December 2020;
- An operational agreement between the UK and Europol after Brexit, based on existing third country models, would represent a significant diminution in the UK's security capacity;
- Being forced to fall back on the 1957 Convention on Extradition, in the absence of agreeing a new extradition arrangement with the EU, would be a catastrophic outcome;
- The Government must work closely with its EU partners to ensure that Brexit does not cause the UK's surveillance powers to become a source of conflict, nor an obstacle to vital forms of data exchange, and the Government and the EU must carry out an impact assessment of the UK failing to receive a data adequacy decision from the European Commission;
- The Government should incorporate Article 8 of the EU Charter of Fundamental Rights (data protection rights) into UK law;
- Where data protection is concerned, the extent of ECJ involvement in any meaningful agreement between the UK and the EU means that it would be unwise to make the jurisdiction of the European Court a 'red line' issue in the negotiations;
- The Government should dedicate a substantial proportion of the £3 billion Brexit planning fund to policing and security cooperation, to include detailed impact assessments of different scenarios and fully costed plans for contingency arrangements.[1]

1 Home Affairs Committee, UK-EU security cooperation after Brexit (HC 635), 21 March 2018

2 The transition period

7. Five days after we agreed our March report, the draft withdrawal agreement was published, outlining the terms of the UK's exit from the European Union. The agreement sets out the details of a transition period ending in December 2020, during which time the UK will continue to participate in the European Arrest Warrant (EAW), retain access to data-sharing tools, including SIS II, and remain part of EU agencies, including Europol. It was reported that the Government wanted the opportunity to opt into new justice and home affairs measures during the transition period,[2] but the draft suggests that the Government has conceded on that point, and will be treated as a third country in relation to new measures (unless they amend, replace or build on measures in which the UK already participates).[3]

The European Arrest Warrant

8. As currently drafted, the withdrawal agreement allows the UK to continue to participate in the EAW during the transition period, but it will also enable Member States to refuse to extradite their own nationals to the UK, and for British authorities to reciprocate by refusing to extradite UK nationals to the same Member States.[4] For constitutional reasons, some Member States are only able to extradite their own citizens to other EU Member States under the EAW, as outlined in our previous report on this subject.[5] This exemption is most likely to be invoked by Germany, but might also affect extraditions of 'own nationals' from a number of other Member States, including the Czech Republic, France, Romania, Slovenia, and Slovakia.[6]

9. The relevant paragraph of the withdrawal agreement (Article 168) is highlighted in yellow, meaning that "the text is agreed on the policy objective but drafting changes or clarifications are still required".[7] However, the Government's White Paper on the future relationship between the UK and the EU, published on 12 July, suggests that this limitation has been accepted. It recognises that these constitutional issues create "challenges", and proposes that the UK's future extradition arrangement with the EU should be based on "arrangements for the EAW during the implementation period, which will take account of constitutional barriers in some Member States".[8]

10. Steve Smart, Director of Intelligence for the National Crime Agency (NCA), said in May that the Crown Prosecution Service and NCA are "engaged" with this issue, which is an "area of concern". But he suggested that the exemption within the withdrawal agreement would not affect "huge numbers" of extraditions—Germany, for example, extradited

2 Politico, Barnier warns UK objections put Brexit transition period at risk, 12 February 2018
3 Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (coloured version) in the negotiation round with the UK of 16–19 March 2018, TF50 (2018) 35 – Commission to EU27
4 *Ibid*
5 Home Affairs Committee, UK-EU security cooperation after Brexit (HC 635), 21 March 2018
6 House of Lords European Union Committee, Brexit: the proposed UK-EU security treaty (HL 164), 11 July 2018
7 Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (coloured version) in the negotiation round with the UK of 16–19 March 2018, TF50 (2018) 35 – Commission to EU27
8 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018

just three of its own nationals to the UK during "the last few years".[9] Between 2009 and 2016/17, over 300 extraditions to the UK (out of over 1,000 surrendered individuals) were of 'own nationals' of EU Member States.[10]

11. Regardless of numbers, however, the human cost of this exemption might be substantial. Our previous report highlighted the case of Zdenko Turtak, a Slovak national who raped an 18-year-old woman in Leeds in March 2015, after dragging her from a bus stop and beating her with a rock. Turtak was traced by a DNA match from a crime committed elsewhere in Europe, extradited to the UK from Slovakia, and sentenced to 14 years' imprisonment in October 2015. Slovakia was only able to surrender him as a result of the EAW, and could have declined to do so under the current terms of the draft withdrawal agreement.

12. **The current draft of the withdrawal agreement will allow the UK to remain part of the European Arrest Warrant during the transition period, which we welcome. But it will also allow Member States to refuse to extradite their own nationals to the UK during that period, and for the UK to reciprocate by refusing to extradite British nationals to the same countries. The extradition of 'own nationals' to a non-member state would require some EU countries to amend their constitutions via a referendum, and the Government's White Paper appear to accept that this exemption will remain. This will undoubtedly lead to cases in which justice for victims is frustrated or denied, and criminals are able to evade arrest for longer.**

13. **This is a stark illustration of the sort of complexities involved in any attempt to maintain the 'status quo' in UK-EU security cooperation after Brexit. We reiterate our recommendation that the Government should publish a full impact assessment of the extradition aspects of the withdrawal agreement, and explain what it plans to do to mitigate their effects on the UK's ability to bring offenders to justice.**

Europol

14. The UK's precise status within Europol during the transition period remains unclear. The draft withdrawal agreement extends the body of EU law (the 'acquis'), including EU agencies such as Europol, to the UK during the transition period. But it also states that the UK will not retain its involvement in "decision-making and governance of the bodies, offices and agencies of the Union",[11] suggesting that British representatives will be unable to remain on the Management Board of Europol during transition, and might not be able to lead operational projects. Prior to the publication of the draft withdrawal agreement, in November 2017, Michel Barnier said that the UK would no longer be a member of Europol after 29 March 2019, and the EU has yet to clarify the UK's status within the agency during the transition period.[12]

9 House of Lords Select Committee on the European Union, Home Affairs Sub-Committee, Oral evidence take on 2 May 2018, Q60

10 National Crime Agency written evidence (PSC009), 20 February 2018

11 Article 6 of the Draft Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community highlighting the progress made (coloured version) in the negotiation round with the UK of 16–19 March 2018, TF50 (2018) 35 – Commission to EU27

12 European Commission, Speech by Michel Barnier at the Berlin Security Conference, 29 November 2017

15. The Committee Chair wrote to Mr Barnier on 15 June, asking questions about the UK's position within Europol after 29 March 2019, but he declined to respond in writing. The same question was put in writing to the then Secretary of State for Exiting the EU, Rt Hon David Davis MP, who did not address this issue in his response.[13]

16. We asked Sir Rob Wainwright what impact this uncertainty was having on Europol. He told us that the expectation (when he left office in April) was that "it would be a sort of standstill arrangement" for the UK during the transition period. When we asked whether such arrangements would allow the UK to remain on the Board of Europol, however, he said: "maybe not in some of the governance dimensions relating to membership of the management board, for example".[14]

17. **With eight months left before Brexit, the UK's status within Europol after 29 March next year remains unclear. The Government and the EU must clarify, at the earliest opportunity, whether the UK will retain any role or function relating to the Europol Management Board, and whether it will be able to lead operational projects during the transition period. We urge the EU to show flexibility and allow the UK to remain on the Management Board during transition, to avoid instability while a new agreement is drawn up. If it is likely that alternative arrangements will be in place, then the Government needs to set out what their impact will be on the UK's law enforcement capabilities.**

13 Written evidence submitted by the Department for Exiting the European Union (BSP0001), published 3 July 2018
14 Oral evidence taken on 3 July 2018, Q16

3 The long-term future security relationship

Introduction

18. Since we agreed our previous report, the EU27 has agreed an initial negotiating mandate on internal security, outlining its approach to negotiations in this aspect of the future relationship. The Government has also published a White Paper on the future relationship between the UK and the EU, which includes further proposals on institutional frameworks and dispute resolution mechanisms, and more detailed objectives in relation to the European Arrest Warrant. This chapter sets out our conclusions on these developments, and the prospects for the Government achieving its aims for the UK's long-term future security relationship with the EU.

The EU's position

19. On 18 June 2018, the Article 50 Taskforce of the European Commission published slides that had been presented to the European Council on 15 June. They were elaborated upon in a speech by Michel Barnier to the European Union Agency for Fundamental Rights (FRA) in Vienna the following day. He described them as a "proposal" reflecting "the guidance established by the 27 Heads of State and government", as well as the relevant resolution of the European Parliament. Mr Barnier said that EU internal security cooperation is "founded on an 'ecosystem' based on common rules and safeguards, shared decisions, joint supervision and implementation and a common Court of Justice". He claimed that "more realism" was needed on "what is possible and what is not when a country is outside of the EU's area of justice, freedom and security and outside of Schengen", asserting that the UK cannot retain direct access to EU or Schengen-only databases after Brexit, cannot take part in the European Arrest Warrant, and will be unable to shape the strategic direction of Europol.[15]

20. The EU's proposal also outlines a number of "safeguards" that it will be likely to demand as preconditions for security cooperation, including the UK remaining a party to the European Convention on Human Rights, with a "guillotine clause" in the event of condemnation by the European Court of Human Rights; adequacy of UK data protection standards, confirmed by an 'adequacy decision' from the European Commission; and a dispute settlement mechanism to ensure "reciprocal application of the agreement".[16] The slides state that the EU27's approach is determined by the bloc's security interest, the balance of rights and obligations, the autonomy of the EU decision-making process, and the fact that a non-member state "cannot have the same benefits as a member", taking into account that the UK will be a third country outside Schengen.[17]

21. At the June summit of the European Council, it was reported that the Prime Minister had urged the EU27 to widen their negotiating mandate to allow for the unrestricted sharing of policing and security information, which she said would be "in all our

15 Speech by Michel Barnier at the European Union Agency for Fundamental Rights, 19 June 2018
16 European Commission, TF50 (2018) 51 – Commission to EU 27, Police and judicial cooperation in criminal matters (slides), 18 June 2018
17 *Ibid*

interests". *The Times* quoted a senior EU official as stating that the UK has to accept "the consequences of its own decisions […] We don't want a security gap. If there is a security gap, that is caused by Brexit, not the EU".[18] Similarly, Michel Barnier said that some in the UK "try to blame us for the consequences of their choice", and that the EU "will not be drawn into this blame game".[19]

22. Steve Peers, Professor of EU Law at the University of Essex, tweeted that the EU27's proposal was: "Overall unimpressive". He said that it "Fails to consider UK contribution of data"; pays "Lip service to security concerns"; is "mostly concerned about ideological constructs"; and "Misstates law & overlooks EU precedent with non-EU countries in this field".[20] Giving evidence to us in July, Camino Mortera-Martinez expressed optimism that the position would become less rigid as the negotiations progress, but she suggested that this would require clarification or movement on the UK's 'red lines', too, including data protection, the ECJ and the EU Charter of Fundamental Rights. Without that, she said, "we will not be able to move on from the Commission's rather harsh initial negotiating position".[21]

The Government's response

23. The Home Secretary, Rt Hon Sajid Javid MP, told us in July that the Commission's position was "completely unsatisfactory", noting that it would limit the UK to existing third country models. He sought to contrast the position taken by the Commission and the EU27 Member States, however, informing us that his bilateral meetings with EU27 interior ministers had revealed an "overwhelmingly positive response" to the Government's security ambitions. He added: "I have yet to meet any interior Minister in any EU country who does not want this kind of comprehensive approach".[22]

24. The Home Secretary also noted that the German Interior Minister, Horst Seehofer, has been "much more positive" about the EU's future security relationship with the UK. Mr Seehofer, who is the German Chancellor's coalition partner but leads a different political party, reportedly wrote to the European Commission in June requesting that the EU strive for "unconditional security cooperation" with the UK after Brexit. The German Government has since distanced itself from his comments—Thomas Eckert from the German Representation to the EU reportedly said that the letter was not sanctioned by the German Government, and an EU spokeswoman said that it was "not the position of the European Council, including Germany".[23]

The Brexit White Paper

25. On 12 July, the Government published a White Paper on the future relationship between the UK and the EU (referred to hereafter as the "Brexit White Paper"). It proposed that the future UK-EU partnership be structured around an "overarching institutional

18 *The Times*, EU putting lives at risk over Brexit, warns May, 29 June 2018
19 Speech by Michel Barnier at the European Union Agency for Fundamental Rights, 19 June 2018
20 Twitter thread by Professor Steve Peers, 18 June 2018
21 Oral evidence taken on 3 July 2018, Q65
22 Oral evidence taken on 10 July 2018, Q488
23 *Deutsche Welle*, Brexit letter: German government distances itself from Interior Minister Horst Seehofer, 9 July 2018

framework", potentially in the form of an Association Agreement. The European Parliament has also proposed an Association Agreement as a framework for the future relationship,[24] but the EU27 has yet to take a formal position.

26. The Government proposes that a number of agreements would sit beneath this overarching framework, some of which should be "legally binding", including an agreement on internal security. A "security partnership" would be one of three pillars (comprising a number of different agreements or chapters) falling under the UK's proposed governance structure. This structure comprises a "Governing Body" of leaders and ministers from the UK and the EU, and a Joint Committee "to ensure that the agreements operate effectively, manage the processes for legislative change, and propose new cooperation as necessary". Some agreements would sit "outside of the overarching framework" with their own governance arrangements, where appropriate.[25]

27. The White Paper's proposals on the future security partnership largely reiterate those outlined in the Government's future partnership paper on security, law enforcement and criminal justice, published in September 2017, which we described in our previous report. The White Paper emphasises the many shared threats faced by the UK and EU27, and reiterates figures on the scale and nature of the UK's contribution to the EU's internal security capabilities. The Government "recognises that leaving the EU will have consequences for the nature of the security relationship between the UK and the EU", but argues that "there is mutual interest in avoiding the creation of unnecessary gaps in operational capabilities". It proposes a "coherent and legally binding agreement on internal security", which "sets out respective commitments and reflects the integrated operational capabilities that the UK and the EU share". This would provide for "strategic and operational dialogues that allow the exchange of expertise and experience". The Government has previously referred to negotiating a "security treaty" with the EU to underpin the future relationship in this area, but that phrase is absent from the White Paper. Otherwise, the core principles outlined are broadly consistent with previous statements, although more specific proposals are made in relation to data protection and dispute resolution, which we outline in further detail below.

Data-sharing

28. Mr Barnier said in June that the EU would be open to exchanging passenger name record data and setting up "streamlined and simplified bilateral exchanges between authorities", including between the UK and Europol, but that the UK would not have access to "EU-only or Schengen-only databases" (which include SIS II, ECRIS and the Europol Information System, although non-Member States have indirect access to the EIS).[26] The EU's proposal refers to "Streamlined information exchange between law enforcement authorities" and "Effective exchanges of data with Europol", but no access to the EIS.[27] Our previous report highlighted the enormous value gained by the UK from

24 *The Daily Telegraph*, Guy Verhofstadt: Brexit will be delayed unless Britain makes further concessions to EU, 27 April 2018

25 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018

26 Speech by Michel Barnier at the European Union Agency for Fundamental Rights, 19 June 2018

27 European Commission, TF50 (2018) 51 – Commission to EU 27, Police and judicial cooperation in criminal matters (slides), 18 June 2018

SIS II and other databases, and Sir Rob Wainwright said that losing access to SIS II would have a "detrimental effect" on the UK's ability to maintain an effective border security operation.[28]

29. Giving evidence to us in June, the European Parliament's Brexit Coordinator, Guy Verhofstadt MEP, was pressed on the limitations being imposed by the EU on future data-sharing with the UK; he responded that the European Parliament wants "a system that is as smooth as it is today". When asked why the UK could not just retain full access to SIS II and other databases, he said that reciprocal exchanges would cause no delays, and that "In practice, it can give exactly the same results".[29] This was contradicted by Sir Rob Wainwright, who emphasised the superiority of shared data platforms over bilateral exchanges, although he countered that he was "not sure what Mr Verhofstadt meant by 'reciprocal arrangements'".[30]

30. Sir Rob gave the example of a suspected sex offender from the EU arriving in Dover: using SIS II, border officials would be able to identify him as a suspected offender, provided that an alert had been entered by the relevant authorities. Without access to that intelligence, British officials would be reliant on his home country being aware of his plans to travel to the UK, and then notifying British authorities about him on a proactive basis. He said that "the volume of cross-border movements of so many offenders across so many criminal areas in Europe" meant that the only way that EU countries have been able to share intelligence "on an efficient and consistent basis" has been through common platforms such as SIS II.[31]

31. Data protection issues were explored in our previous report, including the process of obtaining a data adequacy decision from the EU, and the EU's likely scrutiny of the activities of the UK security services. These challenges were reinforced by witnesses giving evidence in July, who shared our anxieties about ongoing EU privacy concerns generated by the Investigatory Powers Act, and by the 'immigration exception' within the Data Protection Act (which excludes data processed for the purposes of effective immigration control from certain GDPR provisions). Claude Moraes pointed out that the European Parliament had "struck down more than one international agreement", and he suggested that different levels of data adequacy would be demanded for different EU databases, highlighting SIS II as a particular challenge:

> SIS II is the big one. Here the red line is that there is no acceptance […] that there can be anything other than a very stringent adequacy agreement. Therefore, I would say the UK and the EU27 need to get on with it because otherwise we are going to have a cliff-edge situation.[32]

32. The Government's Brexit White Paper states that the UK is "a global leader in strong data protection standards", and proposes that the UK and EU should "go beyond" the EU's data adequacy framework in two respects: first, "to have a clear, transparent framework to facilitate dialogue, minimise the risk of disruption to data flows and support a stable relationship between the UK and the EU"; and second, to have close cooperation and "joined up enforcement action" between the UK's Information Commissioner (ICO) and

28 Oral evidence taken on 3 July 2018, Q21
29 Oral evidence taken on 20 June 2018, Q307
30 Oral evidence taken on 3 July 2018, Q24
31 Q28
32 Q67

EU Data Protection Authorities. The European Commission has already indicated that it is likely to resist these proposals fervently. In a speech in Lisbon in May, Michel Barnier said that "the UK must understand that the only possibility for the EU to protect personal data is through an adequacy decision". In response to the Government's previous proposal for the ICO to remain on the European Data Protection Board, he said: "we cannot, and will not, share [our] decision-making autonomy with a third country, including a former Member State who does not want to be part of the same legal ecosystem as us".[33]

33. Beyond data adequacy issues, granting the UK access to SIS II would generate additional political problems for the EU. Camino Mortera-Martinez highlighted the risk of offending non-EU Schengen countries, and pointed out that Swiss politicians might find it quite "difficult" to "go back home and say, 'The UK has access to the Schengen Information System, but they do not have to give up border controls'". Mr Moraes added: "[…] there are non-EU Schengen members who would look at Britain and say, 'You are not in Schengen, taking all the negatives of Schengen, of free movement and so on, but you are getting one of the best, if not the best, databases in the world'. That is a very big issue".[34]

34. In our previous report, we provided figures on the size of the UK's contribution to (and use of) EU security measures. By the end of 2017, for example, there were over 1.2 million UK alerts in circulation on SIS II. Over the course of that year, there were 9,832 UK hits on non-UK alerts and 16,782 non-UK hits on UK alerts.[35] Nevertheless, the Centre for European Reform suggested recently that, "while many in the EU appreciate the importance of the UK as a security partner, not everybody is convinced that Britain deserves a bespoke deal". In a paper published in June, the think tank said:

> In private, some senior EU officials dismiss the British government's claim that the UK is a net security contributor. Recent EU evaluations on the UK's participation in the SIS and Prüm databases, which are not yet public, show that, in some areas Britain uses more data than it puts in.[36]

35. Similarly, Claude Moraes told the Committee that the European Parliament's analysis found that "Britain was taking more out than it was giving in", and that "there were some other structural problems with the operation of [SIS II] in relation to the UK".[37] When challenged by Committee Members about the relevance of such data, given the scale of the UK's contribution, he responded:

> If you have a scrutiny report that says, "We do not provide added value", for example, […] then that is not going to help. That is not going to be an additional negotiating plus for us. I mention it because I think it is not known how many layers of difficulty there are in getting […] access to SIS II.[38]

36. **Without UK access to SIS II, individuals who pose a genuine threat will be able to enter the UK or the EU without important intelligence being flagged to border officials. Losing access to it would be a calamitous outcome for the UK, which would**

33 Speech by Michel Barnier at the 28th Congress of the International Federation for European Law (FIDE), Lisbon, 26 May 2018
34 Oral evidence taken on 3 July 2018, Q69
35 Home Affairs Committee, UK-EU security cooperation after Brexit (HC 635), 21 March 2018
36 Centre for European Reform, Plugging in the British: Completing the circuit, June 2018
37 Oral evidence taken on 3 July 2018, Q89
38 Q90

pose a severe threat to the Government's ability to prevent serious crime and secure the border effectively, but it is an increasingly likely prospect. Retaining SIS II access should be a primary negotiating objective for the Government: it should publish a detailed assessment of the impact of losing access, and focus significant efforts on persuading the EU27 to widen its negotiating mandate on data exchange. We are very concerned about the vast distance between the EU and UK's positions on this extremely significant issue, and the Government's recent White Paper does nothing to close that gap.

37. **We urge the EU to outline the conditions that it would expect the UK to meet in order to retain access to SIS II. We have already argued that the Government must make concessions to ensure that the EU entrusts it with highly sensitive data on EU citizens, including compliance with EU data protection standards and adherence to Article 8 of the EU Charter on Fundamental Rights, by incorporating it into UK law. The Government must urgently set out its plan for securing data adequacy, including how it intends to deal with sensitive national security and surveillance issues. It should also remove the immigration exemption from the Data Protection Act—both to ensure proper transparency in its immigration policy, and to avoid undermining a data adequacy decision.**

38. **Based on evidence from Guy Verhofstadt, we are unconvinced that all of those involved in the Brexit negotiations fully understand the implications of cutting the UK out of shared data platforms, and moving to a model of 'reciprocal' data exchange. While we acknowledge that SIS II remains part of the Schengen package of measures, we call on EU27 countries to look beyond political considerations, consult their own law enforcement agencies, and engage fully with the operational impact of locking the UK out of EU law enforcement databases after Brexit.**

39. **We reiterate our previous conclusion that the extent of ECJ involvement in any meaningful data-sharing agreement between the UK and the EU means that it would be unwise to make the jurisdiction of the European Court a 'red line' issue in the negotiations. More broadly, both the UK and EU need to drop some of their rigid red lines in order to ensure that crucial policing and security information is shared. Both sides should avoid putting short-term political considerations before the safety and security of citizens. It would be utterly irresponsible to fail to secure a deal in this area.**

Europol

40. During his June speech, Mr Barnier said that, after Brexit, the UK "should be able to participate in Europol analysis projects dealing with live investigations, if they are interested and if Member State participants agree", but that "the UK will not be in a position to shape the strategic direction of EU agencies"—with the result that "UK representatives will no longer take part in meetings of Europol and Eurojust management boards".[39] Sir Rob Wainwright told us that "the loss of British leadership, which seems likely in whatever final form we have at Europol, is not good for either side". He said that losing the UK's leadership of projects "might have an adverse operational effect in terms of prioritisation of which cases to follow", and that the impact of this loss on the UK is "not to be underestimated".[40]

39 Speech by Michel Barnier at the European Union Agency for Fundamental Rights, 19 June 2018
40 Oral evidence taken on 3 July 2018, Q18

41. When pressed, Sir Rob agreed that there is "no operational interest for any member of Europol to have the UK less well engaged with Europol than it is today". He said that politics "play a very important role" in objections to maintaining the status quo, but added that "there are also very important legal considerations. It is not the legal norm for a non-EU member state to have that kind of access".[41] Camino Mortera-Martinez told us that she had been "trying to advance this idea that the UK could have a seat on the management board for questions that do not require unanimity", but that Michel Barnier has said that this is "not an option".[42]

42. As we highlighted in our previous report, even Denmark, as an EU Member State, was unable to negotiate a full (voting) seat on the Europol Management Board when it renegotiated its relationship with the agency last year, following a referendum on its involvement in EU justice and home affairs measures. It was also unable to retain direct access to the Europol Information System (EIS). Instead, Sir Rob Wainwright told us that there are "four or five Danish-speaking seconded experts" who are "attached to the Europol processing unit" in order to field Danish requests for EIS data. He described this as a "fairly slick system, providing Europol can deal with the workload involved", but highlighted that the UK exchanges seven times as much information with Europol as Denmark does, and works on ten times as many cross-border cases every year.[43] Nevertheless, the EU's proposal states that the Danish arrangement is "not a precedent for the relations with the UK", because Denmark is an EU member state, a Schengen member, and it "accepts full ECJ jurisdiction and the EU data protection legislation".[44]

43. **The EU's treatment of Denmark does not bode well for the UK's ability to maintain its influence on the strategic direction of Europol, nor to retain direct access to the Europol Information System. We urge the EU to place the operational needs of Europol above its own political considerations, and to work closely with the agency to identify an optimal model for the UK's future role within Europol, accounting for its intensive use of the EIS and extensive involvement in cross-border operations. It will be in the best interests of the EU, UK and Europol for the UK to retain its prominent role within the agency, advising on strategic priorities and leading operational projects after Brexit. The Government must also take steps to ensure that it has the necessary data protection framework in place.**

The European Arrest Warrant

44. Mr Barnier claimed that the European Arrest Warrant is "linked to the free movement of people", the jurisdiction of the ECJ, respect for fundamental rights (as set out in the EU Charter of Fundamental Rights), and "the concept of EU citizenship, which allows Member States to lift the constitutional ban on the extradition of their own nationals". As a result of the Government's position on these issues, he said, "the UK cannot take part in the European Arrest Warrant" after Brexit. Mr Barnier stated that the EU is "ready to build on the existing Council of Europe Convention" on extradition, including by

41 Oral evidence taken on 3 July 2018, Q37
42 Q75
43 Q7
44 European Commission, TF50 (2018) 51 – Commission to EU 27, Police and judicial cooperation in criminal matters (slides), 18 June 2018

"streamlining the procedure", "facilitating processes", and "introducing time-limits".[45] Claude Moraes queried the link made between the EAW and the free movement of people, stating: "I would not have put that in the speech and I do not know why he did".[46]

45. Like most international extradition agreements, the 1957 Council of Europe Convention on Extradition operates through diplomatic channels rather than the mutual recognition of judicial decisions, so extraditions would require political approval in the extraditing country. It does not impose the sort of strict time limits provided by the EAW (although Mr Barnier suggests that the EU would be willing to do so), and it does not require participating countries to extradite their own nationals.[47] Before the EAW entered into force in 2004, the UK extradited fewer than 60 people per year to any country;[48] in 2016/17, over 1,700 individuals were arrested in the UK as a result of the measure.[49] As Home Secretary in 2014, Theresa May told *The Sunday Times* that losing access to it would make the UK "a honeypot for all of Europe's criminals on the run from justice".[50]

46. Sir Rob Wainwright told us that it would be "difficult to revive the Convention of Europe because other Member States are no longer using it", and that the UK might have to seek bilateral legal agreements with the countries with which it would most need extradition arrangements. He said that the EAW has become "a mainstay of how policing works cross-border in Europe", and that losing it would have an "adverse impact on our overall security arrangements".[51] The Convention is referred to in the Government's Brexit White Paper as "cumbersome" and "significantly more expensive […], delaying justice and reducing shared capabilities to keep citizens safe".[52]

47. Our previous report examined the agreement struck between the EU and Norway and Iceland, which is similar to the EAW, but includes the 'own national' exemption (outlined in the previous chapter), as well as exclusions for political offences. Claude Moraes suggested that the UK might be able to negotiate a deal similar to the Norway/Iceland agreement—which took 13 years to conclude and still hasn't been fully ratified—but he argued that clarity was urgently needed on the UK's proposed dispute resolution mechanism ("we need to get through this phony situation with the ECJ and just say what it is").[53] The Government's proposals for resolving disputes with the EU were later outlined in its Brexit White Paper, and are explored in detail below.

48. The White Paper also sets out the Government's proposals on extradition. It acknowledges that "the constitutional barriers in some Member States to the extradition of their own nationals" creates "challenges" for a future extradition agreement with the EU, but argues that the arrangements for the EAW during the transition period (outlined in the previous chapter) should be the basis for a future agreement.[54] Michel Barnier's June speech suggests that the EU may baulk at the prospect of such a model being applied to

45 Speech by Michel Barnier at the European Union Agency for Fundamental Rights, 19 June 2018
46 Oral evidence taken on 3 July 2018, Q67
47 House of Commons Library, Briefing Paper 07016, The European Arrest Warrant, 18 April 2017
48 *The Times*, Leaked document: the Home Office assessment of post-Brexit terror and crime risks, 23 August 2017
49 National Crime Agency written evidence (PSC009), 20 February 2018
50 *The Times*, May warns Tory rebels will make Britain a honeypot for criminals, 26 October 2014
51 Oral evidence taken on 3 July 2018, Q56
52 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018
53 Oral evidence taken on 3 July 2018, Q71
54 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018

the UK after December 2020, without the institutional and regulatory framework that it is due to adhere to during transition, including the full jurisdiction of the ECJ and the free movement of people. Given how long the Norway/Iceland negotiations took to conclude, timing may also be an issue: Camino Mortera-Martinez suggested to us that a contingency plan on extradition would be needed for the end of the transition period, because "in my opinion there is very little possibility of having a comprehensive extradition agreement in place in the time that we have".[55]

49. **The EU's initial proposals for a future extradition agreement are significantly inferior to the European Arrest Warrant, and could cause major delays to the UK's ability to bring offenders to justice. Our previous report concluded that being forced to fall back on the 1957 Convention on Extradition would be a catastrophic outcome—and the EU proposes basing its future extradition arrangements with the UK on the Convention. We recognise that Member States will seek necessary protections for their citizens' rights after Brexit. But we see no reason why the EU cannot pursue a more ambitious extradition agreement with the UK, based on the mutual recognition of judicial decisions, and underpinned by necessary safeguards. Given the limited time available, the UK and EU must commence negotiations on this vital issue at the earliest opportunity.**

Dispute resolution

50. The jurisdiction of the ECJ was explored in our previous report, including the extent to which the Government's 'red line' on the European Court might serve as an obstacle to future security cooperation with the EU. The Prime Minister said in February that "when participating in EU agencies the UK will respect the remit of the European Court of Justice", but argued that a "principled but pragmatic solution" would be required, in order to "respect our unique status as a third country with our own sovereign legal order".[56] We pressed the Home Secretary on this when he gave evidence to us in July, and he said that the Prime Minister's comments about the ECJ were "specifically about agencies", and would not apply to other forms of security cooperation. He said: "We would like to stay members of Europol after we have exited the EU, under the terms of this [security] treaty, and we would recognise the ECJ's jurisdiction over Europol".[57] The Government's Brexit White Paper reiterated this position.[58]

51. The White Paper outlined new governance and dispute resolution proposals for the UK's future relationship with the EU, which would apply to most agreements falling under an overarching Association Agreement with the EU. A proposed Joint Committee, comprising "officials from the UK and the EU", would resolve disputes related to the future relationship, and would have the option to refer an issue to an independent arbitration panel in the event of ongoing disagreement. This would include members from both parties and might include "specialist expertise". The Joint Committee and arbitration panel would also have the option to make a referral to the ECJ, but the European Court

55 Oral evidence taken on 3 July 2018, Q97
56 PM speech at Munich Security Conference: 17 February 2018
57 Oral evidence taken on 10 July 2018, Q491
58 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018

would "only have a role in relation to the interpretation of those EU rules to which the UK had agreed to adhere as a matter of international law". This would "respect the principle that the court of one party cannot resolve disputes between the two".[59]

52. The EU has yet to issue a formal response to these proposals, but Michel Barnier has previously issued strong statements about "the autonomy of Union law", and said in May that "we cannot accept that another jurisdiction, other than the Court of Justice of the European Union, says what the law is, or imposes its interpretation on the institutions of the Union".[60] In response to the UK's proposal for a "mixed committee" to deal with any disagreement on the withdrawal agreement, he observed: "In the event of a political disagreement in the mixed committee—which cannot be excluded—questions would remain unanswered, with very concrete consequences for citizens and businesses on both sides of the Channel".[61] Our previous report concluded that the UK will be unable to depart from EU data protection law after Brexit, and cannot avoid the direct impact of the ECJ's rulings in relation to data protection and data adequacy, noting that the Court has already struck down agreements on the transfer of data to the USA and Canada.[62]

Conclusions

53. **The European Commission's negotiating mandate on internal security, based on instructions from the EU27, is a disappointingly rigid opening position. It fails to acknowledge any precedent for cooperation with non-EU countries in this field, and suggests that the EU will treat the UK in the same manner as any other third country. It contains no explicit recognition of the deep level of security cooperation between the UK and EU27 to date, the operational needs of all 28 countries, the UK's capabilities in this field, nor the potential for a bespoke solution, which would be in the clear interests of UK and EU citizens. Ultimately, it appears to be driven more by political considerations than by operational needs. It is understandable that Member States would want to retain advantages to EU membership that are unavailable to third countries. But it is unacceptable for such considerations to take precedence over our shared ability to prevent and respond to terrorism and serious crime.**

54. **The EU's opening position makes it clear that the Government must do much more to ensure that a comprehensive security deal with the EU can be agreed. In our previous report, we called for the Government to incorporate Article 8 of the EU Charter of Fundamental Rights (concerning data protection) into UK law; for it to make necessary preparations for a long-term data adequacy decision as early as possible in the Brexit process; and for it to avoid making the ECJ's jurisdiction a 'red line' issue in the security negotiations. It must now take urgent action on all fronts, so that rapid progress can be made.**

55. **We have serious concerns about the impact on security cooperation of the Government's position on the jurisdiction of the ECJ. The Government proposes an alternative form of dispute resolution, involving a Joint Committee and an independent**

59 HM Government, The future relationship between the United Kingdom and the European Union (Cm 9593), 12 July 2018

60 Speech by Michel Barnier at the 28th Congress of the International Federation for European Law (FIDE), Lisbon, 26 May 2018

61 *Ibid*

62 Home Affairs Committee, UK-EU security cooperation after Brexit (HC 635), 21 March 2018

arbitration panel, with the option to refer a matter to the ECJ for an interpretation of EU law. But our previous report concluded that the UK will be unable to depart from EU data protection law after Brexit, nor from the rulings of the ECJ. If the Government is willing to respect the remit of the European Court in relation to Europol, we see no reason why it should not apply this principle to other forms of security cooperation, including data protection and extradition. This could assist the UK with retaining access to SIS II, as well as the speed of negotiations on an extradition agreement, which might otherwise extend far beyond the end of the transition period. At present, the UK is at severe risk of a cliff-edge in its extradition arrangements after Brexit, with serious ramifications for the administration of justice across the European Union.

4 Progress and contingency planning

Progress in the negotiations to date

56. In May 2018, the Home Office's Head of Strategy, Integration and Planning said that there had been "little more than an hour's discussion" about internal security between UK negotiators and the Article 50 Taskforce. This involved the UK and the Commission "setting out our starting positions", with a view to "further negotiations in more detail, and probably at a more technical level, over the next few months".[63] In a letter to the Committee Chair in June, the then Secretary of State for Exiting the EU told us that "[the] Government has made significant progress in our negotiations with the EU so far, including in relation to security".[64] He was asked by the Chair whether there had been any discussions with the EU on the long-term future security relationship since May.[65] In his response, he said: "We are working closely with our partners across government as well as key operational partners to ensure that we are in the strongest possible position to continue our negotiations with the EU", but he did not disclose whether any further negotiations had taken place.

57. The Government's Brexit White Paper proposes that security will form one of three aspects of a broad institutional framework underpinning the UK's future relationship with the EU, with a number of different agreements overseen by unified governance and dispute resolution arrangements. Such a model might enable a security agreement (or a number of agreements) to be concluded without progress on other aspects of the future relationship—indeed, the Home Secretary told us that "Security is something that should not be linked to any of the other discussions", and that the UK's proposals are "completely unconditional".[66] European Council guidelines from December state that an "understanding" of the framework for the future relationship will be "elaborated [upon] in a political declaration accompanying and referred to in the Withdrawal Agreement".[67] Progress on this aspect of the negotiations was delayed by lack of agreement within the UK Cabinet on what sort of future relationship should be sought. The Government agreed its negotiating position on 6 July, and set out its proposals formally in its White Paper on 12 July.

58. Regardless of the legal framework for future security cooperation, witnesses were clear that they wanted to see rapid progress in the negotiations. Based on the last Brexit Steering Group meeting that he attended, Claude Moraes said that clarity about the UK's future security relationship was needed by the autumn, "which is why this is so urgent".[68] He argued that "people take for granted the security area because they think, because of the nature of it, it will just work"; but there are "so many different […] legal problems". By 2020, he said, the UK "would want to have some contingencies in place on issues like extradition, on issues like the databases", to avoid a cliff edge scenario.[69]

63 House of Lords Select Committee on the European Union, Home Affairs Sub-Committee, oral evidence taken on 15 May 2018, Q82
64 Written evidence submitted by the Department for Exiting the European Union (BSP0001), published 3 July 2018
65 Letter from the Committee Chair to the Secretary of State for Exiting the European Union, 15 June, published 17 July 2018
66 Oral evidence taken on 10 July 2018, Q489
67 General Secretariat of the Council, European Council (Art. 50) meeting (15 December 2017) – Guidelines (EUCO XT 20011/17)
68 Oral evidence taken on 3 July 2018, Q97
69 Q98

Contingencies for a 'no deal' Brexit in security

59. In our previous report, we expressed disappointment that the leading policing agencies were unwilling to provide evidence in public about Brexit contingency planning, and called for the Government to dedicate a substantial proportion of the £3 billion Brexit planning fund to policing and security cooperation, including detailed impact assessments and fully costed plans for contingency arrangements. Since then, we have heard almost nothing from the Government on this issue, but the Commissioner of the Metropolitan Police, Cressida Dick, reportedly said in July that the prospect of losing access to EU intelligence was "incredibly worrying", and would mean that police officers would have to phone colleagues overseas every time they wanted information from them.[70] The NCA and CPS have also been examining what capabilities and contingencies they might need in the event of a 'no deal' Brexit.[71]

60. Sir Rob Wainwright told us in July: "I understand that there are indeed contingency plans across the range of different possible outcomes that are being worked on among the EU28, including the UK".[72] He described a 'no deal' scenario in security as "unthinkable", and said that the UK would "suddenly lose access to instruments of very direct and practical operational value to the UK on an everyday basis. That would be quite serious for the ability of our national police authorities to keep us safe."[73] When pressed on the need for law enforcement practitioners to be more vocal about the impact of Brexit on security capabilities, he said that officers in most countries are under direct ministerial command, adding: "We have our place and we are meant to stay in that place". But he later conceded: "You are right, there perhaps is less attention on this than there should be".[74]

61. The Home Secretary told us in July that the Government is preparing contingencies for security arrangements, but that they would be "suboptimal" in many areas. He gave no specific examples, apart from the 1957 European Convention on Extradition, which we refer to in the previous chapter. Once again, he mentioned the attitudes of his counterparts in the EU27 Member States, stating that they have been "very positive" about the Government's aims for future security cooperation.[75]

62. **Four months on from our initial report on post-Brexit security cooperation, we are becoming increasingly frustrated and concerned about the lack of progress in the negotiations to date. The UK and EU agree that future security cooperation is in all our interests, but the vast gap between their respective proposals demonstrates that the negotiations on the long-term future security relationship will be challenging and highly complex. The Home Secretary has expressed hope to us that the EU's position will change to reflect the attitudes of the EU27 interior ministers, but the Commission's proposal reflects a consensus reached among all 27 Member States, so we do not share his optimism.**

63. **We agree with Claude Moraes MEP that "the time for philosophical discussions is over". The Government's recent White Paper moves us no closer to agreement with the EU on many difficult issues. Progress in the security aspects of the negotiations**

70 *BBC News*, Cressida Dick: post-Brexit information sharing 'clunkier', 3 July 2018
71 House of Lords European Union Committee, Brexit: the proposed UK-EU security treaty (HL 164), 11 July 2018
72 Oral evidence taken on 3 July 2018, Q23
73 Oral evidence taken on 3 July 2018, Q63
74 Q61
75 Oral evidence taken on 10 July 2018, Q511

will require both sides to devote considerable time and energy to this subject, putting forward detailed proposals or draft agreements for discussion. Time is running out to get this right.

64. **The framework for the future relationship remains unclear, but any security agreement might require ratification by all 27 Member States, as well as the UK and the EU. Based on the current state of the negotiations, we reiterate our recommendation that the UK Government and the EU must remain open to extending the transition period for security arrangements beyond the proposed end-date of December 2020.**

65. **It is often said that the primary purpose of any Government is to protect its citizens from violence and harm—yet crucial questions about the UK's future security relationship with the EU remain unanswered, and the issue continues to be side-lined by public debate about customs, borders and immigration after Brexit. The limited evidence available suggests that the Government is still failing to focus requisite energy on security cooperation at a ministerial level, and that the Home Office's Brexit planning budget is largely (if not entirely) devoted to the UK's future immigration system. A 'no deal' Brexit is an increasingly plausible outcome, but we are unconvinced that the Government is planning adequately to prevent the most unthinkable of outcomes from becoming a reality. Without urgent action to make progress in these negotiations, and to put workable contingency plans in place for a 'no deal' scenario, the safety and security of UK and EU citizens will be put at serious and unnecessary risk.**

Conclusions and recommendations

The transition period

1. The current draft of the withdrawal agreement will allow the UK to remain part of the European Arrest Warrant during the transition period, which we welcome. But it will also allow Member States to refuse to extradite their own nationals to the UK during that period, and for the UK to reciprocate by refusing to extradite British nationals to the same countries. The extradition of 'own nationals' to a non-member state would require some EU countries to amend their constitutions via a referendum, and the Government's White Paper appear to accept that this exemption will remain. This will undoubtedly lead to cases in which justice for victims is frustrated or denied, and criminals are able to evade arrest for longer. (Paragraph 12)

2. This is a stark illustration of the sort of complexities involved in any attempt to maintain the 'status quo' in UK-EU security cooperation after Brexit. We reiterate our recommendation that the Government should publish a full impact assessment of the extradition aspects of the withdrawal agreement, and explain what it plans to do to mitigate their effects on the UK's ability to bring offenders to justice. (Paragraph 13)

3. With eight months left before Brexit, the UK's status within Europol after 29 March next year remains unclear. The Government and the EU must clarify, at the earliest opportunity, whether the UK will retain any role or function relating to the Europol Management Board, and whether it will be able to lead operational projects during the transition period. We urge the EU to show flexibility and allow the UK to remain on the Management Board during transition, to avoid instability while a new agreement is drawn up. If it is likely that alternative arrangements will be in place, then the Government needs to set out what their impact will be on the UK's law enforcement capabilities. (Paragraph 17)

The long-term future security relationship

Data-sharing

4. Without UK access to SIS II, individuals who pose a genuine threat will be able to enter the UK or the EU without important intelligence being flagged to border officials. Losing access to it would be a calamitous outcome for the UK, which would pose a severe threat to the Government's ability to prevent serious crime and secure the border effectively, but it is an increasingly likely prospect. Retaining SIS II access should be a primary negotiating objective for the Government: it should publish a detailed assessment of the impact of losing access, and focus significant efforts on persuading the EU27 to widen its negotiating mandate on data exchange. We are very concerned about the vast distance between the EU and UK's positions on this extremely significant issue, and the Government's recent White Paper does nothing to close that gap. (Paragraph 36)

5. We urge the EU to outline the conditions that it would expect the UK to meet in order to retain access to SIS II. We have already argued that the Government must make concessions to ensure that the EU entrusts it with highly sensitive data on EU citizens, including compliance with EU data protection standards and adherence to Article 8 of the EU Charter on Fundamental Rights, by incorporating it into UK law. The Government must urgently set out its plan for securing data adequacy, including how it intends to deal with sensitive national security and surveillance issues. It should also remove the immigration exemption from the Data Protection Act—both to ensure proper transparency in its immigration policy, and to avoid undermining a data adequacy decision. (Paragraph 37)

6. Based on evidence from Guy Verhofstadt, we are unconvinced that all of those involved in the Brexit negotiations fully understand the implications of cutting the UK out of shared data platforms, and moving to a model of 'reciprocal' data exchange. While we acknowledge that SIS II remains part of the Schengen package of measures, we call on EU27 countries to look beyond political considerations, consult their own law enforcement agencies, and engage fully with the operational impact of locking the UK out of EU law enforcement databases after Brexit. (Paragraph 38)

7. We reiterate our previous conclusion that the extent of ECJ involvement in any meaningful data-sharing agreement between the UK and the EU means that it would be unwise to make the jurisdiction of the European Court a 'red line' issue in the negotiations. More broadly, both the UK and EU need to drop some of their rigid red lines in order to ensure that crucial policing and security information is shared. Both sides should avoid putting short-term political considerations before the safety and security of citizens. It would be utterly irresponsible to fail to secure a deal in this area. (Paragraph 39)

Europol

8. The EU's treatment of Denmark does not bode well for the UK's ability to maintain its influence on the strategic direction of Europol, nor to retain direct access to the Europol Information System. We urge the EU to place the operational needs of Europol above its own political considerations, and to work closely with the agency to identify an optimal model for the UK's future role within Europol, accounting for its intensive use of the EIS and extensive involvement in cross-border operations. It will be in the best interests of the EU, UK and Europol for the UK to retain its prominent role within the agency, advising on strategic priorities and leading operational projects after Brexit. The Government must also take steps to ensure that it has the necessary data protection framework in place. (Paragraph 43)

The European Arrest Warrant

9. The EU's initial proposals for a future extradition agreement are significantly inferior to the European Arrest Warrant, and could cause major delays to the UK's ability to bring offenders to justice. Our previous report concluded that being forced to fall back on the 1957 Convention on Extradition would be a catastrophic outcome—and the EU proposes basing its future extradition arrangements with the UK on the Convention. We recognise that Member States will seek necessary

protections for their citizens' rights after Brexit. But we see no reason why the EU cannot pursue a more ambitious extradition agreement with the UK, based on the mutual recognition of judicial decisions, and underpinned by necessary safeguards. Given the limited time available, the UK and EU must commence negotiations on this vital issue at the earliest opportunity. (Paragraph 49)

Conclusions

10. The European Commission's negotiating mandate on internal security, based on instructions from the EU27, is a disappointingly rigid opening position. It fails to acknowledge any precedent for cooperation with non-EU countries in this field, and suggests that the EU will treat the UK in the same manner as any other third country. It contains no explicit recognition of the deep level of security cooperation between the UK and EU27 to date, the operational needs of all 28 countries, the UK's capabilities in this field, nor the potential for a bespoke solution, which would be in the clear interests of UK and EU citizens. Ultimately, it appears to be driven more by political considerations than by operational needs. It is understandable that Member States would want to retain advantages to EU membership that are unavailable to third countries. But it is unacceptable for such considerations to take precedence over our shared ability to prevent and respond to terrorism and serious crime. (Paragraph 53)

11. The EU's opening position makes it clear that the Government must do much more to ensure that a comprehensive security deal with the EU can be agreed. In our previous report, we called for the Government to incorporate Article 8 of the EU Charter of Fundamental Rights (concerning data protection) into UK law; for it to make necessary preparations for a long-term data adequacy decision as early as possible in the Brexit process; and for it to avoid making the ECJ's jurisdiction a 'red line' issue in the security negotiations. It must now take urgent action on all fronts, so that rapid progress can be made. (Paragraph 54)

12. We have serious concerns about the impact on security cooperation of the Government's position on the jurisdiction of the ECJ. The Government proposes an alternative form of dispute resolution, involving a Joint Committee and an independent arbitration panel, with the option to refer a matter to the ECJ for an interpretation of EU law. But our previous report concluded that the UK will be unable to depart from EU data protection law after Brexit, nor from the rulings of the ECJ. If the Government is willing to respect the remit of the European Court in relation to Europol, we see no reason why it should not apply this principle to other forms of security cooperation, including data protection and extradition. This could assist the UK with retaining access to SIS II, as well as the speed of negotiations on an extradition agreement, which might otherwise extend far beyond the end of the transition period. At present, the UK is at severe risk of a cliff-edge in its extradition arrangements after Brexit, with serious ramifications for the administration of justice across the European Union. (Paragraph 55)

Progress and contingency planning

13. Four months on from our initial report on post-Brexit security cooperation, we are becoming increasingly frustrated and concerned about the lack of progress in the negotiations to date. The UK and EU agree that future security cooperation is in all our interests, but the vast gap between their respective proposals demonstrates that the negotiations on the long-term future security relationship will be challenging and highly complex. The Home Secretary has expressed hope to us that the EU's position will change to reflect the attitudes of the EU27 interior ministers, but the Commission's proposal reflects a consensus reached among all 27 Member States, so we do not share his optimism. (Paragraph 62)

14. We agree with Claude Moraes MEP that "the time for philosophical discussions is over". The Government's recent White Paper moves us no closer to agreement with the EU on many difficult issues. Progress in the security aspects of the negotiations will require both sides to devote considerable time and energy to this subject, putting forward detailed proposals or draft agreements for discussion. Time is running out to get this right. (Paragraph 63)

15. The framework for the future relationship remains unclear, but any security agreement might require ratification by all 27 Member States, as well as the UK and the EU. Based on the current state of the negotiations, we reiterate our recommendation that the UK Government and the EU must remain open to extending the transition period for security arrangements beyond the proposed end-date of December 2020. (Paragraph 64)

16. It is often said that the primary purpose of any Government is to protect its citizens from violence and harm—yet crucial questions about the UK's future security relationship with the EU remain unanswered, and the issue continues to be side-lined by public debate about customs, borders and immigration after Brexit. The limited evidence available suggests that the Government is still failing to focus requisite energy on security cooperation at a ministerial level, and that the Home Office's Brexit planning budget is largely (if not entirely) devoted to the UK's future immigration system. A 'no deal' Brexit is an increasingly plausible outcome, but we are unconvinced that the Government is planning adequately to prevent the most unthinkable of outcomes from becoming a reality. Without urgent action to make progress in these negotiations, and to put workable contingency plans in place for a 'no deal' scenario, the safety and security of UK and EU citizens will be put at serious and unnecessary risk. (Paragraph 65)

Formal minutes

Tuesday 17 July 2018

Members present:

Rt Hon Yvette Cooper, in the Chair

Rehman Chishti	Stuart McDonald
Christopher Chope	Alex Norris
Stephen Doughty	Naz Shah
Tim Loughton	John Woodcock

Draft Report (*UK-EU security cooperation after Brexit: Follow-up report*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 65 read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134

[Adjourned till Wednesday 18 July at 5.00 pm

Witnesses

The following witnesses gave evidence. Transcripts can be viewed on the inquiry publications page of the Committee's website.

Tuesday 3 July 2018

Sir Rob Wainwright, former Director of Europol and Senior Cyber Partner at Deloitte — Q1–63

Claude Moraes MEP, Chair of the European Parliament's Committee on Civil Liberties, Justice and Home Affairs (LIBE) and **Camino Mortera-Martinez**, Research Fellow and Brussels Representative, Centre for European Reform — Q64–99

Published written evidence

The following written evidence was received and can be viewed on the inquiry publications page of the Committee's website.

1 Department for Exiting the European Union (BSP0001) (Response to the Chair's letter of 15 June 2018)

Published Correspondence

The following correspondence related to the inquiry can be viewed on the inquiry publications page of the Committee's website.

1 Chair to Secretary of State for Exiting the European Union, 15 June 2018

List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the publications page of the Committee's website. The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

Session 2017–19

First Report	Home Office delivery of Brexit: customs operations	HC 540 (HC 754)
Second Report	Immigration policy: basis for building consensus	HC 500 (HC 961)
Third Report	Home Office delivery of Brexit: immigration	HC 421 (HC 1075)
Fourth Report	UK-EU security cooperation after Brexit	HC 635
Fifth Report	Windrush: the need for a hardship fund	HC 1200
Sixth Report	The Windrush generation	HC 990
First Special Report	The work of the Immigration Directorates (Q1 2016): Government Response to the Committee's Sixth Report of Session 2016–17	HC 541
Second Special Report	Asylum accommodation: Government Response to the Committee's Twelfth Report of Session 2016–17	HC 551
Third Special Report	Unaccompanied child migrants: Government Response to the Committee's Thirteenth Report of Session 2016–17	HC 684
Fourth Special Report	Home Office delivery of Brexit: customs operations: Government Response to the Committee's First Report	HC 754
Fifth Special Report	Immigration policy: basis for building consensus: Government and Office for National Statistics Responses to the Committee's Second Report	HC 961
Sixth Special Report	Home Office delivery of Brexit: immigration: Government Response to the Committee's Third Report	HC 1075