



Lord Ricketts
Chair of the EU Security and Justice Sub-Committee
House of Lords
London
SW1A 0PW

26 June 2020

Dear Lord Ricketts,

Thank you for your letter of 17 June following our evidence session, which covered a range of important issues.

As I outlined to the Committee, the UK and EU have agreed to intensify talks in July. This should create the most conducive conditions for concluding and ratifying a deal before the end of 2020. We remain committed to seeking a balanced and reciprocal agreement in this area and we will play our full part to accelerate the work to achieve this in the coming weeks.

Preparations for the end of the Transition Period

While our future arrangements with the EU remain under discussion, it is right that we continue to drive UK preparedness for a range of possible outcomes at the end of the Transition Period.

You asked specifically about what would happen in the event that it is not possible to reach a further agreement with the EU. In that scenario, the UK would no longer use or participate in EU law enforcement and criminal justice tools and mechanisms. As I said when I gave evidence, this would result in some mutual loss of capability for the UK and EU Member States. However, the UK has well-developed and well-rehearsed plans in place to transition cooperation with EU Member States to alternative, non-EU arrangements by the end of the Transition Period, where available.

Significant preparations were undertaken last year, resulting in a high state of readiness before the terms of our withdrawal were agreed with the EU, as reflected in the Government's No-Deal Readiness Report published in October 2019.¹

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/837632/No_deal_readiness_paper.PDF

The Home Office continues to regularly meet with the police, other law enforcement and criminal justice agencies in the UK – as well as the devolved administrations – to drive preparedness and monitor any risks to maintaining this high state of readiness throughout the Transition Period.

As set out previously in that Report, the UK will be ready to transition cooperation with EU Member States to alternative, non-EU arrangements, should that be necessary. This includes:

- Maximising our use of Interpol, including for exchanging alerts for wanted persons;
- Using Council of Europe Conventions, rather than EU instruments, in areas such as extradition and mutual legal assistance; and,
- Continuing use of bilateral channels and other multilateral mechanisms outside EU structures, including for counter terrorism cooperation.

These alternative, non-EU arrangements are not like-for-like replacements for the EU capabilities but are largely tried and tested mechanisms that we already use for cooperating with many close partners that are not in the EU.

Alternative arrangements for extradition

Your letter also sought confirmation of the alternative arrangements for extradition, should an agreement with the EU not be reached by the end of this year. If there is no agreement in place at the end of the year, the Government will rely on the Council of Europe Convention on Extradition, and its additional protocols as the basis for extradition with the EU's Member States. EU Member States would become Category 2A territories under the Extradition Act.

You specifically raised the issue of diplomatic channels. Although the Council of Europe Convention requires extradition requests to be made through diplomatic channels, it is not the case that all subsequent operational discussions must take place through diplomatic channels. Prosecutors would continue to have direct contact with their counterparts in EU Member States and be able to exchange information with them about extradition requests.

The UK has ratified the 4th Additional Protocol to the Convention on Extradition, which explicitly allows for direct transmission of requests between central authorities. Although a significant number of Member States have not yet ratified it, each further ratification would represent an enhancement to capacity with the state concerned.

It is also the case that the most time-sensitive communication envisaged by the convention – the request for a person's provisional arrest – is not required to pass through diplomatic channels. Along with a range of other media, the Convention explicitly refers to the transmission of requests for provisional arrest via Interpol. As the Committee is aware, the House of Commons is currently considering the Extradition (Provisional Arrest) Bill which would create an immediate power of arrest in relation to serious offences when an Interpol alert has been circulated by a specified territory. It would be open to Parliament to agree to the inclusion of EU Member States as specified territories should the need arise.

Data adequacy and alternatives

Lastly, your letter also sought clarity on issues surrounding data adequacy. No other third country's standards have ever been closer to the EU's, and it is from this position of unprecedented alignment that we are seeking an adequacy decision. The EU Commission and the UK are committed to achieving this by the end of the Transition Period and extensive discussions are underway.

In the event of a non-negotiated outcome in which the EU does not award the UK adequacy by the end of the Transition Period, Member States' law enforcement may still transfer data under Article 37 of the Law Enforcement Directive following an assessment of whether the UK law enforcement has 'appropriate safeguards' in place to protect the data. The 'appropriate safeguards' provision could be provided in the form of a legally binding instrument or where the controller - for example the relevant police force - has assessed the circumstances around the transfer and considers that the safeguards exist.

Given our close working relationships and existing knowledge of each other's high data protection standards, we can see no reason why a Member State would not recognise the UK as meeting appropriate safeguards. However, as an alternative to the measure set out in Article 37 of the Law Enforcement Directive, data may still be transferred to the UK if one of the derogations for special circumstances permit the transfer. Special circumstances are outlined in Article 38 of the Law Enforcement Directive and include (among others) the protection of vital interests.

Currently, no third country has an adequacy decision for law enforcement, and therefore all international transfers by law enforcement outside of the European Economic Area will be done using these two alternatives to adequacy.

In the context of the future relationship, the Committee will note that the UK draft legal text for a UK-EU Law Enforcement and Criminal Justice Agreement does not rely on data adequacy. In line with precedent, we have included bespoke data protection provisions tailored to each capability in the Treaty.

I hope that this has answered the questions posed in your letter.

Yours sincerely,


RT HON JAMES BROKENSHERE MP
MINISTER OF STATE FOR SECURITY