



# HOUSE OF LORDS

European Union Committee

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Rt Hon James Brokenshire MP  
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24 July 2020

## **POST-BREXIT SECURITY AND CRIMINAL JUSTICE COOPERATION AGREEMENT**

Dear James,

Thank you for your letter dated 26 June 2020 which was considered by the Security and Justice Sub-Committee at its meetings of 14 and 21 July 2020.

Following your evidence to us on 16 June 2020, we wrote to you in order to elicit greater detail regarding the Government's contingency planning, should the UK and the EU 27 fail to reach an agreement on security and criminal justice cooperation by the end of the year.

Despite your optimism throughout the session, we note your confirmation in your letter that without a deal the UK will "no longer use or participate in EU law enforcement and criminal justice tools and mechanisms". In their place, you expect to fall back on "well-developed and well-rehearsed plans ... to transition cooperation with EU Member States" to alternative, non-EU arrangements by the end of the transition period. Examples cited by you, include:

- greater use of Interpol;
- returning to Council of Europe Conventions on Extradition and Mutual Legal Assistance for cooperation with the EU 27; and,
- in relation to data exchange, the use of derogations included in the so-called Law Enforcement Directive covering exchanges of data between law enforcement authorities (Articles 37 and 38 of Directive 2016/680).

In February 2020, in a joint meeting of our predecessors the Justice and Home Affairs Sub-Committees, Deputy Assistant Commissioner (DAC) Richard Martin, the National Police Chiefs' Council's Lead for Brexit, discussed the impact of no-deal on UK policing. Having highlighted the importance of maintaining UK access to the various EU databases, DAC Martin said that "effective policing is intelligence-led [and] is also about being fleet of foot and able to do things and exchange information and intelligence quickly, almost in real time"; adding that "anything that stops us doing that causes us problems".

In this regard, he explained that in 2019 the UK police checked the Schengen Information System (SISII) "603 million times". He emphasised SISII's importance to the operation of the European Arrest Warrant (EAW) and said that "if we are not successful in negotiating and

keeping” access “things will start to become slower”. Turning to the European Criminal Records Information System (ECRIS), DAC Martin said that “If we do a check ... it comes back pretty much instantaneously” without it, similar checks would take an average of “66 days”; he described this as “quite a tangible difference”.

He explained the loss to the UK of the so-called Prüm based system of information exchange in similar stark terms: “going through Interpol to try to get crime scene matches [and] DNA ... used to take four months; it now takes 15 minutes.” He also referred to the importance of the Passenger Name Record (PNR) system which “allows us to see not only who is coming but what credit card they might have used to book” their ticket. He said that PNR allows “access to a vast range of data that is not just about the individual who is landing”, it also enables the police “to do a lot of research about that individual’s background”; he concluded that “for intelligence purposes [PNR] is fantastic”. DAC Martin stated that whatever deal the Government secures, “we want to make sure there is not a gap between what we have now and what we have in the future, because fast, real-time access to intelligence and data ... is absolutely critical”. You will be aware that on 14 July 2020 DAC Martin expressed similar concerns to the Exiting the EU Committee in the House of Commons.

While we note your suggestion that if the UK leaves these EU arrangements without a deal there will be “some mutual loss of capability for the UK and EU Member States”, in our view, this downplays the inevitable impact of this eventuality on the UK’s security and policing. In light of DAC Martin’s compelling evidence, we remain deeply concerned about the adequacy of the replacements for EU cooperation cited in your letter. Recourse to them will inevitably have considerable consequences for UK policing. We would also anticipate a similarly negative impact on policing in Northern Ireland.

We look forward to considering your response to our concerns and your assessment of the implications of the *Schrems* judgment (C-311/18) for post-Brexit UK/EU Security cooperation by the time the House returns in September.

I am copying this letter to Lord Kinnoull Chair Lords EU Select Committee; Sir William Cash MP, Chair of the Commons European Scrutiny Committee; Jessica Mulley, Clerk to the Commons Committee; Les Saunders, Cabinet Office; and Mark Leslie, Home Office

Yours sincerely



Lord Ricketts

Chair of the EU Security and Justice Sub-Committee