

# European Scrutiny Committee

House of Commons, London, SW1A 0AA

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From: Sir William Cash MP

3 September 2020

Rt Hon. James Brokenshire MP  
Minister of State for Security  
Home Office  
2 Marsham Street  
London SW1P 4DF

## **UK participation in the European Arrest Warrant (Council documents 9339/20 and 9341/20) (41379 and 41383)**

Thank you for your [Explanatory Memorandum](#) on these documents which concern the implementation and use of the European Arrest Warrant (“EAW”) in the UK.

You indicate that there are no legal, policy or financial implications for the UK. We note, however, that the [Commission report](#) on Member States’ implementation of the [Framework Decision establishing the European Arrest Warrant](#) raises two concerns which may be relevant to any future extradition arrangements between the EU and the UK. First it says that the requirement for an EAW to be “trial ready” deviates from the Framework Decision, modifying the obligation to execute an EAW unless one of the stated grounds for non-execution applies. Second, the Commission report makes clear that the grounds for non-execution of an EAW are exhaustively listed in the Framework Decision itself. It highlights the “proportionality principle” as one of the additional grounds for non-execution provided for in the domestic laws of some Member States which are not compliant with the Framework Decision. Both of these grounds for non-execution of an EAW are enshrined in the [Extradition Act 2003](#)<sup>1</sup> and are also included in the [UK’s draft working text for an agreement on law enforcement and judicial](#)

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<sup>1</sup> Sections 11 and 12A of the 2003 Act provide that the absence of a prosecution decision is one of the grounds for refusing to execute an EAW. Sections 2(7A) and 21A of the Act require a judge to consider whether extradition based on an EAW would be “disproportionate”, taking into account the seriousness of the conduct alleged to constitute the extradition offence; the likely penalty that would be imposed if the requested person was found guilty of the extradition offence; and the possibility of the relevant foreign authorities taking measures that would be less coercive than extradition.

[cooperation in criminal matters](#).<sup>2</sup> They do not form part of the [EU's draft legal text](#), nor are similar provisions contained in the [surrender agreement between the EU and Iceland and Norway](#).

The EU and UK positions appear difficult to reconcile. We ask you to clarify:

- your reasons for considering that a “trial readiness” test and a proportionality test are consistent with the EAW Framework Decision;
- the importance you attach to maintaining the same tests in any future arrangements on surrender/extradition agreed with the EU; and
- the progress being made on this aspect of the future relationship negotiations with the EU.

The [Impact Assessment](#) which the then Government published in July 2014 to inform its decision to rejoin the EAW concluded that participation in the Schengen Information System (SIS II) would “maximise the UK’s ability to identify and arrest people who pose a threat to public safety and security and make sure that they are brought to justice”.<sup>3</sup> The European Commission considers that there are legal as well as political constraints which preclude the UK from participating in SIS II after transition. Should this view prevail in the future relationship negotiations (locking the UK out of SIS II), would it affect your assessment of the benefits of agreeing new extradition/surrender arrangements with the EU or the compromises the Government might be willing to make?

The [surrender agreement between the EU and Iceland and Norway](#) is the only precedent for a third country agreement offering terms similar to those provided under the EAW Framework Decision. The agreement requires the parties to set up a mechanism for sharing relevant case law of the CJEU and domestic courts in Iceland and Norway, including case law relating to similar surrender instruments (such as the EAW), with a view to ensuring “as uniform an application and interpretation as possible” of the agreement. Would such a mechanism address the Government’s concern that the CJEU should not have any jurisdiction in the UK after transition?<sup>4</sup>

Finally, you state:

Under the Withdrawal Agreement, the UK and the EU have agreed to establish arrangements based on streamlined procedures and time limits to

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<sup>2</sup> See Articles SURR 7 and 8 in Part 4 of the draft text.

<sup>3</sup> See p.72 of Command Paper 8897.

<sup>4</sup> See p.3 of Command Paper 211, published in February 2020, on *The Future Relationship with the EU: The UK's Approach to Negotiations*.

enable the UK and the EU to continue to surrender suspected and convicted persons efficiently and expeditiously.

In fact, the agreement you refer to reflects a common aspiration set out in the Political Declaration agreed by the EU and the UK in October 2019, not a legally binding commitment to establish such arrangements.<sup>5</sup> As indicated above, we would welcome regular updates on the progress made in securing new arrangements on surrender/extradition as negotiations enter their crucial final stages.

We ask you to respond within ten working days.

I am copying this letter to the Chair (Rt Hon Hilary Benn MP) and Clerk (Gordon Clarke) of the Committee on the Future Relationship with the EU; the Chair (Rt Hon Yvette Cooper MP) and Clerk (Elizabeth Hunt) of the Home Affairs Committee; the Chair (Sir Robert Neill MP) and Clerk (David Weir) of the Justice Committee; the Chair (the Earl of Kinnoull) and Clerk (Stuart Stoner) of the Lords European Union Committee; Alex Bernal of your Department and Les Saunders and Donald Harris in the Cabinet Office.

**CHAIR**

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<sup>5</sup> See para 87 of the [Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom](#), agreed by the EU and the UK in October 2019.