

Yvette Cooper, MP  
Chair, Home Affairs Committee



11 November 2020

Dear Yvette,

### **Future of Post Brexit Law Enforcement Cooperation**

Thank you for your letter dated 21 October 2020 in relation to UK law enforcement cooperation with EU partners from 1 January 2021.

The NPCC has established the International Crime Coordination Centre (ICCC) to prepare police forces across England & Wales for the loss of EU Law Enforcement and National Security (LENS) measures as part of Brexit and the end of the transition phase. At present, we await the outcome of the current negotiations, but our objective is to ensure continued cooperation with law enforcement bodies across the EU and to ensure that, where possible, alternative methods are utilised efficiently, should EU LENS measures be lost to us.

The ICCC is preparing for the end of the transition period and we have planned for both a negotiated outcome (NO) and non-negotiated outcome (NNO).

The NPCC and the NCA work extremely closely in preparing for the end of the transition phase. My letter to you reflects this and I have answered your questions as best as possible based on our current information. As you are aware, Deputy Assistant Commissioner Richard Martin is the NPCC lead in this area; he has appeared before your Committee on several occasions and has drafted our response. I believe the NCA have provided comprehensive statistics on the usage of the various EU tools currently available, so I do not seek to replicate them in this letter.

In a NNO, the UK will lose access to all LENS tools and capabilities and will rely on contingencies. As an overarching principle, the loss of some or all of the tools will mean that, even with contingencies in place, the fallback systems will be slower, provide less visibility of information/intelligence and make joined up working with European partners more cumbersome.

#### **Q1. Loss of access to EU law enforcement cooperation tools**

##### **Schengen Information System (SISII)**

This loss will have a major operational impact. SISII is currently aligned to national systems meaning that anyone circulated as wanted or missing automatically can be seen by 27 EU member states (EUMS) and vice versa. The fall back for loss of SISII is Interpol. Interpol is not linked to national systems and, while the ICCC is leading a project to semi-automate the uploading of Interpol notices through a “smart form” and is working to ensure dual circulations with SISII and Interpol are

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undertaken during this transition period, it will be slower and lack the capability of SISII. Because of the differences between SISII and Interpol, forces will circulate far fewer persons and objects.

Policing will be ready to use the alternative Interpol system at the end of the transition period; however, success will be reliant on the matters outlined above and upon EUMS checking or using the system for any benefit to be realised. The UK currently has in the region of 7100 Interpol Notices and Diffusions circulated on the Interpol system.

Subject matter experts from the ICCC sit alongside Home Office colleagues as part of the International Law Enforcement Alert Platform (I-LEAP) programme. I-LEAP is an alternative alert sharing platform that may be capable of replicating some of the functionality of SISII, subject to agreements with EU and international partners. The NPCC supports the introduction of such a system, however, this project is at an early stage.

### **European Arrest Warrant (EAW)**

UK law enforcement currently makes extensive use of the EAW to enable the fast track surrender and extradition of wanted individuals to and from EUMS. There is certainly scope to negotiate an arrangement that builds on the Norway/Iceland agreement. This is based upon 'mutual confidence' rather than 'mutual recognition' of the parties' judicial systems. There is little practical difference between the EAW and the Norway/Iceland agreement, however, Norway and Iceland are both within the Schengen Area and have the advantage of being able to circulate arrest warrants via SISII, where the UK may not have the same benefits in the future. In addition, EUMS may refuse to extradite their own citizens under a Norway/Iceland agreement, which is not the case under the current EAW process. Germany, Austria and Slovenia have already indicated they will not extradite their own nationals. The dispute resolution mechanism is via a meeting of the governments of Norway/Iceland and the EU rather than via the CJEU.

A Norway/Iceland style agreement would be better than reliance on the EU 1957 Convention on Extradition, but would still be slower and more bureaucratic than the EAW process.

In mitigation, the ICCC has received Home Office funding to create a National Extradition Unit (NEU). This unit consisting of 40 staff, will be operational from the 31<sup>st</sup> December and will be responsible for all operational extradition across England & Wales, covering every aspect of the process from manhunts and the Extradition Court process through to removals and collections. The NEU supports geographically based police forces by centralising the risk, providing economies of scale and lessening the chance of flawed extradition procedures due to lack of expertise and training.

Operationally, the NEU will identify all extradition requests with a UK link, complete the triage process and subsequent intelligence packages for all cases and conduct the arrests that are required for high and medium risk cases. For those cases not classified as high or medium risk the NEU will still provide intelligence, warrant applications and background information to enable arrests to be made by local police forces. The ICCC is on course to have the NEU in place, with all staff trained for either a NNO or a NO, and operationally ready before the end of the transition period.

Whilst policing is not part of the negotiating team, we are regularly updated on the current position and will be ready to operationally deliver, whatever the outcome.

### **European Criminal Records Information System (ECRIS)**

The loss of ECRIS will significantly slow our ability to check criminal records of individuals from overseas databases. ACPO Criminal Records Office (ACRO) estimate this loss would mean that securing overseas conviction data would move from an average of 6 days to 66 days. The alternative mechanism is the Council of Europe – 1959 Convention on Mutual Assistance in Criminal Matters

which does not impose timescales. Losing access to the automated system will impact on ACRO and change the way in which data can be exchanged with EUMS.

### **Passenger Name Records (PNR)**

The UK is a leader in the use of PNR, with significant traffic coming through UK airports. An inability to access PNR would have a major impact for CT and Serious and Organised Crime related matters. Without the legal basis provided by the PNR Directive, it is difficult to foresee how such data could be shared by EUMS with the UK.

### **Prüm**

Whilst Prüm is a relatively new addition to the UK law enforcement armoury, its loss will have a major operational impact. The Prüm DNA Exchange Programme allows the UK to share DNA data immediately and search EU partner databases. To date the UK has had over 12,000 hits on DNA data searched against the 11 countries with whom we have connections.

The UK went live with the Prüm Fingerprint Exchange Programme in October 2020 and is currently connected to Germany. More countries are due to be connected within the next financial year.

In the event of a NNO, there is no direct alternative to Prüm and the UK would need to revert to individual manual exchanges of data via Interpol channels on a case by case basis.

### **Europol**

Third party membership of Europol and Eurojust is available in a NNO, but such states are not able to initiate operations such as Joint Investigation Teams (JIT) and must rely upon a partnership with another EUMS to undertake any activity. The EU draft text states that a UK liaison delegation for Europol and a UK liaison magistrate for Eurojust may be agreed, but participation in meetings and operational activity is by invitation and with the approval of the other participating EUMS.

Access to Europol is likely to be less of an issue if the UK can secure a large enough delegation to be able to secure influence.

### **Training and Guidance**

The ICCC is responsible for providing training and guidance relating to LENS tools across the police forces of England and Wales, working in conjunction with the College of Policing. We also work closely with our colleagues in the NCA, CT, PSNI and Police Scotland to ensure that there is a consistent message across the UK.

Whilst some training (1,970 occasions to a combined audience of over 24,000 people) has taken place, new training elements have also been created within the policing national curriculum. These have been drafted, assessed through end user panels and are ready to deliver early next year. The uncertainty regarding the outcome of negotiations creates difficulty in predicting the exact timing for delivery of this training as all operational partners wish to ensure that we provide an unambiguous message to front line officers. The new material will target:

- 120,000 front line officers.
- 47,000 investigators.
- All Senior Investigators.

To support the training, the following notable training and guidance products exist:

- An International Criminality App, we are in the process of making available to all police officers via force PDA systems providing simple guidance across a number of front-line, operational scenarios.
- Computer based learning packages for front-line officers and staff.
- Classroom based training to International Liaison Officers (ILO) and Senior Investigating Officers (SIO).
- A comprehensive suite of guidance accessed through the College of Policing's Knowledge Hub.

To mitigate any uncertainty surrounding a NNO or a NO, the ICCC has established a call centre through a dedicated freephone number. The centre will be staffed 24/7 from the beginning of December with experienced international cooperation subject matter experts including representatives from the NCA, CPS, Immigration Enforcement and potentially the UKCA.

To support forces further, the ICCC has a geographically based Single Point of Contact (SPOC) network that covers the entirety of England & Wales, PSNI and Police Scotland provide representatives for the Devolved Administrations. The SPOC network is crucial as we prepare police forces for the end of the transition phase, their duties are varied depending on the needs of forces but in the main are as follows:

- Assisting forces with the circulation of existing SISII alerts on Interpol channels.
- Supporting force Brexit Gold Groups in their contingency planning.
- Providing tactical advice to live investigations and cold case reviews.

Since May 2019 the ICCC 24/7 Hotline has dealt with 3,166 International Crime requests for service from UK policing

## **Q2. Comments made by AC Neil Basu, National Lead on Counter Terrorism Policing.**

The NPCC has been clear of the need to retain the existing EU LENS tools and the operational impact if any are lost. In both a NO and NNO scenario, the alternative measures are less automated and more unwieldy to use. Policing has been working closely with our law enforcement partners and the Government to ensure we are prepared for all outcome scenarios.

## **Q3. Discussions with European or international colleagues on future co-operation**

The nature of discussions with international partners is in an operational context only. We continue to undertake crucial engagement with the London-based Foreign Law Enforcement Community (FLEC), which is comprised of over 140 officers representing over 36 countries.

Since May 2019, the ICCC has serviced 1,322 inbound requests from the FLEC network. Feedback is consistently recorded as "excellent" due to the ICCC ability to respond quickly to requests by utilising the national SPOC network.

## **Q4. The impact of decisions regarding data adequacy**

Policing is not party to the negotiations, but it is our view that without a data adequacy agreement we should be able to continue to exchange data under the Law Enforcement Directive as third party countries do now. At present, we are uncertain how other EUMS will view this position and there is concern that less data will be shared without an agreement.

It is also our understanding that the CJEU judgment C-623/17 is no longer relevant and superseded by the Investigatory Powers Act 2016 so should not be an issue.

### **Additional Information**

The ICCC is funded until the end of the financial year 2020-21. We expect some clarity early in 2021 regarding further funding to secure the long-term future of the unit.

ICCC activity prior to transition:

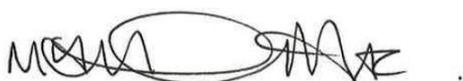
- Developing our joint approach with the NCA for all FLEC enquiries to maintain partnership working post-transition.
- Creating a new Foreign National Offenders (FNO) desk and analytical capability to develop greater oversight of operational delivery and opportunity.
- Building a 10-year strategy to place policing at the forefront of tackling international crime.

ICCC continued activity post transition:

- Monitor post transition negotiations; develop policy, guidance and training for forces.
- Provide support to policing through 24/7 contact desk.
- Provide support to investigations through regional SPOCS and risk desks.
- Support an International Criminality App and Knowledge Hub.
- Increase the delivery of police information to the border through Watchlisting.
- Launch a digital forensics capability to support Mutual Legal Assistance requests.
- Implement a dashboard of metrics for each force to assist in self-assessment.

I am confident that, through the ICCC, the NPCC is prepared for any eventuality as we come to the end of the transition phase. We will continue to engage with internal and external partners and to refine our contingency plans as the situation changes.

I trust that this response has been of use to the Committee.



**Martin Hewitt QPM**

Chair

National Police Chiefs' Council