

Baroness Sally Hamwee
Chair, House of Lords Justice and Home Affairs Committee
House of Lords
London
SW1P 4DF

18 October 2023

Dear Baroness Hamwee,

Thank you for your letter dated 25 July 2023, setting out your Committee's conclusions from your follow up enquiry to the EU Security and Justice Sub-Committee's original enquiry, entitled "Beyond Brexit: policing, law enforcement and security", published on 26 March 2021.

The EU/UK Trade and Cooperation Agreement (referred to as 'the TCA' hereafter) delivers a comprehensive package of law enforcement and criminal justice capabilities which ensure the UK can work with counterparts across Europe to tackle serious crime and terrorism – protecting the public and bringing criminals to justice.

The arrangements under the TCA are working well in practice and we continue to engage closely with domestic operational partners and counterparts in the EU to ensure sustained effectiveness.

In April 2023, a specialist new unit was launched to support the response of UK territorial policing to international crime. The Joint International Crime Centre (JICC), housed within the NCA, consolidates and enhances the UK's capabilities around international law enforcement cooperation, and ensures the appropriate international tools are utilised.

The Government remains committed to working together with European partners to counter the threats we all face, within Europe and beyond.

Please find the Government's response to your list of questions (as set out in Appendix D to your letter) below.

Prüm Data

What assessment has been made of the resource implications of the new mechanism by which the UK exchanges Prüm data with the EU, compared with the previous mechanism (full membership)?

The current technical arrangements for exchanging biometric data with EU Member States under Prüm are identical to those which were in place when the UK was a member of the EU. The resourcing requirements are therefore unchanged. An assessment of the resource implications of the proposed reforms to the Prüm mechanism (Prüm II) will be undertaken once we have clarity on the new regime. EU negotiations on the reforms are due to be completed in late 2023/early 2024 on current plans, but we understand will be followed by further implementing legislation to determine the technical specifications, parameters for exchange, and operating systems.

What is the Government's view on the proposed reforms to the Prüm mechanism? Will the Government seek to participate in that new mechanism?

We understand that the proposed reforms to the Prüm mechanism seek to modernise operating systems and practices and introduce new data categories. However, until the EU has completed its internal negotiations on the new mechanism and agreed the new technical architecture it would be premature to take a position on UK participation. As soon as we have that detail, we will consult operational partners and other stakeholders on the new system and seek views from Parliament. In the meantime, the Government recognises the value of Prüm in enabling UK and overseas police forces to progress investigations into international criminality using evidence to which they might not otherwise have had access.

The UK having successfully passed, in June 2022, an evaluation by the EU of the UK's handling of Prüm data, are further evaluations to be expected in the future?

The UK expects to undergo an evaluation of its vehicle registration data exchange capabilities; all participating States are required to do so prior to connection. We are not aware of any evaluation procedures in the Prüm II reform proposals but, if we choose to participate, we cannot preclude the possibility that there will be an evaluation procedure, particularly for new data categories.

Passenger Name Record (PNR) data

What assessment has the Government made of TCA provisions for the exchange of PNR data? How effective has such exchange been in practice?

The TCA has enabled the continued transfer of PNR data to the UK Government from aircraft operators for all scheduled routes between the EU and the UK. In

addition to this, there is effective operational co-operation between the UK's National Border Targeting Centre and its counterparts among the Passenger Information Units of the EU Member States.

The UK is required to update its PNR processing systems by the end of the year to comply with TCA requirements. Will that deadline be met? If not, when can we expect the requirements to be met?

Work to update the UK's passenger data systems to ensure PNR data can be processed in compliance with the TCA without derogation will be completed by the end of 2023.

Article 552(4) of the TCA has required the UK to adapt its passenger data systems in order to identify, risk assess and delete specific PNR data relating to flights between the EU and the UK or data stored in the EU, and in relation to visitors who have, or should have, departed from the UK (excluding data relating to British nationals and those with status in the UK).

The TCA provided for no more than three years to make the necessary technical adjustments to deliver these new capabilities. Article 552(11) permitted derogation from Article 552(4) through the operation of additional safeguards for an interim period. The UK will continue to operate these safeguards until the end of the interim period on 31 December 2023.

How realistic is the suggestion that the exchange of PNR data could be extended to rail and sea travel? Would the Government consider pursuing that idea?

The longer-term aim is to develop mechanisms to extend the processing of PNR data to its equivalent for maritime and international rail services. Both the UK Government and the European Commission acknowledge the benefits of such an approach, having adopted a Joint Political Declaration on Title III of Part Three of the TCA to this effect.

The UK holds the ability to enter into and operate bilateral agreements with individual member states for a system for collecting and processing PNR data for other modes of transport. However, the EU does not currently have a legal framework for the processing and transfer of PNR for modes other than aviation.

Criminal Records

What assessment has the Home Office made of the operations of the exchange of criminal records between the UK and the EU? How does the Government explain the decline in the volume of outbound requests and the increase in the volume of inward requests? What do these trends signify?

We recognise the value of exchanging criminal records with EU Member States to support criminal proceedings, protect the public and safeguard the vulnerable, and we assess that this exchange is operating effectively. We note that the overall speed and effectiveness of the exchange of criminal records with Member States has remained strong following EU Exit and the UK Criminal Records Office (ACRO) continues to work well with EU central authority counterparts.

EU Exit did not change the core operational process by which UK law enforcement request EU criminal records checks via ACRO and the capability remains a key law enforcement and criminal justice tool. Requests continue to be made by operational partners when they deem necessary. The volume of requests will be impacted by need – which in turn will be impacted by, for example, broader travel and demographic trends.

In terms of inbound numbers, we are aware that some EU Member States have amended their domestic legislation since the enactment of the TCA and are increasingly using the criminal record exchange arrangements to request information for non-criminal purposes. The basis for such requests is provided for under the TCA in the same way as previously allowed under EU legislation.

Alert sharing (Second-Generation Schengen Information System (SIS II); INTERPOL; and the International Law Enforcement Alerts Platform (I-LEAP))

Does the need for EU Member States to double-key incur any delays? For instance, do EU Member States typically feed information into INTERPOL's I-24/7 database at the same time as they feed information into SIS II?

Each EU Member State has its own operational procedures and legislation in respect of INTERPOL which determines at what point an alert may be circulated on INTERPOL systems. We continue to work closely with EU Member States to ensure our cooperation through INTERPOL channels is effective and that UK law enforcement and their partners within the EU are able to access information required.

It is important to note that INTERPOL is only one mechanism for information exchange. For example, information is routinely shared through the UK Liaison Bureau in Europol and via the NCA's extensive network of International Liaison Officers.

Not knowing whether information was double-keyed and whether information is shared promptly creates uncertainty for the police. What consequences does this uncertainty have? How is it mitigated?

The UK and EU Member States routinely exchange information on persons of interest, including missing and wanted individuals, and on lost and stolen documents.

There is an automated upload of incoming INTERPOL circulations to UK domestic systems. Information is available via policing systems within minutes of receipt and is available at the border within 24 hours. If the National Crime Agency is notified a case is urgent, then specific alerts can be uploaded to domestic systems more rapidly.

Delivery of technical capabilities through I-LEAP is further enhancing the UK's connectivity to INTERPOL by providing UK law enforcement with real-time access to INTERPOL nominal data (people) and objects of interest (stolen motor vehicles; stolen, lost and fraudulent travel documents). This ensures that there is direct and real-time connection to INTERPOL data.

What progress has been made towards the completion of phase 1 of I-LEAP? Does it remain the Government's ambition to complete it by April 2024?

I-LEAP's rollout to UK policing is underway and continues at pace with 32 police forces now onboarded. Over 5 million searches have been carried out to date through the service and approximately 40,000 users have access to the I-LEAP service.

Under our current scope of policing connectivity, which focuses on front line access primarily through mobile devices, it remains our ambition to complete rollout by April 2024. Following this our ambition is to integrate I-LEAP connectivity with LEDS (Law Enforcement Data Service) as part of the decommissioning of the Police National Computer (PNC) to provide real-time INTERPOL access through this national system.

Our ambition remains to develop the I-LEAP technical capability for the UK Border by April 2024 but the go live date is dependent on other technical programmes being delivered at the UK Border.

What does the Government hope to achieve through multilateral international agreements as part of the further development of I-LEAP? When does the Government expect these negotiations to start and conclude? What explains the significant delay in the timeline for the completion of phase 2?

Phase 2 will expand the I-LEAP service to provide reciprocal access to international alert data exchange with international partners. The programme was initially premised on achieving its aims through a series of bilateral agreements. However, following the announcement in December 2021 of the EU Commission proposal on "security-related information sharing – reciprocal access for frontline officers in the EU and key partner countries", the Home Office is targeting its approach at an EU-wide multilateral solution. The ability to receive international alerts from all EU Member States through a single solution will deliver a substantially greater level of mutual benefit to both domestic and international law enforcement compared to individual bilateral agreements.

The programme has therefore been reprofiled in light of Commission plans to propose a mechanism for sharing alerts between the EU and third countries. The European Commission is currently stating that they expect the proposal to be published Q4 2023.

Cooperation with Europol

Is the Government satisfied with the operation of TCA arrangements addressing cooperation with Europol? With the forthcoming review of the TCA (including of Part Three) on the horizon, what aspects of the current arrangements establishing cooperation with Europol would the Government like to see reformed and/or developed further? (Paragraph 55).

The UK has a long history of contributing to the strategic priorities, technical and analytical expertise, operational capabilities, and data held within Europol. The UK continues to have a strong, effective, and evolving partnership with Europol, with the TCA allowing for close cooperation between the UK and Europol in a way which protects and enhances respective capabilities. In relation to the future TCA review, we are currently focused on maximising implementation of the TCA as it stands, although we will of course prepare for significant TCA milestones as we do with any treaty.

A UK-Europol Working and Administrative Arrangement (WAA) has been signed, to underpin the provisions in the TCA. Since the TCA and WAA have been in place, UK operational partners report relations as very strong with the agency. This is benefitting their ability to progress key mutual priorities with the EU in order to tackle crime. We will continue engaging to further deepen the relationship for the mutual benefit of both parties.

Surrender

The Crown Prosecution Service for England and Wales told us that it wanted the Government to “continue engaging with EU member states to try to strengthen our ability to prosecute cross-border crime”. In replying to this letter, we ask that you set out what actions you have taken to address the CPS’s concerns. (Paragraph 90)

As noted by the Crown Prosecution Service in evidence to the Committee, we engage regularly with EU Member States with a view to strengthening the UK’s ability to prosecute cross-border crime and will continue to do so. We welcome the constructive approach we continue to see from partners across the EU in relation to the operation of the surrender provisions of the TCA.

The TCA arrangements are based on the exchange of warrants between judicial authorities. This streamlined method of cooperation is similar to the arrangements in place between the EU and Norway and Iceland.

We are pleased to have already been able to reach agreement with specific EU partners to deepen our operational co-operation which was possible because of the strong foundation provided for under the TCA. For example, the Home Office worked closely with the Polish Ministry of Justice to secure the withdrawal of their bar on extradition of own nationals under the TCA. The Polish legislation that was necessary to achieve this came into force on 3 August 2023. Extradition between the UK and Poland in this context is a significant operational priority.

We also work closely with the CPS liaison magistrate network, who amplify the efforts HMG makes to strengthen the UK's overall ability to prosecute cross-border crime.

13 countries have cited “fundamental principles” of their domestic legal orders as a basis for refusing to extradite their own nationals to the UK (Article 603(2) of the TCA). Which of them have relied upon legislative reasons (subject to change) for imposing the bar and which have invoked constitutional principles (subject to higher thresholds for change)? What steps has the Government taken to engage with those countries that impose a bar due to national legislation and, in the Government’s view, how realistic is the prospect of persuading them to change their approach, following the Polish example? (Paragraph 91)

The TCA provides for streamlined extradition arrangements based on the exchange of warrants between judicial authorities, which is similar to the arrangements in place between the EU and Norway and Iceland and also enshrines key domestic extradition safeguards which were previously not explicit in the European Arrest Warrant Framework Decision.

Own national declarations are a common feature of arrangements outside of the European Arrest Warrant.

We engage regularly with EU Member States with a view to strengthening the UK's ability to prosecute cross-border crime and achieve justice for victims of crime, and will continue to do so. This includes engagement with countries that have imposed an own national bar under the TCA but have not done so under the arrangements in place between the EU and Norway and Iceland.

The Crown Prosecution Service for England and Wales estimates that “roughly 10%” of extradition cases are affected by the nationality bar. Our calculations suggest a higher estimate. What are the Government’s views on these two estimates? (Paragraph 92)

As set out above, own national declarations are a common feature of arrangements outside of the European Arrest Warrant. These declarations have different impacts depending on the volume and composition of cooperation with the relevant individual

Member State. This informs our understanding of operational need and, in turn, our engagement with international partners on this issue.

Through the TCA we have ensured alternative paths to justice are available where an own national bar is applied. For example, for those wanted to face a trial the TCA provides for a mechanism where a person could be extradited to the UK, face trial, and then be returned to their home country to serve their sentence. The NCA works closely with UK policing, CPS, prosecutors in the Devolved Governments and international partners to ensure the most appropriate avenues are explored in the pursuit of justice.

What assessment has been made of the effectiveness of provisional arrest pending the certification of a TCA warrant by the NCA?

The National Crime Agency is responsible for the collation and publication of data in relation to extradition requests under the TCA. We understand that the provisional arrest power is working effectively.

How many people subject to a European Arrest Warrant have been provisionally arrested and subsequently discharged pending the certification of a TCA warrant by the NCA? Why does the NCA not certify European Arrest Warrants as Part 1 warrants under the Extradition Act 2003? (Paragraph 93)

The UK has maintained an effective extradition relationship with the EU. Since the TCA came into force, arrests and surrenders have continued to take place and cases are proceeding through the courts – ensuring criminals are brought to justice. We understand that the provisional arrest power is working effectively and there is no systemic issue in relation to cases being discharged on the basis that a TCA warrant is not provided to UK authorities within the necessary timescale.

Neither the UK nor the EU sought to retain the European Arrest Warrant as a basis for our cooperation during EU Exit negotiations

The NCA certifies TCA warrants as provided for by the provisions of the TCA, and within the parameters of UK domestic law. We continue to work with operational partners and EU Member States to monitor our extradition arrangements and maximise their effectiveness.

We heard that time limits for the surrender of suspects are routinely exceeded in England and Wales. How does this compare with the situation in Northern Ireland and Scotland? What actions has the Government been taking to meet targets? (Paragraph 94)

Our assessment of the TCA extradition arrangements is that they are functioning effectively between the UK and EU. The TCA and UK's domestic extradition legislation frameworks and processes give requested individuals in the UK the

opportunity of a fair and balanced hearing before an independent court, with safeguards and procedures which are robust and transparent.

The listing and management of cases in the UK is a matter for independent courts and operational partners in all three UK jurisdictions. While both EU Member States and the UK endeavour to meet the time limits set out in the TCA, there may be individual circumstances where it is not possible to do so.

These specific, operational, challenges have always been a feature of our cooperation, under the EU Treaties previously and now under the TCA, and are felt on both sides. The implementation and functioning of Part 3 of the TCA is kept under review by the Specialised Committee on Law Enforcement and Judicial Cooperation, including at its most recent meeting on 19 June in Brussels. Both Parties are committed to working together to address operational issues as they arise, including adherence to timelines.

Mutual Legal Assistance

When does the Government expect the standard form to be available for use in practice? (Paragraph 102)

As agreed at the Specialised Committee on Law Enforcement and Criminal Justice which took place on 19 June, the MLA Standard Form became mandatory for all MLA requests between the UK and the EU on 1 September 2023.

The new form will deliver significant operational benefits by improving the efficiency of the overall MLA process, reducing duplication, promoting the use of digital transmission and ensuring requests can be triaged promptly. This will support enabling better outcomes for victims of crime.

Human Rights and Data Protection

What does the Home Office anticipate the consequences would be should Part Three of the TCA be terminated or suspended? How has this informed the Department's approach to the ECHR and Channel crossings?

The Government places significant value on the important operational cooperation on law enforcement and criminal justice provided for through the TCA, as do our EU partners. We are committed to maintaining this cooperation.

As we made clear in our response to the 2021 Committee report, it is right that the TCA is underpinned by the EU and UK's shared values of human rights, democracy and the rule of law. As the Committee notes, TCA cooperation on law enforcement and criminal justice may be suspended by either party in the event of serious and systemic deficiencies of the other party regarding the upholding of human rights, the

rule of law, or the protection of data. This approach was calibrated to ensure cooperation protects individuals' rights, whilst enabling the UK to give effect to its long standing strong human rights protections autonomously, which we remain committed to doing.

In line with this approach, the Government's legislative plans allow the UK to remain party to the ECHR. In respect of the Government's approach to channel crossings, there is nothing in the Illegal Migration Act which requires the UK to act incompatibly with its international obligations.

What representation has the Home Office made to the Department for Science, Innovation and Technology and the Ministry of Justice on the consequences that the Data Protection and Digital Information (No. 2) Bill and the Bill of Rights Bill (when it was still being considered), respectively, could have on UK-EU security cooperation?

We have high data protection standards, as recognised by our international partners. That is why the Home Office has worked closely with the Department for Science, Innovation and Technology (DSIT) throughout the process of developing the Data Protection and Digital Information (DPDI) Bill - on both the parts DSIT are responsible for and amendments to Parts 3 and 4 of the Data Protection Act 2018 for which the Home Office are responsible - to ensure the UK's high standards are upheld.

The Government remains committed to a human rights framework that is up to date and fit for purpose and works for the British people.

We see no reason why this commitment and the proposed changes to our data protection regime should be incompatible with our continued close co-operation with EU partners on law enforcement and criminal justice via the TCA.

Progress Update on UK's accession to 2007 Lugano Convention

Finally, you also asked about progress in relation to the UK's application to join the 2007 Lugano Convention. The Government continues to believe that UK membership of Lugano is a sensible, pragmatic basis for continued civil judicial cooperation with the EU and that it is in the mutual interest of ordinary UK and EU citizens, families and businesses, who live, work and do business across borders. The EU has not yet agreed to the UK's accession to the Convention.

However, as opportunities arise, Ministers and senior officials continue to make the case for UK membership of Lugano to their counterparts in the European Commission and individual EU member states. Meanwhile the Government is pressing forward with its consideration the 2019 Hague Convention on the

Recognition and enforcement of judgments, which would apply between the UK and the EU, should the UK join.

I would like to thank the Committee for the consideration they have given to this topic and for giving us the opportunity to respond.

Yours sincerely,

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HOME SECRETARY