



## DEBATE PACK

Number CDP-2017-0015, 13 January 2017

# Exiting the EU and security, law enforcement and criminal justice

## Summary

A general debate on exiting the EU and security, law enforcement and criminal justice has been scheduled for the afternoon of Wednesday 18 January 2017.

The House of Commons Library prepares a briefing in hard copy and/or online for most non-legislative debates in the Chamber and Westminster Hall other than half-hour debates. Debate Packs are produced quickly after the announcement of parliamentary business. They are intended to provide a summary or overview of the issue being debated and identify relevant briefings and useful documents, including press and parliamentary material. More detailed briefing can be prepared for Members on request to the Library.

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# 1. Background

## 1.1 Law enforcement and criminal justice

### Existing arrangements

EU law on criminal justice and policing cooperation can be divided into the following areas:

- The substantive criminal law (how criminal offences are defined);
- Criminal procedure;
- Mutual recognition of criminal decisions;
- Participation in EU agencies; and
- Information sharing

The UK currently has an arrangement whereby it can choose which laws it wishes to adopt, and opt out of others.

The UK has chosen to opt in to relatively few EU laws aimed at harmonising the substantive criminal law and criminal procedure, and those it has chosen to adopt essentially affect domestic law. As such, they would not necessarily need to be altered as a result of the UK's withdrawal from the EU.

By contrast, the UK has been a more enthusiastic participant in measures concerning mutual recognition of decisions; information sharing; and participation in EU agencies. These measures depend on cooperation between Member States. Therefore, alternative arrangements would have to be put in place of existing measures if the UK wished to maintain similar levels of cooperation.

Examples of such measures include the following:

#### **Schengen Information System**

The Second Generation Schengen Information System (SIS II) is a database of real time alerts about individuals and objects (such as vehicles) of interest to EU law enforcement agencies.<sup>1</sup> It includes information on people wanted under a European Arrest Warrant, suspected foreign fighters, and missing people. SIS II alerts are made available to the police through the Police National Computer and to Border Force officers at the immigration controls at ports of entry.

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<sup>1</sup> [Council Decision 2007/533/JHA](#)

The Government has highlighted the importance of SIS II in tackling the terrorist threat from foreign fighters returning from Syria and Iraq, tracking them as they travel around Europe.<sup>2</sup>

### **European Arrest Warrant**

The European Arrest Warrant (EAW)<sup>3</sup> facilitates extradition between Member States, and is based on the principle of mutual recognition of legal systems within the EU. Unlike extradition arrangements with countries outside the EU, the EAW requires acceptance of a foreign warrant by national judicial authorities without an inquiry into the facts or circumstances giving rise to the warrant. It also limits the grounds on which extradition may be refused, and provides for the extradition of Member States' own nationals (which is prohibited under many other extradition agreements). It was intended to streamline the process of extradition and relies on trust between Member States.

### **Europol**

The main objective of Europol is to support and strengthen action by Member States' law enforcement authorities and facilitate cooperation between these authorities in preventing organised crime, serious crime, and terrorism, where the crimes affect two or more Member States. It provides support for UK law enforcement investigations and has analytical capabilities, processing data and making links between crimes in different countries. The Europol Information System (EIS) pools information on criminals and terrorists from across the EU.

## **Future arrangements**

The Government has consistently stated that it will seek to maintain close ties with the EU in the area of criminal justice and law enforcement. In a statement on 10 October, David Davis told the House that one of the Government's four aims for the Brexit negotiations is to "keep our justice and security arrangements at least as strong as they are."<sup>4</sup>

However, others have questioned whether it will be possible to replicate existing arrangements from outside the EU. Shortly before the EU referendum, Rob Wainwright, Director of Europol, said that the UK would become a "second tier member of our club" if it left the EU. He warned that the UK's future relationship with the organisation may

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<sup>2</sup> [The UK's cooperation with the EU on justice and home affairs, and on foreign policy and security issues](#), HM Government, 9 May 2016

<sup>3</sup> [2002/584/JHA](#)

<sup>4</sup> [HC Deb 10 October 2016, c55](#)

mirror Norway and Iceland, denying UK agencies direct access to Europol data.<sup>5</sup>

Third countries do not currently enjoy the same access to Europol databases as EU Member States, although countries such as the US, Canada and Australia have “operational agreements” to enable them to exchange certain types of data and participate in joint operations.<sup>6</sup>

During her last evidence session before the Home Affairs Committee as Home Secretary, Theresa May said:

If we are not in the European Union, we would almost certainly not have access to the European arrest warrant. Norway, for example, started negotiating with the European Union on access to something similar to the European arrest warrant in 2001. An agreement has been reached, but has not been implemented yet. It includes, as I understand it, the caveat that could mean that nationals of some countries could not be extradited. There are some countries that will not extradite their nationals unless it is under a European arrest warrant. I think that would have a real impact on our ability to deal with criminals.

## 1.2 National security

According to Article 4 of the [Treaty on European Union](#), “national security remains the sole responsibility of each Member State”.

As a result, it has been argued that leaving the EU will have little impact on national security.

During the run up to the referendum a number of intelligence experts expressed views on the likely impact of a vote to leave. Sir Richard Dearlove, the former head of the Secret Intelligence Service, published an article in *Prospect* magazine in which he suggested that

the truth about Brexit from a national security perspective is that the cost to Britain would be low.<sup>7</sup>

He went on to point out that existing measures are largely focused on criminal justice, and that the sharing of intelligence continues to take place primarily on a bilateral level. He further noted that the UK contributes more to the EU in intelligence and security matters than it receives in return, as a result of which, it is likely that other European countries would wish to continue to maintain a cooperative relationship with the UK in the event of Brexit.

Others have highlighted the role played by the UK in coordinating an EU wide response to the threat of terrorism, and the significance of information sharing measures for domestic security.

In a speech in April 2016, the Government’s independent reviewer of terrorism legislation, David Anderson QC, suggested that after Brexit

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<sup>5</sup> *The Guardian*, [Europol chief says Brexit would harm UK crime-fighting](#), 22 June 2016

<sup>6</sup> *The Wall Street Journal*, [U.K. Faces Brexit Dilemma Over Europol](#), 13 July 2016

<sup>7</sup> [Brexit would not damage national security](#), *Prospect* magazine, 23 March 2016

there would be significant differences between our current arrangements and any future agreement to retain associate membership of organisations and access to databases:

But we need to understand that an arrangement along those lines would be wholly different in nature from what we have at the moment – which is, to put it bluntly, a position of leadership where European counter-terrorism policy is concerned.

Thanks to British influence:

- European instruments require all Member States to have terrorism laws of a type that we were the first to introduce.
- The EU action plan on terrorism, drafted during a UK Presidency, is heavily modelled on the UK's own CONTEST programme, whose four elements (Pursue, Prevent, Protect, Prepare) have been translated into the only slightly less alliterative Pursue, Prevent, Protect, Respond.
- It is the UK which has taken the lead in producing EU policies on counter-radicalisations, both internally and in third countries; on aviation security; on risk and threat analysis; and on the sale of dangerous goods.
- *Europol*, some 10% of whose cases concern counter-terrorism, has developed under UK leadership into an effective hub.
- And the UK has, as one would expect, been exceptionally useful in managing the relationship between the EU and the USA.

This leadership did not fall into our lap: it was hard won, because we saw earlier than most the importance of an effective counter-terrorism response across the continent. That response is a work in progress, which we continue to guide in our own interests and those of the rest of Europe.<sup>8</sup>

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<sup>8</sup> David Anderson QC, Terrorism and the law, Graham Turnbull Lecture, 21 April 2016, available from: [www.lawsociety.org.uk](http://www.lawsociety.org.uk) [accessed 9 December 2016]

## 2. Media

### 2.1 Articles and blogs

#### General

Law Society Gazette

[Justice should be higher up Brexit agenda, MPs told](#)

Monidipa Fouzder 10 January 2017

Financial Times [Registration required]

[Theresa May will have to put country first to make Brexit work](#)

Nick Clegg 7 January 2017

#### National security

Telegraph

[Britain will demand a leading role in Europol after Brexit](#)

Kate McCann 29 December 2016

BBC online

[Brexit could leave UK less safe, warn peers](#)

16 December 2016

Guardian

[Germany fears UK may quit spy programme because of Brexit](#)

Philip Oltermann 6 November 2016

Observer

[Understanding Brexit's security implications](#)

John R. Schindler 27 June 2016

Guardian

[Europol chief says Brexit would harm UK crime-fighting](#)

Jennifer Rankin 22 June 2016

Telegraph

[Leaving the EU would be a retrograde step for national security](#)

Keir Starmer 29 March 2016

Prospect

[Brexit would not damage UK security](#)

Richard Dearlove 23 March 2016

Prospect

[Brexit would hinder the fight against terrorism](#)

David Anderson 3 March 2016

## 2.2 Press releases

FCO

[Beyond Brexit: a global Britain](#) [Speech]

Boris Johnson 2 December 2016

Law Society

[UK legal services sector and the EU](#)

24 September 2015

## 3. Parliamentary Business

### 3.1 Ministerial Statements

[European Council 2016](#) [Extract]

HC Deb 19 December 2016 c1177-201

I turn to security and defence. Whether it is deterring Russian aggression, countering terrorism or fighting organised crime, the UK remains firmly committed to the security of our European neighbours. That is true now, and it will remain true once we have left the EU. At this Council we welcomed the commitment from all member states to take greater responsibility for their security, to invest more resources and to develop more capabilities. That is the right approach, and, as the Council made clear, it should be done in a way that complements rather than duplicates NATO.

A stronger EU and a stronger NATO can be mutually reinforcing, and that should be our aim. We must never lose sight of the fact that NATO will always be the bedrock of our collective defence in Europe, and we must never allow anything to undermine it. We also agreed at the Council to renew tier 3 economic sanctions on Russia for another six months, maintaining the pressure on Russia to implement the Minsk agreements in full.

[Annual Report on the National Security Strategy and Strategic Defence and Security Review](#) [Extract]

7 December 2016 | Written statements | HCWS 329

The decision to leave the EU carries significant implications for the UK in many areas of political and economic engagement. In the national security context, however, the threats and challenges to UK national security have not fundamentally changed as a result of the decision to leave. The UK remains fully and strongly committed to Europe's defence and security and we continue to play an active role in security and defence cooperation across Europe. As we leave the European Union, we will be more prominent than ever: an outward-facing, global partner at the heart of international efforts to secure peace and prosperity for all our people.

[Foreign Affairs Council – 17 October 2016](#) [Extract]

25 October 2016 | Written statements | HCWS 217

**European Union Global Strategy**

The Council discussed the follow up the EU Global Strategy on foreign and security policy and adopted Council Conclusions. The Foreign Secretary made clear that the UK would continue to support European security after Brexit. He encouraged other European countries to spend more on defence and exploit the EU's soft power.

## 3.2 Debates

### [Europol](#)

House of Commons European Committee B proceedings, 12 December 2016, c1-12

### [Brexit: Foreign and Security Policy Co-operation](#)

HL Deb 20 October 2016 c2446-83

## 3.3 Parliamentary Questions

### [Legal Profession: EU Law](#)

**Asked by: Stephen Timms**

To ask the Secretary of State for Exiting the European Union, what assessment his Department has made of the potential merits of maintaining the provisions of the Lawyer Services Directive after the UK leaves the EU.

**Answered by: Mr Robin Walker | Department: Exiting the European Union**

The Government will bring forward legislation in the next session that, when enacted, will repeal the European Communities Act 1972 and ensure a functioning statute book on the day we leave the EU. This Great Repeal Bill will end the authority of EU law and return power to the UK.

The Bill will preserve EU-derived legislation, including applicable European Court of Justice (ECJ) case law where appropriate, as it applies in the UK on exit day.

The Government will set out the content of the Bill and its implications in due course.

9 January 2017 | Written questions | 59238

### [Firearms](#)

**Asked by: Lord Rosser**

To ask Her Majesty's Government, further to the answer by Baroness Williams of Trafford on 21 November (HL Deb, cols 1723–4) concerning seizures of illegal firearms, what discussions they have held with other EU member states to ensure that the UK can maintain and enhance joint working capabilities with EU member states following the UK's withdrawal from the EU.

**Answered by: Baroness Williams of Trafford | Department: Home Office**

The importance of UK cooperation with EU Member States to tackle criminal activity and address mutual security concerns has not changed following the vote to leave the EU. We are exploring options for future cooperation arrangements, but it would be wrong to set out unilateral positions on specific measures in advance of formal negotiations.

**15 December 2016 | Written questions | HL 3584**

[Terrorism: EU Action](#)**Asked by: Martin Docherty-Hughes**

To ask Mr Chancellor of the Exchequer, what preparations his Department is making for the coordination of efforts to tackle the financing of terrorism with EU member states in line with the aspirations of the G7 Financial Taskforce after the UK leaves the EU.

**Answered by: Simon Kirby | Department: HM Treasury**

The UK continues to play a full part in the international work on defeating the terrorist financing, including through the EU, the G7, the Financial Action Task Force and the Counter-ISIL Finance Group. The UK also has a strong reputation for tackling terrorist financing domestically. Counter-terrorist financing is a key part of the UK's CONTEST strategy and earlier this year the UK published an Action Plan for anti-money laundering and counter-terrorist finance.

As we leave the EU, we will continue to build the strongest possible relationship on security with our European partners, as well as our close friends in North America, the Commonwealth, and other important partners around the world. Our voice will always be prominent on the world stage, and we will continue to make it heard on issues such as this through our permanent seat at the UN Security Council and our membership of NATO, of the G7, the G20 and the Commonwealth.

**13 December 2016 | Written questions | 56730**

[Human Trafficking: EU Action](#)**Asked by: Tommy Sheppard**

To ask the Secretary of State for Foreign and Commonwealth Affairs, what plans he has for inclusion within negotiations on the UK leaving

the EU the continuing participation by the UK in Operation Sophia; and if he will take steps to ensure continuing UK participation in that operation after the UK has left the EU.

**Answered by: Sir Alan Duncan | Department: FCO**

The UK remains fully engaged in European defence and security, as our ongoing commitments to European Union Common Security and Defence Policy operations and missions demonstrate. Our future relationship with the EU on foreign and defence policy is something that will be addressed in the future. But it is clear that we share many challenges with other European nations, and therefore it is in our shared interests to continue to cooperate.

**12 December 2016 | Written questions | 53905**

[EU Common Foreign and Security Policy](#)

**Asked by: Jim Shannon**

To ask the Secretary of State for the Home Department, what plans she has to co-operate on knowledge-sharing related to policy and security with other EU countries after the UK has left the EU.

**Answered by: Robert Goodwill | Department: Home Office**

The UK will, in due course, be leaving the EU but the importance of law enforcement co-operation with our EU and global allies has not changed.

We are exploring options for cooperation arrangements once the UK has left the EU. We will do what is necessary to keep people safe, but it would be wrong to set out unilateral positions on specific measures in advance of negotiations.

**8 December 2016 | Written questions | 55798**

[Criminal Records: EU Nationals](#)

**Asked by: Diana Johnson**

To ask the Secretary of State for the Home Department, whether the Government plans to (a) continue to take part in the European Arrest Warrant system, (b) remain signed up to the Europol Information System, (c) retain voting rights in Europol and (d) remain a member of the European Criminal Records Information System; and what measures are being taken to ensure that the UK can remain a member of each of those schemes once it has left the EU.

**Answered by: Branson Lewis | Department: Home Office**

The Prime Minister has made clear that law enforcement cooperation with our European partners will continue after the UK leaves the EU – we will do what is necessary to keep our people safe.

We are exploring options for cooperation arrangements once the UK has left the EU but it is too early to speculate at this stage what future arrangements may look like.

25 October 2016 | Written questions | 49259

[Police: Cross Border Cooperation](#)

**Asked by: Diana Johnson**

To ask the Secretary of State for Exiting the European Union, if he will make it his policy to continue UK access to the Schengen Information System for law enforcement purposes once the UK exits the EU.

**Answered by: Robin Walker | Department: Exiting the European Union**

We are leaving the EU but co-operation on security with our European and global allies will be maintained. We will do what is necessary to keep our people safe - our aim will be to continue cooperation where it is in the national interest to protect the public. We are about to begin these negotiations and it would be wrong to set out unilateral positions in advance.

6 September 2016 | Written questions | 45272

## 4. Further reading

### 4.1 General

European Affairs Directorate, German Bundestag, [Consequences of Brexit for the realm of justice and home affairs: scope for future EU cooperation with the United Kingdom](#) , 18 August 2016

Centre for European Policy Studies, [What does Brexit mean for the EU's Area of Freedom, Security and Justice?](#) 11 July 2016

J R Spencer, [What would Brexit mean for British criminal justice?](#) Archbold Review, Issue 5, 22 June 2016

Steve Peers, [EU referendum brief 5: how would Brexit impact the UK's involvement in EU policing and criminal law?](#) EU Law Analysis, 21 June 2016

Police Professional, [Officers hold 'crucial role' in EU referendum battle](#) , 1 June 2016

Adam Ilke et al, [The UK in Justice and Home Affairs: the engaged outsider](#) , Institute for European Studies Policy Brief, Issue 2016/6, April 2016

The Law Society, [Brexit and the Law](#), January 2017 (chapter 3)

J Carberry & O Bailey, [Progressive principles for Brexit negotiations](#), Fabian Society & Open Britain, January 2017

### 4.2 National security

Sarah Lain, [The future of post-Brexit Germany–UK security relations](#) , Royal United Services Institute, September 2016

Steve Peers, [How would Brexit affect data protection, privacy and surveillance laws in Britain?](#) The Conversation, 5 May 2016

Steve Peers, [Migration, internal security and the UK's EU membership](#) , Political Quarterly, Vol 87 No 2, April-June 2016, p247-53

Christian Stensrud, [Leave argument: Brexit will not put Britain at greater risk from terrorism](#) , Civitas EU Facts, 2016

## 4.3 Official publications

House of Commons Justice Committee, [Implications of Brexit for the justice system – oral evidence - 10 Jan 2017](#) , HC 750 2016-17, 13 January 2017

EU Home Affairs Sub-Committee, [Brexit: future UK-EU security and police cooperation](#) , House of Lords EU Committee, 7th Report of Session 2016-17, 16 December 2016

HM Government, [The UK's cooperation with the EU on justice and home affairs, and on foreign policy and security issues](#) , Background Note, 9 May 2016

H. M. Government, [Alternatives to membership: possible models for the United Kingdom outside the European Union](#) , Unprinted paper, 4 March 2016

HM Government, [The best of both worlds: the United Kingdom's special status in a reformed European Union](#) , Unprinted paper, 22 February 2016

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