British-Irish Parliamentary Assembly: Committee B (European Affairs)

**THIRD INTERIM REPORT ON
EUROPEAN SECURITY COOPERATION AFTER BREXIT**

Background to this report

In July 2018, the Committee launched its inquiry into European security cooperation after Brexit. The inquiry is considering:

- The potential impact of Brexit on cooperation between the UK and the EU on security matters, including cross-border policing cooperation, the fight against organised crime, counter-terrorism and cyber-security;
- Future security cooperation between the UK and Ireland in the context of Brexit; and
- The future direction of EU security policy, including implementation of the European Agenda on Security, and the implications of these developments for future security cooperation between the UK and EU.

As part of this inquiry, the committee took evidence in Dublin and Belfast on 4 and 5 October 2018, hearing from a wide range of experts on European and UK-Irish security cooperation. We produced and published a short interim report on this subject. We then visited Dublin and Holyhead Ports on 29 March 2019 and produced a further short interim report on port security, available here. This report was adopted by BIPA at the Wicklow Plenary in May 2019.

We then took evidence from a range of experts, in London, in October 2019:

- Professor Steve Peers, University of Essex
- Professor Valsamis Mitsilegas, Queen Mary, University of London
- Deputy Assistant Commissioner Richard Martin, National Police Chief's Council (NPCC)
- Eleonor Duhs, Director, Technology, Outsourcing and Privacy, FieldFisher
- Javier Ruez, Policy Director, Open Rights Group
- Duncan Buchanan, Policy Director, Road Haulage Association

At the time of taking evidence, the UK Government's 31 October deadline on leaving the EU was fast-approaching. The fluid, rapidly developing nature of the Brexit negotiations meant that this session was a timely opportunity to get an update on developments since we last took evidence and to publish our interim conclusions.

Summary of evidence and interim conclusions

- There have been substantial developments since we last took evidence in this inquiry. We were encouraged to hear from both experts and practitioners that progress has been made on some key security issues identified in our previous reports. These include, for example, extradition arrangements in lieu of the European Arrest Warrant (EAW). However, it was clear that some key obstacles remain. Several of our witnesses identified data security as a particular stumbling block.

- The proposed Withdrawal Agreement has also been published—but failed to achieve the backing of the UK Parliament. At the time of writing, it remains unclear whether the UK will leave the EU with or without a deal. Witnesses emphasised to us the importance of a managed transition period in which to work out the details of security co-operation, which is essential for the safety of the UK and EU public. British experts told us that the UK leaving with no deal would put the progress made so far at risk, and leave the UK reliant on negotiating bilateral treaties that may not provide the same functionality as existing arrangements.

Parliamentary scrutiny of treaties

- The UK Government has set out plans to give Parliament a greater role in scrutinising post-Brexit treaties. The Department for International Trade has published a white paper that includes details of enhanced scrutiny of free trade agreements after Brexit. This includes scrutiny by Committees, stakeholders and a new Advisory Group. These arrangements only cover post-Brexit free trade agreements, and not any other category of post-Brexit treaty. We heard that proper scrutiny of treaties is important, especially in achieving the right balance between security and protecting human rights.

- **The UK Government's proposals for a strong role for Parliament in scrutinising post-Brexit free trade agreements are very welcome, but they currently apply to those agreements only. We recommend that the UK Government replicates the arrangements it has already proposed for scrutinising post-Brexit free trade agreements for security treaties.**

- **We call on the House of Commons Commission and House of Lords Commission to provide adequate resources for effective scrutiny by the UK Parliament.**

Data security

- Data-sharing on criminal matters will be vital to ensuring the security of the UK, Ireland and the wider EU after Brexit. This includes the issue of the UK's access to key databases, such as SISII (owned by Europol), and the Passenger Name Records (PNR) database. We were encouraged to hear about the valuable, mutually beneficial contribution the UK makes to these services and about the extent of agreement between national Governments and practitioners alike on the need for continued cooperation after Brexit.

- But witnesses emphasised that Britain's access to these databases after Brexit is not simply a matter of goodwill. British experts told us that access is linked to EU and UK data protection laws. After Brexit, the Commission will need to issue an adequacy notice on the UK's data protection laws. There is a risk that the UK could lose access to key databases if its data protection environment is found not to be up to standard.

- Data security also has implications for trade after Brexit. Data security experts told us that many small businesses are struggling to comply with the requirements of GDPR, despite UK Government outreach efforts. If they are not compliant, then they may find themselves unable to trade with EU countries.

- If the UK leaves without a deal, it will have to negotiate bilateral treaties across a range of issues related to security cooperation. This does not negate the need to ensure that the UK's data laws are up to the EU's standards, however. Member states, including Ireland, would still need to comply with EU law in their data sharing arrangements with the UK. If the Commission finds that the UK's data protection laws are not found to be adequate, the prospect of bilateral agreements—between the UK and Ireland, and the UK and wider EU—could be impeded.

Passenger Name Records

- Our previous interim report highlighted the possibility of extending the use of PNR to cover travel other than aviation (for example, for use on ferries). We committed to take more evidence on this issue. Security and human rights experts told us that any move to extend PNR (whether to ferries or other forms of transport) would very likely to be subject to legal challenge, on the grounds of proportionality. We also heard that there are technical challenges in collecting data in advance on some other forms of transport, such as trains.

- Security experts also re-emphasised that whether the UK has access to PNR databases after Brexit—irrespective of their coverage—will be determined in part by the adequacy of its data laws.

- **The UK, Republic of Ireland and wider EU have mutually beneficial interests in continuing security cooperation after Brexit. Stumbling blocks remain, however,**

especially in relation to the UK's data protection laws. We urge the UK Government, and UK/EU negotiators, to make data adequacy a focus of ongoing preparations for Brexit.

Policing

- The National Police Chief's Council told us that a key challenge they face is ensuring that front-line officers are prepared for Brexit. Deputy Richard Martin explained that use of some EU databases is restricted to specialist police (such as the EAW), but that front-line officers also use EU systems every day (such as SISII), often without realising it. Witnesses emphasised the extent of mutual benefit derived by the UK and the remainder of the EU from the UK's access to and use of these systems. **Witnesses told us that fall-back arrangements in place in the case of a no-deal Brexit will not offer the same level of information sharing and cooperation, as was noted in our first interim report.**

- The NPCC has launched innovative programmes to help police forces adjust and to provide support in adjusting to new systems. The funding for this type of educational support is distinct from funding for individual forces. **We urge the UK Government to ensure that UK police forces remain adequately resourced for the consequences of Brexit: both on the front line and in supporting officers adjust to longer-term changes in how they work.**

Summary of Recommendations

- **We recommend that the UK Government replicates the arrangements it has already proposed for scrutinising post-Brexit free trade agreements for security treaties.**

- **We call on the House of Commons Commission and House of Lords Commission to provide adequate resources for effective scrutiny by the UK Parliament.**

- **We recommend that the UK Government and the UK/EU negotiators make data adequacy a focus of ongoing negotiations for Brexit.**

- **We recommend that consideration be given to the use of Passenger Name Records for passenger ferry journeys.**