

**Written evidence to the House of Lords EU Home  
Affairs Sub-Committee on 'Brexit: The Proposed UK-  
EU Security Treaty'**

[BrexitLawNI](#)

**May 2018**

## About the BrexitLawNI Project

1. The BrexitLawNI project<sup>1</sup> is a collaborative Economic and Social Rights Council-funded research project between the Law Schools of Queen's University Belfast and Ulster University and the region's leading human rights organisation, the Committee for the Administration of Justice (CAJ).
2. BrexitLawNI welcomes the opportunity to provide Written Evidence to the Committee on *The Proposed UK-EU Security Treaty*.

### **Do you believe that the land border between the UK and Republic of Ireland will pose particular challenges for security cooperation post-Brexit?**

3. BrexitLawNI maintains that the land border poses significant challenges for security cooperation post-Brexit. As a post-conflict society, the security situation in Northern Ireland is different than the security context in the rest of the UK and therefore faces unique challenges posed by Brexit.

### **Brexit and Security Threats in Northern Ireland**

4. Policing and security in Northern Ireland is complex. Not only is the Police Service of Northern Ireland (PSNI) having to grapple with broader changes to the nature of policing, but it also does this in the context of a SEVERE terrorist threat. According to the 2016-2017 Policing Plan, 'some of the daily challenges faced include the cost of policing interface areas, public order situations and fulfilling our responsibilities around legacy issues. In addition, we face an increased threat from cyber-related crime, evolving organised crime groups and the need to professionally deal with vulnerable victims.'<sup>2</sup>
5. Thus, in addition to traditional, visible forms of crime, the nature of crime has shifted to increasingly less visible, cyber-related forms of crime. These types of crimes are not bound by national borders and investigations often require more resources and cross-border police cooperation to complete. These changing demands on police have increasingly required cross-border cooperation on the island of Ireland between the PSNI and An Garda Síochána. For example, in response to these challenges, the Joint Agency Task Force (JATF) was created in 2015 under *The Stormont Agreement and Implementation Plan*.
6. The Task Force forms part of a concerted and enhanced effort to tackle organised and cross jurisdictional crime and also involves partnerships with the Revenue Commissioners and HM Revenue and Customs, and other key agencies.<sup>3</sup> As part of this Initiative, a Strategic Assessment was prepared for the JATF, which identified areas of criminality enabled and facilitated by the existence of the land border across the island of Ireland. The Strategic Assessment identified six priorities, including drugs, excise fraud, human trafficking, child sexual exploitation, rural/agricultural crime and criminal finances/money laundering. Child sexual exploitation was removed at a later date and replaced with Immigration Crime.

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<sup>1</sup> The BrexitLawNI team is comprised of: Professor Colin Harvey, Professor Kieran McEvoy, Professor Rory O'Connell, Dr Anna Bryson, Dr Amanda Kramer, Brian Gormally, and Daniel Holder.

<sup>2</sup> See, 2016-2017 Policing Plan: [https://www.psni.police.uk/globalassets/inside-the-psni/our-strategy-and-vision/documents/final\\_pdf\\_-\\_policing\\_plan\\_2016-17.pdf](https://www.psni.police.uk/globalassets/inside-the-psni/our-strategy-and-vision/documents/final_pdf_-_policing_plan_2016-17.pdf)

<sup>3</sup> Such as Trading Standards, Driver and Vehicle Licensing Agency, Northern Ireland Environmental Agency, Road Safety Authority, Department of Agriculture, Food and the Marine and Department of Social Protection.

7. Additionally, the PSNI Annual Report stated, ‘policing Northern Ireland’s post conflict society comes with additional complexity and cost. The SEVERE threat places a substantial burden on the delivery of policing in Northern Ireland. There have already been four serious attempts to murder police officers in the first four months of 2017 alone. Whilst we receive additional security funding from the UK Government we are still spending almost 30% of our main grant budget dealing with Northern Ireland specific issues. This includes responding to paramilitarism and the significant costs of dealing with the past.’<sup>4</sup>

8. Further fears regarding the security situation in NI have been raised by Brexit. For example, in an interview with the Guardian, the chief constable of the PSNI, George Hamilton, expressed significant fears about threats to security related to the land border.<sup>5</sup> He has stated that any kind of border posts of security installations that result from Brexit would become a target for dissident republicans. If any kind of physical infrastructure were placed on the border, Hamilton has warned that it would likely have to be policed around the clock and would therefore also place officers at risk.

9. Brexit also had the potential to increase in smuggling and trafficking, particularly if NI exits the EU Single Market and Customs Union or if other it becomes more difficult to enter other parts of the EU (for example, Dover). According to Katy Hayward, the imposition of an economic border would create additional opportunities for smuggling.<sup>6</sup> Smuggling of tobacco, fuel, and alcohol is already an issue due to differences in duties and VAT regimes between Ireland and Northern Ireland. Further divergence between economic regulations in the North and the South would therefore likely lead to increases in smuggling. It is also significant to note that profits from smuggling have also been linked to the funding of Paramilitary groups on the island of Ireland.

10. Overall, it is clear that NI faces unique security concerns, particularly in the context of Brexit. The most serious of which include organised crime, paramilitary activity, and smuggling. Cross-border coordination and cooperation, particularly between the PSNI and An Garda Síochána, has proven a vital strategy for tackling crime on the island. It is essential that UK mitigates the additional security concerns arising from its exit from the EU and does not inhibit this long-standing and hard won cooperation.

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

11. The potential loss of the EAW is one of the most serious security-related issues arising from Brexit. The EAW facilitates extradition of individuals between EU Member States to face prosecution or to serve a prison sentence. This EU legal framework has no provisions for third country membership, meaning that the UK is unlikely to be able to remain within it after it leaves the EU. Adding further complication to this, the Government has stated that it intends to remove the jurisdiction of the Court of Justice of the European Union (CJEU) in the UK, something which creates a tension with the continued access to EAW in the UK. The CJEU is

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<sup>4</sup> See pg. 3-4: Police Service of Northern Ireland Annual Report and Accounts for the year ended 31 March 2017: <https://www.psni.police.uk/globalassets/inside-the-psni/our-departments/finance-and-support-services/documents/main-report.pdf>

<sup>5</sup> <https://www.theguardian.com/uk-news/2018/feb/07/n-ireland-police-chief-says-hard-brexit-border-posts-would-be-paramilitary-target>

<sup>6</sup> Katy Hayward (November 2017) *Bordering on Brexit: Views from Local Communities in the Central Border Region of Ireland/Northern Ireland*. Centre for International Borders Research & Queen’s University Belfast. <https://www.qub.ac.uk/brexit/Brexitfilestore/Filetoupload,780606,en.pdf> Page: 82.

the final arbiter on extradition matters. Without CJEU jurisdiction it is unclear how the UK will have continued access to the EAW.

### ***Importance of the EAW for Northern Ireland***

12. The unique circumstances of NI, specifically the sharing of a land border with the Republic of Ireland and the history of conflict, means that the requirement for the PSNI to have access to the EAW is different than the rest of the UK. The European Arrest Warrant is a vital tool for the PSNI.

13. Our research has revealed that maintaining access to the EAW, or having access to a viable alternative is one of the PSNI's Brexit main priorities. The Department of Justice has also identified the continuation of the EAW as one its main priorities. An official DOJ briefing paper from June 2017 highlighted a number of justice-related issues that Brexit has raised for NI, stating that 'for practical law enforcement the maintenance of the European Arrest Warrant system is essential'. Prime Minister Theresa May has also recognised the importance of the EAW for NI, emphasising in February that the EAW 'enabled police cooperation between the Republic of Ireland and Northern Ireland'.<sup>7</sup>

14. As NI shares a land border with the Republic of Ireland, policing and security experts we interviewed revealed that it has been the 'go to place for criminals'. Thus, the EAW has been an essential tool for apprehending people who have committed crimes in NI and fled across the border. We are concerned that without an EAW, suspects would increasingly flee the jurisdiction and the police would not have a straightforward tool for extradition. It is likely that many would cross the land border into the Republic of Ireland and could make their way further afield into the EU (and beyond) from there.

15. The PSNI has stated specifically that the EAW, as part of broader cooperation between the North and South of Ireland, is a vital tool for combating organised crime and paramilitary activity. Whilst it is likely that that cooperation between the PSNI and the Gardaí will continue, this issue must be resolved urgently. When considered in the context of the fresh security concerns surrounding Brexit – in particular, the likelihood of increased criminal activity and violence committed by dissident republicans and the potential opportunities created for smuggling – the need to continue the EAW becomes more apparent.

16. The EAW has been an important tool for the PSNI. George Hamilton maintains that the EAW is an essential part of the security infrastructure for keeping people safe and bringing people to justice. Over the past five years, the PSNI has used the EAW to extradite 352 criminal suspects to other EU countries and 54 have been extradited to Northern Ireland.<sup>8</sup>

17. The EAW has been a particularly important tool for cross-border policing on the island of Ireland. Between 2007 and 2017, the PSNI sought 154 EAWs, of these, 71 warrants were granted, leading to the extradition of 47 suspects to Northern Ireland. The overwhelming majority of these PSNI EAW applications, 113, requested the extradition of suspects believed to be in the Republic of Ireland.

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<sup>7</sup> <https://www.theguardian.com/politics/2018/feb/17/theresa-may-wants-new-security-treaty-with-eu-next-year>

<sup>8</sup> <https://www.theguardian.com/uk-news/2018/feb/07/n-ireland-police-chief-says-hard-brexit-border-posts-would-be-paramilitary-target>

18. Concerns surrounding the broader political consequences of losing access to the EAW have also been highlighted. A leaked Department of Justice (DOJ) document sent to the head of the NI Civil Service stated that ‘the EAW has removed the political dimension from extradition. The extradition process could become toxic once again’. Any solution must take this into consideration.

19. In interviews with policing and security experts, we have been told that the PSNI have been assured that either the current arrangements will remain in place or ‘a suitable alternative will be presented’ – what this could be, however, has yet to be defined. We were also informed that the PSNI themselves have repeatedly requested that both the UK government and the EU present an alternative to the EAW, which has not yet occurred.

### ***Alternative Models of Extradition***

20. Prior to the Extradition Act 2003, which enacted the EAW in the UK, extradition with EU Member States fell under the 1957 Council of Europe Convention on Extradition. Under the Convention, it used to take an average of eighteen months to extradite an individual – partly because there were no time limits on each stage of the process. With the introduction of the EAW, average extradition times dropped to 48 days. The cost of extradition has also decreased, by as much as four times. It has been proposed that the UK could fall back on the Convention as an option for extraditions. In addition to the issues of cost and time, several other problems would also arise. Once the EAW came into effect, a number of member states rescinded the Council of Europe Treaty – meaning that the Convention would have no effect in domestic law within these countries.

21. An important change was also introduced with the EAW: the removal of the “political exception” clause. This clause allowed Member States to grant safe haven to those who had committed crimes that were political in nature. Under the Convention, this clause had served as a barrier to the extradition of Irish Republican terrorism suspects to the UK.

22. One of the proposed solutions for the UK is to model a deal after the Norway/Iceland deal. Norway and Iceland began negotiating a deal for a surrender agreement with the EU in 2001, which concluded in 2014, and has yet to enter into force. As these agreements have proven difficult to negotiate and very time consuming, it has been suggested that it could provide an efficient solution to this problem for the UK. That said, the agreement contains two important differences to the EAW, which may prove problematic for NI (as well as the rest of the UK). It includes an option for parties to refuse to extradite their own nationals, as well as reintroducing the political exception clause. Thus, NI (as well as the rest of the UK) could again be faced with a barrier to the extradition of members of Dissident Irish Republican groups suspected of committing terrorist activities. When this is considered in relation to the broader context of the potential for an increase in paramilitary activity and violence resulting from Brexit, this solution becomes less viable. Steve Peers has also highlighted this concern, stating that the inclusion of a political exception clause would likely be exploited by defence lawyers seeking to prevent the extradition of those suspected of committing terrorist activities from Ireland to the UK.

23. With countries outside of the EU, the UK relies on bilateral extradition agreements – this has also been suggested as a solution for the UK after it leaves the EU. That said, evidence shows that EAW requests are more likely to be successful, cost far less, and take less time to complete than extradition requests with non-EU countries. First, EAW requests made by the PSNI have a much higher success rate than extradition agreements in place with non-EU countries. From the period of 2007 to 2017, 31% of EAW requests resulted in extradition, whereas only 14% of

non-EAW requests were successful. Second, there is a significant difference in relation to the costs associated with extradition. A leaked Home Office document revealed that, on average, it costs £62,000 to extradite an individual to a non-EU country, whereas the average cost for an extradition under the EAW is £13,000. Third, it takes approximately three times as long to extradite an individual from a non-EU country.

## **Europol**

24. It is also important for security in NI, that the UK remains a member of Europol. As a hub for cross-border cooperation, specifically in relation to serious and organised crime, cybercrime and counter-terrorism, Europol is an important feature of the security landscape for NI. As discussed above, some of the most significant challenges, and areas of focus for the PSNI include organised crime, cyber-crime and counter-terrorism. These areas of policing are complex and very demanding of resources. Membership in Europol facilitates not only cooperation, but also sharing of knowledge and best practice, something that will become increasingly valuable as these forms of crime continue to grow.

25. Furthermore, membership in Europol is likely to be helpful for tackling the potential rise of paramilitary threat in NI. If the destabilising effects of Brexit continue, and the predictions of the police and many experts in the field prove true that paramilitary activity (particularly that of Dissident Republican Paramilitaries) rises and increasingly poses more of a threat to peace in NI, membership in Europol may grow in importance. Having this space for coordinated European strategy, as well as another platform for cooperation between the PSNI and An Garda Síochána is an essential tool for tackling the security risks created and exacerbated by Brexit in NI.

## **Information Sharing**

26. Another significant issue for security in Northern Ireland relates to the continuation of information sharing between the UK and the EU. In the context of Northern Ireland, and the multitude of complications created by the land border, information sharing between the PSNI and An Garda Síochána is an essential part of effective policing. Leaving the EU risks losing the level of data sharing that currently takes place between the two jurisdictions, thus potentially threatening security on the island.

27. Although a willingness has been expressed by both the PSNI and An Garda Síochána to continue sharing information and maintaining a close relationship, it is possible that regulations at the EU level will inhibit the level of cooperation possible once the UK exits the EU. For example, the EU's position paper on data protection states that 'the UK's access to networks, information systems and databases established by Union law is, as a general rule, terminated on the date of withdrawal'.<sup>9</sup>

28. One of the key issues here is whether the UK will continue to be a trusted recipient of the personal data of EU citizens. For example, if the UK does not continue to align its data protection laws with the EU, it may not continue to have access to data sharing mechanisms of the EU as it will no longer be considered a 'trusted' recipient of personal data. Furthermore, as the UK has been clear that it intends to remove the jurisdiction of the CJEU, this could also pose a risk to its continued access to EU data and data sharing mechanisms. As reported by the UK

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<sup>9</sup> See page 2, [https://ec.europa.eu/commission/sites/beta-political/files/use-data-protection-information\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/use-data-protection-information_en.pdf)

in a Changing Europe, 'it is possible that the EU will push for commitments regarding the CJEU's jurisdiction in any agreement over data-sharing on criminal matters. Although there is some precedent for the exchange of such data on criminal matters, including the crucial information held on SIS II and ECRIS. ... ECRIS remains a member state only system'.<sup>10</sup>

29. A security and policing expert interviewed by BrexitLawNI highlighted the value of the European Investigation Order for information sharing between the PSNI and An Garda Síochána, 'So regardless of the bilateral, you have this European exchange, which has actually proved pretty successful, I think it has only really been, we've only been using it for about twelve months. The data sharing, over and beyond the bilateral arrangements and practical working techniques they have North and South, the data sharing watch list, the European watchlist...quite often the guards will access a watchlist via the European database, not via NI, so, and you'd have PSNI accessing European database, via the European database, not from each other. What it ensures is that they are both receiving the same information, they are not relying on each other. They have different regulatory regimes obviously, PSNI has got RIPA and various other things, and the Guards have something else. If they go direct to Europe they've got this data sharing data base and they just plug straight into it. The Guards will continue to be able to do that, PSNI will not, almost certainly, so they are going to revert to the old days, of just goodwill or not, whether or not they will share information North of the border...

27. While the UK Government has expressed a desire to maintain as much security-related information sharing as possible, we have concerns about what kind of arrangements the EU will be willing to accept. By way of example, a security and policing expert interviewed by BrexitLawNI stated that 'And what is very clear I think, is that there is not going to be the same access to EU databases, the UK is not going to be trusted, a trusted source, with, for example, personal data of EU citizens. So immediately there is going to be fewer opportunities to intercept, mm, in terms of counter terrorism strategy in particular, it's an absolute disaster This issue is pertinent for a number of areas relating to security, including: the European Arrest Warrant, the European Investigation Order, counterterrorism and policing, and the continuation of membership in Europol.'

**What are the most important aspects of the current security cooperation relationship between the UK and EU, which the Government should seek to maintain?**

28. There is a long history and continued strong desire for the PSNI and the Gardaí to continue working together. Due to the history of conflict on the island, the North and South of Ireland share a lot of common threats – many of which are best managed through coordinated strategies. If the regimes for sharing information and the EAW do not continue, effective replacements must be put in place immediately to ensure a smooth transition and continued cooperation between the North and South.

29. Our key recommendations include: (1) NI (and preferably the UK) require continued access to the EAW; (2) the UK should prioritise continued membership in Europol; (2) the UK must take steps to ensure the continuation of data sharing with the EU, including the European Investigation Order; and (3) The UK must continue to allow jurisdiction of the CJEU to maximise law enforcement and security cooperation with the EU and ensure effective oversight.

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<sup>10</sup> See page 27, <http://ukandeu.ac.uk/wp-content/uploads/2017/11/Post-Brexit-law-enforcement-cooperation-negotiations-and-future-options.pdf>