

A hard Brexit will see criminals taking back control



*How will Brexit affect British security? A hard Brexit would see both the UK and its European partners lose access to much-needed information, but even a soft Brexit will come at a price. **Gijs de Vries (LSE)** explains.*

What's the price for Brexit? Whatever it takes, as Brexiteers would have it? A hard Brexit would see Britain crash out of dozens of EU agencies, instruments, and data systems. Criminals would be taking back control, in Britain as in the rest of Europe. Conflicts around Europe would become more difficult to manage; Russia and China would expand their power at Europe's expense. Can such a scenario be avoided?

Perhaps it still can. Recent developments suggest that common sense, historically associated with British policy-making, may be enjoying something of a revival. In her most recent speeches Theresa May has adopted a more constructive tone than before. The change from hectoring is welcome. Atmospherics are no substitute for policy, but they do matter.

Fortunately, there have been changes in substance, too, including in the area of security. Less than a year ago, May issued a thinly veiled threat to the EU: work with Britain or face the consequences in terms of (your) security. Britain's Article 50 letter to the EU was [widely regarded](#) as a crude attempt to blackmail the EU. According to the renowned former British ambassador to the EU, [Sir Stephen Wall](#), the letter originally contained even tougher language and had to be toned down.

A different Theresa May, it seemed, took the floor at the February Munich Security Conference. Barbs against presumed EU ideology aside [the speech](#) contained much that was constructive and sensible. The Prime Minister called for the two sides to consult each other regularly, to coordinate and deliver operationally on the ground, and to work together on developing the capabilities – in defence, cyber and space – to meet future threats. The UK, May said, was open to contributing to EU mechanisms, including development programmes, post-Brexit. And when participating in EU agencies such as Europol the UK would respect the remit of the European Court of Justice.

Whereas this went down well in the rest of Europe, other sections of the speech raised eyebrows. There would need to be an EU-UK treaty which offered “a principled but pragmatic solution to close legal cooperation (...) to respect our unique status.” The UK demanded “a future relationship” with the European Defence Fund and the European Defence Agency, whose budget the UK has long fought to curtail. And the UK wanted “an open and inclusive approach to European capability development – that fully enables British defence industry to participate.” Cake, anyone?

That said, the speech signals a growing recognition in London that, in terms of its security, the UK needs the EU as much as the EU needs the UK – and an implicit rebuff to the many pundits who cleave to the opposite point of view. One such opinion-leader, former MI6 head Sir Richard Dearlove [dismissed](#) continental intelligence agencies as “the leakiest ships of state.” The European Arrest Warrant, too, was pretty useless: “few would note its passing.” A similar sense of English superiority can occasionally be caught wafting through the corridors of Whitehall. Theresa May, to her credit, does not regard it a sound basis for policy.

However, renegotiating the UK's security relationship with the EU will prove a formidable undertaking. Politicians, as well as journalists, still tend to underestimate what Brexit will mean for policing, judicial cooperation, and counter-terrorism. They also fail to appreciate the amount of work needed to stave off the threat.

After Brexit the UK will lose influence. Its police forces and intelligence services also risk losing access to information. Continued access to information will come at a price.

Of course, bilateral intelligence cooperation between the UK and other EU countries is not regulated by the EU and would continue as before. The UK would also stay a member of the Counter-Terrorist Group, which brings together the intelligence and security services of the EU member states, Norway and Switzerland, and of the ‘SIGINT Seniors’ (the UK, Canada, Australia, New Zealand, the USA, plus Belgium, Denmark, France, Germany, Italy, the Netherlands, Spain and Sweden). However, Britain will lose access to **IntCen**, the EU's Brussels-based centre for strategic intelligence analysis.

Were the UK to leave **Europol** UK police forces would lose access to Europol's Information System, the Bomb Data System, the EU Internet Referral Unit and other much-needed information. The National Crime Agency, Britain's Financial Intelligence Unit, would lose access to the EU's network of FIUs, which is based at Europol. This would serve neither Britain's interests nor those of its European partners. So, the UK's wish to stay involved is well-understood. But as a non-EU country Britain would no longer be entitled to a seat on the Management Board. At best, it may have to settle for non-voting observer status. British police officers could no longer expect to lead Europol teams.

Eurojust coordinates criminal investigations and prosecutions, including into terrorism, where it supported 74 cases in 2017. Post Brexit the UK will lose its seat in the college, but will it request to appoint a liaison officer like Norway, Liechtenstein, and other countries? The Governments [policy paper](#) on security cooperation offers little clarity.

The UK may also wish to renegotiate its role in the European Union Agency for Network and Information Security (**Enisa**), which is responsible for cybersecurity, including protection from state-sponsored cyber-attacks and espionage, and cyber crisis management. As a third country the UK could participate in the work but would not be represented on the Management Board.

The European Global Navigation Satellite Systems Agency (**GNS**) manages Galileo, the EU's global satellite system, which provides securely encrypted services, including the Public Regulated Service for security operators (police, border control, and others) in EU member states. The Galileo Satellite Security Monitoring Centre, currently located in Swanwick (UK), will move to Madrid. As it leaves the EU, Britain will lose the senior positions it currently holds in GNS. Does it still see a role for itself?

At the end of the transition period, the Commission [warns](#), the UK will no longer have access to any EU network, any information system, and any database. These include **SIS II**, which gives police forces access to information about people (some 35,000 wanted on a European Arrest Warrant) and stolen property such as cars, passports, and firearms. **ECRIS**, or the European Criminal Records Information System, let countries share criminal records in Europe. For example, if a British person is convicted of a crime in Spain, then the Spanish authorities will send details of that crime to the UK where they will be stored on the local criminal records system. **FADO** allows for the rapid sharing between EU countries of images of genuine, false and forged passports, visas, driving licences, and other documents, as well as information on forgery techniques and national false document alerts. Will British police forces retain access to European Passenger Name Record data (**PNR**)? What about access to DNA profiles stored in other European countries (**Prüm** System)? How does London intend to limit these consequences of Brexit?



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Some issues may be relatively easy to solve, such as continued British membership of the **EU Internet Forum**, an informal alliance of EU member states, Europol, EU experts and private companies, or British participation in the Radicalisation Awareness Network (**RAN**) and the European Strategic Communications Network (**ESCN**), which share best practice on countering violent extremism. Should it wish to remain part of the criminal justice response to radicalisation through the European Judicial Training Network, the UK will have to pay into the EU budget.

Other nuts will be more difficult to crack. To tackle terrorism and other forms of cross-border crime the UK will have to renegotiate its status under a slew of criminal law instruments, such as the **European Investigation Order**, under which EU countries exchange information in criminal cases. For example, if the UK is tracking terrorist suspects in Belgium, it can request the Belgian authorities to interrogate witnesses or conduct house searches in its behalf. The UK has suggested it would like to continue using the **European Arrest Warrant**. What about the **European Protection Order**, which allows court protection orders made in criminal cases in one member state to be enforced in another? What about, for example, the Framework Decisions on mutual recognition of financial penalties, custodial sentences, supervision measures, and confiscation orders? Each of these legal instruments, which apply to EU member states, will have to be changed – a complicated, time-consuming process.

To protect British security the UK will need to stay closely connected to EU institutions and instruments. But even this soft Brexit will come at a price. The UK will lose both power and influence. It will no longer have a voice in EU legislation and decision-making on terrorism, crime, foreign policy or security. Furthermore, to the extent it wants access to EU agencies, instruments and data systems the UK will still be required to share sovereignty and accept the jurisdiction of the European Court of Justice. It will also have to pay up. This is what a soft Brexit implies: a degree of taxation without full representation.

In the end, this bric-a-brac may just about enable security cooperation between the UK and the rest of Europe to continue. But make no mistake: cooperation will become more cumbersome and messy, and a predictable source of mutual acrimony. Britain will trade security for the semblance of sovereignty. Neither a hard nor a soft Brexit will benefit public security. The clock is ticking. How long will it take for reality to sink in?

This post represents the views of the authors and not those of the Brexit blog, nor of the LSE.

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