

## UK SECURITY AND BREXIT – An assessment of the implications

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- The slow development of a common EU defence and security policy could accelerate if the UK leaves the EU.
- Internal security and judicial cooperation is perceived to be as important as the Single Market to EU cohesion in policy making circles in France, Germany and the Benelux, this is a potentially complicating factor in any post-Brexit negotiations.
- Brexit would probably encourage increased cooperation between the remaining EU members on defence procurement and exports. France has already overtaken the UK in value of arms exports and Germany is a formidable competitor.
- It is unlikely that the European Arrest Warrant could be applied in the UK in a similar form to now in the event of Brexit. The legal and technical difficulties are formidable.
- The situation in Ireland could become very complex. If the border between the Republic of Ireland and Northern Ireland is kept open, the asylum seekers and migrants in Calais could choose to approach the UK via the Irish Republic.
- There is a significant difference between “feeling secure” and “being secure”: although people may feel more secure if “we take back control of our borders” and have British border police checking on all foreigners coming into the UK, their security may in reality be better protected by the free movement of persons in the EU conjoined to close cooperation between police and security forces in partner countries.

### General considerations

The UK is in many ways a semi-detached member of the EU. It did not adopt the Euro, it does not participate in the Schengen area, it ignores as far as possible the developing EU external and security policy, and it can pick and choose from within the areas of security, justice and police cooperation. Even the EU Charter of Fundamental Rights is not fully applicable in the UK. Would it therefore make a significant difference to UK security if the country opted out of the EU altogether?

In this area there are no certainties and only more or less plausible scenarios. A fundamental flaw in the case for Brexit – as Philip Stephens pointed out in the *Financial Times*, on 12 November 2015 – is that the proponents of Britain leaving the EU have not developed a detailed strategy in the event of an “out” vote. This is strikingly the case in the area of security where assertions have taken the place of plausible scenarios and of strategies to confront the potential difficulties. The supporters of the remain campaign do not, of course, need to make proposals about what to do if the referendum vote favours Brexit.

### The Security Field

Security is a broad area of activity, covering many topics from nuclear deterrence to neighbourhood security, including all policies which keep us, or allegedly keep us, safe. Generalisations about the effect of Brexit on the whole field should be avoided. Traditionally the field was split into internal and external security, threats from outside and disorder within the territory of the state. Internal and external security are now tending to merge, with some arguing that they have already merged, under the impact

of globalisation and more specific developments such as instability in the Islamic world and terrorist outrages. While we will treat external and internal security separately, the strong connections between them should not be forgotten. External security usually falls within the sphere of the military and the security services acting on the instructions of central government. Internal security is the responsibility of the police, the justice system and the internal security services, in the UK’s case MI5 and the special branch. In internal security the EU has established a series of instruments in the field of justice and home affairs while, although the EU is increasingly active diplomatically, the development of a common defence and security policy has been slow and hesitant, although *it may well accelerate* if the UK leaves the EU.

### External Security

Uncertainty about the effects of Brexit is greatest in the field of external security which is highly determined by unpredictable events. The US President, like the UK Prime Minister, is firmly of the view that Britain’s external security interests are best protected if it remains a member of the EU. This position is backed by the majority of high level military and intelligence-service opinion.

In a letter to *The Telegraph* on 23 February 2016, 13 former Armed Forces chiefs wrote that they “believe strongly that it is in our national interest to remain an EU member”. The signatories to the letter included Field Marshal Lord (Edwin) Bramall, a former Chief of Defence Staff who took part in the Normandy landings in the Second World War, and Field Marshal Lord (Charles) Guthrie, another former Chief of Defence Staff, who served in Aden, the Persian Gulf, Malaysia, East Africa and Northern Ireland.

At variance with this judgment, a recent [parliamentary research paper](#) stated, with supporting arguments, that “The UK’s ability to project military power would be largely unaffected, and any military shortfalls could be compensated by bilateral arrangements. Ensuring the success of Common Security and Defence Policy (CSDP) operations remains in the UK’s interest, but outside the EU, the UK could choose to continue its participation in CSDP operations as a third party state.” However, the authors of the paper also argued that there would be a political downside because, within the EU, Britain could continue to cooperate closely on key security matters, as was the case when the UK “helped to force the Iranians to the negotiating table through EU-wide sanctions, or made sure that Putin would pay a price for his aggression in Ukraine”.

An experienced and well-informed academic, Professor Anand Menon of Kings College London, supported the parliamentary authors’ position, writing in the [Financial Times](#) that “the Remain camp’s claims about the dangers Brexit poses to military co-operation are overblown.” He also argued, in what must be considered a highly speculative way, that the British would become a more cooperative and loyal ally after exiting the EU: - “There is no reason why Brexit would not have a similarly galvanising effect. The British government, sensitive to accusations of disloyalty, would probably go out of its way to defuse them, not least to reassure the US. A post-Brexit prime minister would be quick to reaffirm the country’s commitment to NATO by maintaining or even increasing defence spending. Freed from the political pressures imposed by EU membership, Britain would also find it easier to collaborate militarily with its European allies. After Brexit, a UK government would not face charges at home of conspiring to join a “European army”, and would thus encounter fewer obstacles should it choose to contribute to EU military missions (which, to date, it has been reluctant to do).”

Opinions are similarly divided on intelligence co-operation. Former director of MI6, Sir Richard Dearlove (1996-2004) has argued that EU bodies cannot be trusted with intelligence because they leak like a “colander”. “The EU is more interested in grabbing power from elected governments than promoting sharper operational capabilities.” The latter statement suggests that Dearlove has a political agenda which goes beyond intelligence cooperation.

On the 8th of May this year, one of Dearlove’s successors at MI6, Sir John Sawers, (Director General between 2009 and 2014), and Lord (Jonathan) Evans (Director General of MI5 between 2007 and 2013), took issue with Dearlove, in an article in *The Sunday Times*. They denied that the EU interfered in any way with British Intelligence and Security services and emphasised that the conditions of sharing intelligence between member states was based on agreement. In a closely argued contribution, they specified that, in the event of Brexit, Britain would have little say over the terms of data sharing, thus seriously damaging the UK’s ability to defend its interests. Counter terrorism, they argued, was a team game and the EU provided the best framework available. They concluded that behind the daily mechanics of intelligence and security collaboration lies the bigger question of geopolitical stability in Europe and the EU is essential to maintaining this stability.

Sawers and Evans’s view chimes with a contribution made earlier in the year by a former director of MI6 operations, Nigel Inkster, who told [BBC Newsnight](#) that leaving the EU would deprive the UK of automatic access to the data sets of the other European countries on matters such as travel information, credit card information, mobile phone use, and this access would have to be renegotiated.

Pauline Neville-Jones, a former Chairman of the Joint Intelligence Committee and Minister of State for Security and Counter Terrorism, has also taken issue with Dearlove saying that Brexit would put valuable bilateral relations at risk as well as cutting the UK off from key multilateral forms of cooperation. Dearlove also provoked an excoriating reply in the newsletter [Infacts](#) from David Hannay, former ambassador to the UN and the EU (between 1985 and 2004) - “Dearlove begins by asserting that leaving the EU would enable us to “dump” the European Convention on Human Rights. Leaving to one side whether it would be in Britain’s interest to pull out of an agreement we helped draft, the Convention is part of the Council of Europe, not the EU. Leaving the EU is thus neither here nor there.”

One neglected aspect here is defence procurement and the extent to which Brexit would threaten the UK’s security and defence industry which is currently worth £56 billion and which directly employs almost 111,000 people. Brexit would make it harder for the sector, to win inward investment, and competing with other nations would become more and more difficult. ADS (Aerospace Defence Security) Group, the trade organisation representing the aerospace, defence, and security sector [found that](#) 73 per cent of firms believe that EU membership is positive for their business against 1 per cent who said it was negative, and that 86 per cent of ADS members would vote for the UK to stay in the EU against 2 per cent who would vote to leave. 43 per cent of respondents identified the primary benefits of continuing UK membership of the EU as being the opportunities for free trade within the EU; the simplicity of doing business in Europe because of existing regulations and directives; overall economic growth in the UK economy; access to EU suppliers and supply chains; and the ability to recruit skilled workers because of the free movement of EU labour.

Furthermore, Brexit would probably encourage increased cooperation between the remaining EU members. France has already overtaken the UK in value of arms exports and Germany is a formidable competitor.

### Internal security

EU internal security cooperation is highly developed and is based both on EU law and on inter-governmental Conventions. EU law involves the European Court of Justice, the Commission, the European Parliament and the Council whilst inter-governmental conventions remain the prerogative of member states and their permanent representatives in Brussels. Topics covered by Justice and Home Affairs are illustrated by the various EU working parties in the area, excluding transitory ones such as on cyber-crime.

I. Immigration & Asylum	II. Security, Police and Customs Cooperation	III. Judicial Cooperation
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| <ul style="list-style-type: none"> <li>• Migration</li> <li>• Asylum</li> <li>• Visas</li> <li>• External frontiers</li> <li>• Forged documents</li> <li>• Observation centres for immigration and Asylum</li> </ul> | <ul style="list-style-type: none"> <li>• Terrorism</li> <li>• Police cooperation</li> <li>• Drugs and serious organized crime</li> <li>• Customs</li> <li>• Europol</li> </ul> | <ul style="list-style-type: none"> <li>• Extradition</li> <li>• International organized crime</li> <li>• Criminal law/Community law</li> <li>• Driving licence withdrawal</li> <li>• Transfer of trial documents</li> <li>• Application of Brussels Convention</li> </ul> |
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Following the Lisbon Treaty of 2008, the UK has had the opportunity to opt out of all EU Justice and Home Affairs legislation but in 2013-14 decided to [opt back into the 35 most important instruments](#). That decision was made by the government and endorsed by large majorities in both Houses of Parliament. The evidence submitted by the Home Office, police and Crown Prosecution Service, as well as by all branches of the legal profession in all three of the UK's jurisdictions, emphasised the importance for our internal security of doing so. The arrangements based on inter-governmental conventions would have to be adapted, because they are either explicitly or implicitly limited to EU members. Needless to say, this is complicated and would take time. The goodwill of all the remaining 27 EU states cannot be guaranteed. Some would probably use negotiations in this area to gain concessions from their partners in other areas.

The three particular topics which have received most attention in the debate are the European Arrest Warrant, Europol and Border control.

According to [Sir Hugh Orde](#), former head of the Association of Chief Police Officers ('ACPO'), if the UK left the EU, it would have to renegotiate 27 extradition agreements. Fugitives across Europe will flock to the UK as a safe haven if it leaves the EU because a series of laws and extradition agreements would be ripped up and criminals would know that it would take longer to extradite them if the UK were outside the EU. "If I was a villain somewhere else in Europe and I'm escaping justice, I am going to be here because it is going to take a lot longer to get me back.". This means, Orde continued, that criminals would see Britain as a safe haven as it would take longer to extradite them. And investigations of serious crimes will be impeded because there will be long and complicated legal processes to get the necessary evidence. On 24 March 2016, the head of the Metropolitan Police [Sir Bernard Hogan-Howe](#) echoed this view and suggested the upheaval that would follow a Brexit vote would damage the powers of police and be a "bureaucratic nightmare".

Sir David Hannay, in the exchange referred to in the previous section, argued that Sir Richard Dearlove belittled the European arrest warrant as "exclusively criminal". But terrorism, human trafficking, cyber-crime, drugs and child pornography are also all exclusively criminal – and increasingly international. The European Arrest Warrant (EAW) helps combat all of them – as do other pieces of EU cooperation and legislation such as Europol and Eurojust. When Dearlove says "few would notice" the passing of the

European Arrest Warrant, that would come as news to the 675 people extradited to the UK using the mechanism between 2010 and 2014, or the 5,365 extradited to other EU countries. An authoritative independent review by Lord Justice Scott Baker had already reached the same conclusion in 2011 - the EAW had improved the scheme of surrender between Member States and broadly speaking it operated satisfactorily.

Opponents of the EAW argue that it is used too frequently and favours procedural simplicity over the rights of suspects and defendants. One of the advantages of the EAW from the prosecuting state's perspective is the speed with which it operates. In 2011 the European Commission reported that the average time for the surrender of persons who consented to an EAW was 16 days and 48.6 days for those who did not consent. On average, under the old extradition arrangements extradition from EU countries took, on average, 12 months.

An EAW was used to extradite Hussain Osman, one of the men found guilty of planning and executing the 7/7 bombings. He was brought back to the UK from Italy to face justice very swiftly after his arrest. Opinions have been expressed that something similar to the EAW could be negotiated after the British leave, but this seems problematic because the legal and technical difficulties are formidable.

The most spirited defence of Britain's participation in Europol has been made by Rob Wainwright, formerly of MI5 and NCIS, and the current director of the organisation. "If you put at risk any part of the framework for international police cooperation and intelligence sharing that Britain currently relies on then there clearly is potential for consequences," Wainwright said in an interview on BBC Radio 4's Today programme 24 March 2016. 40 per cent of Europol's casework has a UK dimension. He would expect Britain to get associate membership of Europol, similar to that which the United States and Canada have, but that that arrangement would not give the UK direct access to its databases on suspected militants. "Useful access, certainly, but just not as good."

He said Britain's access to the Schengen Information System, which shares data on criminal suspects within the passport-free zone in Europe, was uncertain. He concluded that "I have no doubt that Britain will secure at least partial access to most of the systems, but that access will be variable and depend on many factors."

In an earlier interview, he directly contradicted Ian Duncan Smith, a leading proponent of Brexit, who argued that leaving the EU would make Britain safer from terrorist attacks. "If you take that infrastructure that they (British police) have helped to design over the past 40 years, it would make the United Kingdom's job harder to protect citizens from terror," he said. There is an absence of reasoned statements on the Brexit side of the argument about the costs and benefits of Europol beyond assertions that European cooperation does not contribute a great deal in the fight against terrorism. Not all criminal investigators are enthusiasts for the kind of multilateral cooperation represented by Europol, preferring bilateral and at the most trilateral investigating teams for working on cases. Europol is regarded by them as a useful mechanism for the exchange of information rather than for genuine intelligence sharing and "the real work" of criminal investigation.

## Borders between EU Member States

The Brexit campaign has made “taking back control of our borders” a key theme. The linking of immigration to border controls and to membership of the EU is regarded as a persuasive way of mobilising electors to vote in favour of Brexit.

Home Secretary Theresa May in an [interview](#) on 24 April 2016 admitted that immigration was harder to control due to the EU’s free movement of labour rules but she also insisted the task was not impossible since the UK was not part of the Schengen passport-free area. And she insisted it was still possible to control immigration as part of the EU, denying that the UK had “lost control of its borders”. Even if the country votes to leave the EU, May warned, the UK would still have to accept unlimited immigration from other European countries. If the UK wanted access to the single market, she continued, we would have no choice but to allow the free movement of people.

The main Brexit arguments are that without rigorous border checks on all entrants (some going as far as to suggest visas for other European nationals) immigration is impossible to control, that the EU prevents us from expelling illegal immigrants, that the EU prevents us from reducing the benefits to asylum seekers, that the UK is more exposed to terrorism since the majority of those involved in the recent outrages in Brussels and Paris were EU nationals. None of these claims is clearly substantiated.

Two issues have provoked controversy. First, David Cameron has said that the “jungle” (the shanty town of asylum seekers wishing to gain entry to the UK) could be transplanted to Kent in the event of a Brexit. The Le Touquet Border Arrangement of 2003 effectively transfers the UK border to the Gare du Nord in Paris and Calais. If Britain leaves the EU, France’s Economic Minister, Emmanuel Macron, has threatened to withdraw from the agreement. This could lead to a higher number of migrants crossing from Europe to the UK. Those in favour of Brexit argue that Le Touquet would not be affected in any event as it is a bi-lateral agreement. It would not therefore automatically fall away if Britain left the EU. If Britain votes in favour of leaving, whether Le Touquet would continue depends largely on the reaction of French governments but there would be no clear French national interest in maintaining the status quo.

Second, Ireland has no intention of leaving the EU but its border with the UK could, according to senior UK Conservatives on both sides of the argument, become the site of systematic border controls on persons. Any exit arrangement would require customs officials to check goods crossing either direction, which may need to meet tariff, quota or origin rules requirements. If post-Brexit Britain looks to limit European immigration, then heavier border controls will be needed across Ireland to stop Europeans flying to Dublin then travelling by land into the north. This would put at risk the fragile peace in Northern Ireland, inconvenience Irish business and annoy Irish citizens and those with Irish connections who have enjoyed a free movement area with the UK since 1922. Theresa Villiers, the pro-Brexit Northern Ireland Secretary, after some equivocation sought to end confusion among

Brexit campaigners over the impact on the province of a vote to leave the EU, insisting border checks with the Republic would not be restored. This could lead to a difficult anomaly if the Irish government maintained free movement for EU citizens after the UK left the EU. The asylum seekers in Calais which the UK government is determined to keep out could arrive via the Irish Republic.

## Judicial Co-operation

A complex area which touches at many points on security is judicial co-operation. This must simply be noted without entering into detail. Britain’s justice system currently benefits in many ways from the EU. The downside for some critics is that, in certain areas of litigation, the court with the ultimate authority is the European Court of Justice. If Brexit goes ahead, it is possible that we could continue to reap the benefit of Europe-wide cooperation by negotiating new treaties and arrangements. However, while these new bonds are forged, Brexit would create a climate of confusion and uncertainty. Such an atmosphere is likely to have a negative effect on the justice system and the rights of the individuals within it.

## General conclusion

Despite the lack of certainty about the effects on security co-operation of Britain leaving the EU, the balance of informed opinion is persuaded of the benefits of staying and the Brexit campaign has not proposed serious arguments about how it proposes to deal with most of the expected difficulties. The effects of UK exit are the most uncertain in the field of external security. However, there is also an important psychological element in the security debate. As studies of the fear of crime have shown, “feeling secure” and “being secure” are not the same thing. People may feel more secure if “we take back control of our borders” and have British border police checking on all foreigners coming into the country, although their security may be better protected by the free movement of persons in the EU with close cooperation between police and security forces in partner countries.

In internal security matters, such as in immigration and asylum, criminal justice and police cooperation, the UK is not at the moment bound by EU law, but has an opt-in arrangement. It is likely that the UK would wish to replace some EU measures with various forms of bilateral or multilateral cooperation. But there would be no automatic right to participate in the EU cooperation on police and criminal justice. The UK would need to negotiate a bilateral agreement with the EU and its member states to establish such arrangements. Given goodwill, this is possible but there will be legal complications and political uncertainties. Much will depend on the general political situation. A crucial, and potentially complicating factor in post-Brexit negotiations is that internal security and judicial cooperation is perceived as important as the Single Market to EU cohesion in policy making circles in France, Germany and the Benelux.

*Professor Malcolm Anderson, Culmer Raphael, May 2016*

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