

Jeremy Miles AS/MS

Cwnsler Cyffredinol a'r Gweinidog Pontio Ewropeaidd
Counsel General and Minister for European Transition



Llywodraeth Cymru
Welsh Government

The Rt Hon Michael Gove MP
Chancellor of the Duchy of Lancaster
Cabinet Office
70 Whitehall
London
SW1A 2AS

10 June 2020

Dear Michael,

I am writing to you to set out some further detail on the Welsh Government's priorities in respect of law enforcement and judicial cooperation in criminal matters, as part of the UK/EU future relationship negotiations.

We have been clear that the Welsh Government would have set a different approach to the negotiations than the one advanced by the UK Government. Despite this we want to remain constructive in the negotiations to seek to ensure that Welsh interests and impacts are taken into account properly in the negotiations.

We believe that in the current circumstances, the negotiations should be paused and the transition period extended. If however the UK Government continues to seek to advance the negotiations at this time, despite the global health emergency of Covid-19 and its economic impacts, then it also needs to make good on its commitments in regards to meaningful Ministerial arrangements for ensuring Welsh priorities are reflected in the development and evolution of agreed UK negotiating positions. .

The Welsh Government recognises that matters relating to law enforcement and judicial cooperation in criminal matters are currently not devolved, but given the impact of crime on Welsh citizens and on devolved public services, we have a strong interest in the future internal security relationship between the UK and the EU. In 'The Future UK/EU Relationship: Negotiating Priorities for Wales', which we published in January 2020, we included as a priority the negotiation of the fullest possible future security partnership with the EU.

We recognise of course that once the UK exits the Transition Period, it will unfortunately not be possible to maintain the levels of law enforcement and judicial cooperation that currently exist, and that some operational capability will be lost as a result. The EU itself has been very clear that the future relationship will reflect the UK's status as a non-Schengen third country, and that a non-member of the Union that is not subject to the same obligations as a

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

YPCCGB@llyw.cymru / PSCGBM@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

member, cannot have the same rights and enjoy the same benefits as a member; whilst your negotiating objectives propose an even looser relationship with the EU than is envisaged in the Political Declaration which you agreed with the EU in October 2019.

However, the UK Government rightly identifies that its first duty is to keep citizens safe and the country secure, and in recent years the unprecedented levels of cooperation that have developed between EU Member States has played an increasingly important role in the fulfilment of this duty. It is on this basis that we believe the closest possible internal security relationship with the EU should be pursued, to the EU's benefit as well as the UK's.

As such, we support your ambition for the closest possible arrangements for access to the Schengen Information System (SIS II) and the European Criminal Records Information System (ECRIS), both of which provide significant operational benefits to law enforcement authorities. Similarly, on Europol – where it is clear from the EU's mandate that membership is not possible – we support your ambition for an agreement which goes beyond existing third country precedents, and which recognises the very close cooperation which currently exists between the UK and Europol. In respect of arrangements for the surrender of suspected and convicted persons, we believe both sides should work towards an agreement that preserves as many of the benefits of the European Arrest Warrant system as possible, building upon the EU's extradition agreements with Iceland and Norway. What assurances can you provide that your position in respect of the surrender of convicted and wanted persons will support the work of law enforcement agencies in protecting our citizens, particularly, given that in 2014 the then Home Secretary Theresa May said that losing access to the EAW could make the UK a "honeypot for all of Europe's criminals on the run from justice"?

The Welsh Government has carefully noted the opening positions of both the UK and the EU in respect of law enforcement and cooperation, and we support the UK Government's ambitions in a number of respects. However, if the UK and EU are to secure agreement on law enforcement and judicial cooperation which provides a reasonable level of security for both UK and EU citizens, both sides will need to be prepared to move from their initial position.

We believe the EU needs to recognise the leading role which the UK has played in the development of cooperation between states to tackle serious crime, and should look beyond existing third country precedents.

However, we also believe the UK Government should not stick rigidly to its hard line on CJEU jurisdiction, and we are very troubled by your apparent refusal to make a formal commitment to the European Convention on Human Rights. The former could easily confound the hopes of continued access to SIS II and ECRIS, and we understand could result in very long delays compared to the status quo in accessing criminal records from EU countries. The Convention is the central plank of rights protection across Europe, and is of British authorship. Far from regarding it as a threat, it is in the UK's interest to embed the Convention further across Europe, and ensure rights protection across the Union matches ours. It is very clear that your positions here will significantly limit the level of cooperation that can be achieved.

Even if you are not prepared to make any concessions in this regard in relation to other aspects of the future relationship, we believe you should be open to doing so as a 'special case' on specific aspects of law enforcement and judicial cooperation if that will enable a stronger and more effective relationship to be agreed, recognising that, on matters of security at least, the UK will continue to work in partnership with the EU, and not in competition with it. Will you confirm that you are open to such concessions?

Similarly, in order to secure the best possible ongoing exchange of data, obtaining data adequacy decisions from the Commission will be of considerable importance. Can you confirm that you are prepared to compromise in order to secure data adequacy decisions – for example by recognising the role of the European Court of Justice in relation to the EU’s rules on the exchange of personal data, so that the best possible arrangements for data exchange on law enforcement matters can be achieved? If you are unable to secure data adequacy decisions, what is your assessment of the implications for data exchange, and what are your plans for mitigation?

I look forward to receiving a substantive response on these points, and for the opportunity for further conversations with you upon the detail of these questions. Overall, it is our hope that both the UK and the EU will recognise that compromise is very much in the interests of both parties, and that you will approach the negotiations on future law enforcement and judicial cooperation in that spirit.

I am copying this letter to the Home Secretary, the Secretary of State for Wales, and the Paymaster General; to the Cabinet Secretary for the Constitution, Europe and External Affairs at the Scottish Government; and to the First Minister and deputy First Minister of Northern Ireland.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'JM', with a stylized flourish at the end.

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