



Speech by Michel Barnier at the European Union Agency for Fundamental Rights

Vienna, 19 June 2018

Ambassadors,

Ladies and gentlemen,

Let me first thank the EU Agency for Fundamental Rights, and its Director Michael O'Flaherty, for this invitation.

Over the past 10 years, this Agency has contributed to the area of justice, freedom and security in the European Union.

- This is an area with one external – but no internal – border.
- This is an area where security is protected by common rules and operational cooperation between police and judicial authorities, notably extradition, border controls, travel visas, immigration and asylum policies.
- This is an area where people – both EU and non-EU citizens alike – see their fundamental rights respected. And where the European Court of Justice plays an indispensable role in the protection of our rights.

The delicate balance between security and freedom has been tested and will be tested.

- By the series of terrorist attacks that have hit our streets, concert halls, stadiums, bars and restaurants. People have been killed and our freedoms have been attacked. Let's not forget.
- By the increasing cyber-attacks targeting our economy and our democracy.
- By other internal and external threats, such as radicalisation and organised crime.

These threats are common to European countries. And they call for European responses, including with the UK.

- After each attack – in Manchester, London, in Paris, Brussels, Berlin, Stockholm and Barcelona – our countries knew that they could count on the solidarity of their neighbours.
- And this solidarity contributed to avoiding more attacks, thanks to our close cooperation and swift information exchanges.

Ladies and gentlemen,

After Brexit, it is clear that we will need to cooperate strongly with the UK in these areas.

But, we will need to cooperate on a different basis. That is a challenge in itself.

The UK has decided to leave the EU, its institutions, structures and safeguards. It will be a third country outside Schengen and outside the EU's legal order. This is a fact.

Facts have consequences.

The UK's recent paper on security, law enforcement and criminal justice expresses a desire to keep the benefits of EU membership.

This is understandable when you look at what we have achieved together as a Union in internal security.

- Together, on the basis of the European Arrest Warrant, we extradite wanted criminals or suspects – including own nationals – from one Member State to another.
- Together, we set up Europol to support Member States law enforcement authorities. Europol pools information from across the EU and helps fight cross-border crime.
- Together, with our Schengen partners such as Norway and Switzerland, we operate the Schengen Information System. It was consulted over 5 billion times last year to monitor who is crossing Schengen borders. It helped to capture dangerous criminals and terrorists. It also helped to retrieve not only stolen cars, but also missing people and missing children.

- Together, under the European Investigation Order, we collect evidence from each other and exchange it swiftly in order to bring criminals to justice.
- Together, we execute each other's judicial decisions in real time, for instance by confiscating criminals' property or freezing their assets.

Such achievements can today seem obvious to us Europeans.

But are they really?

- Is there another region in the world where sovereign states rely on each other to create such intense cooperation for internal security?
- Is there another region where sovereign states build together a common area without internal border controls? Where citizens enjoy free movement and security, and can avail of shared institutions to ensure their fundamental rights are protected?

This cooperation is both unique and unprecedented. And it is made possible by the trust between Member States.

This trust does not fall from the sky! There is no magic wand.

As I set out in a recent speech in Lisbon in front of the International Federation of European Law, this trust is founded on an "ecosystem" based on common rules and safeguards, shared decisions, joint supervision and implementation and a common Court of Justice.

If you leave this "ecosystem", you lose the benefits of this cooperation. You are a third country because you have decided to be so. And you need to build a new relationship.

To negotiate an ambitious new relationship with the UK, which we all want, we need more realism on what is possible and what is not when a country is outside of the EU's area of justice, freedom and security and outside of Schengen.

Ladies and gentlemen,

Last Friday, we discussed with Member States how to construct a framework for this future relationship.

This was done on the basis of a presentation by my deputy Sabine Weyand, our colleagues from the justice and home affairs departments of the Commission and Magdalena Jagiello, in close cooperation with the teams of Commissioners Jourová and Avramopoulos

Yesterday we published this proposal.

- This proposal reflects the guidance established by the 27 Heads of State and government.
- It also reflects the resolution of the European Parliament, which I want to thank, dear Guy Verhofstadt, for its commitment on this topic, as on many others.

This proposal is based on the security interests of the EU27. It also fully respects the sovereign choices made by the UK.

And it is ambitious while respecting the privileged relationship that we have created with our Schengen partners in a common framework of rights and obligations.

- At the same time, crime and terrorism do not stop at our borders. The EU needs to cooperate with third countries. We need to exchange information and work together to bring criminals to justice and fight against common security threats.
- In doing this, the EU needs however to ensure the integrity – and the further development – of its Area of Freedom, Security and Justice. Because this common framework is the best way to guarantee the security and rights of our citizens.

Ladies and gentlemen,

We want to build our future internal security partnership with the UK on four pillars.

1) First: effective exchange of information

Law enforcement is data-driven. Information is crucial for effective justice. We must have an effective exchange of information between police forces and judges on both sides of the Channel.

- We need to set up streamlined and simplified bilateral exchanges between authorities. We need information exchanges between the UK and our Agencies – Europol and Eurojust – on terrorism and serious cross-border criminality.

- o This would help fight cross-border crime.
- o This would contribute to the success of transnational judicial cases.
- o To strengthen this cooperation, we would invite the UK to send their liaison prosecutor and liaison officers to these Agencies. And of course we would have our liaison officers stationed in the UK.
 - Finally, we are open to exchanging information on passengers contained in Passenger Name Records with the UK authorities.

But let's be clear: based on the UK's positions, our cooperation will need to be organised differently. It will rely on effective and reciprocal exchanges, but not on access to EU-only or Schengen-only databases.

2) Second pillar: operational cooperation between law enforcement authorities.

UK authorities should be able to participate in Europol analysis projects dealing with live investigations, if they are interested and if Member State participants agree. When there is a shared operational goal, I am certain they will.

But let me be clear: the UK will not be in a position to shape the strategic direction of EU agencies.

The European Council guidelines require us to preserve the autonomy of the EU's decision-making process.

As a consequence of the UK's decision to leave the Union, UK representatives will no longer take part in meetings of Europol and Eurojust management boards.

3) This brings me to our third pillar: judicial cooperation in criminal matters.

I hear those who say that cooperation on the basis of the Council of Europe Conventions is slow and cumbersome.

We are ready to facilitate cooperation on mutual legal assistance and find solutions for effective assistance in judicial cases and evidence sharing between the EU27 and the UK.

Eurojust will be helpful in this context. For serious cross-border cases and organised crime, it will encourage coordination between EU and UK investigators and prosecutors.

Ladies and gentlemen,

A few words also on extradition as it has attracted a lot of public attention recently:

Let me explain the facts.

The European Arrest Warrant is linked to the free movement of people. It works well because it is based on mutual trust between Member States.

This trust is underpinned by:

- shared respect for fundamental rights as set out in the Charter of Fundamental Rights;
- by certainty that other Member States enforce and apply the rules the same way, under the jurisdiction of the European Court of Justice;
- and by the concept of EU citizenship, which allows Member States to lift the constitutional ban on the extradition of their own nationals.

Yet today we know that the UK is not ready to accept the free movement of people, the jurisdiction of the Court and the Charter of Fundamental Rights – for the Charter, this was confirmed last week by the House of Commons.

This means that the UK cannot take part in the European Arrest Warrant.

This does not mean that we cannot work together on extradition.

We are ready to build on the existing Council of Europe convention, to which all Member States have signed up.

For instance we could envisage streamlining the procedure, facilitating processes, introducing time-limits. This is very much needed.

4) Our fourth pillar concerns measures against money laundering and terrorist financing.

These topics, which I used to deal with as an EU commissioner for internal market and financial services, should be an important component of our future partnership.

In the EU, we believe that transparency is the best way to prevent money laundering and terrorism financing.

Together we must ensure transparency on the beneficial owners of companies and trusts.

Ladies and gentlemen,

This is our offer. While we are constrained by the UK's red lines, it is a fair offer. It reflects our strong commitment to address our common challenges.

Some in the UK would like to go further.

They want to maintain all the benefits of the current relationship, while leaving the EU regulatory, supervision, and application framework. And they try to blame us for the consequences of their choice.

Once again, we will not be drawn into this blame game. It would mean wasting time we don't have.

In this field of internal security, it is particularly hard to speak about what will no longer be possible. But we have, I have, to speak the truth.

The UK decided to leave the EU. We regret this decision but this is a democratic decision and we have to respect it and now we are working towards an orderly withdrawal.

If we want to build a new relationship, we need a basis of good will and confidence. We also need more realism about what is and what is not possible.

Ambassadors,

Ladies and gentlemen,

In this area, freedom and security are two sides of the same coin.

As Commissioner Věra Jourová said recently,

- Respecting fundamental rights contributes to stronger and better security.
- And a safe Europe is essential for the protection of fundamental rights.

It is not by chance that I speak about security here, at the EU Fundamental Rights Agency in Vienna. With its expertise and analyses, the Agency contributes to putting fundamental rights at the centre of what we are as a Union.

That is not going to change after Brexit.

This means two things.

1) First, our future relationship with the UK will need to be based on strong safeguards on fundamental rights, data protection and dispute settlement.

- In its proposal on internal security, the UK recalled its "long standing commitment to human rights". This is welcome.
- o But we need to be more specific here.
- o A comprehensive future partnership requires a common commitment to human rights and confidence that the other party will respect them.
- o The UK has been a party to the European Convention of Human Rights since 1953 and we expect this commitment to be maintained.
- Our future relationship will also have to be based on strong data protection.
- o There is no possibility for the EU to compromise on data protection. This stems from EU primary law.
- o UK's data protection standards will therefore have to remain in line with ours, and confirmed by an adequacy decision from the EU.
- o Such a decision can only be taken once we are able to assess the new UK legal framework.
- And of course, we will need a mechanism to ensure a uniform application of our future agreement and an effective enforcement and dispute settlement system.

We want an ambitious partnership with the UK. The content of this partnership depends on the UK's readiness to ensure appropriate safeguards.

You cannot expect Member States to continue cooperating with the UK without these safeguards. These are not bureaucratic issues; this is about the lives and liberties of our citizens.

2) My second point is that the EU at 27 will continue to strengthen its area of justice, freedom and security.

Security has been a priority of President Juncker from the beginning of this Commission.

Under the responsibility of Commissioner Julian King, we are building an effective and genuine Security Union, where all members cooperate closely on the basis of solidarity, mutual assistance and in full respect of each other's national competences.

We are facing a challenging geopolitical environment. The EU will stick to this ambitious agenda.

- We will continue to fight terrorists by cutting access to their means and resources. With reinforced control on firearms, restricted access to chemical substances that can be used to make explosives, measures against terrorism financing and document fraud.
- We will continue to protect Europeans online. With an EU Cybersecurity Agency and decisive action against radicalisation, in close cooperation with Member States, Europol and technology and social media companies. We need to be able to quickly detect terrorist-related content online and remove it swiftly.
- We will continue to improve the protection of our external borders, which allows free movement between our internal borders.
- And we will continue to improve the sharing of information among Member States. All centralised EU information systems for security, border and migration management should be interoperable and should fully respect fundamental rights.

This will ensure that crucial information is made available more quickly for border guards, immigration officers and frontline police.

Ladies and gentlemen,

Each of these initiatives shows that we are far stronger together as a Union where the safety of one Member State means the safety of us all.

It is in this united spirit that the EU27 will continue working to face evolving threats in the years to come.

And it is in this spirit that, while respecting its decision to leave the EU, we will propose a strong partnership with the UK, a country with whom we have a common history, a common geography and common challenges.

Thank you for your attention.

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