

Mrs May must suspend the EAW now

By Torquil Dick-Erikson (c) 2016

In April 1997, at a specially convened seminar in Spain, the EU Commission unveiled its “Corpus Juris project”, for a single system of criminal law for the whole of the EU, based entirely on Napoleonic-inquisitorial principles. At that stage it was nothing more than an embryonic criminal code, but had it been inflicted on us, it would have swept away our own Magna Carta-based system, in particular our Trial by Jury and Lay Magistrates (art. 26.1), our Habeas Corpus (art. 20.3.g) and our protection against double jeopardy (art. 27.2). I happened to be among 141 European jurists invited to attend, as guests of the Commission. I was included in the Italian delegation, as a last-minute replacement. The head of the Italian delegation had read an article I had published in an Italian law journal and had been impressed enough to invite me to come along and fill an empty slot.

Since then, I have been following subsequent developments in the area of European criminal law, including the introduction of the European Arrest Warrant (EAW) and the establishment of its own paramilitary, lethally armed, police force, the European Gendarmerie Force (EGF). Six national gendarmeries are currently being trained and drilled side by side, in a location in Northern Italy, to weld them into a single European corps. They will then be deployed all over the European Union, in any state with its “consent” (art. 6.3 Treaty of Velsen, signed by EGF participant states).

In 2012, when she was Home Secretary, Mrs May said of the Eurogendarmerie, “Of course” we will call upon them, “onto British soil”, “if we see the need”. Since she became Prime Minister, I can find no evidence that she has ever disowned

this statement. What is more, no one, apart from Christopher Gill and myself, has been calling on Mrs May to refuse unevidenced European Arrest Warrants with immediate effect.

Mrs May has insisted that "Brexit means Brexit". If she is serious about this, EU authorities must no longer be allowed to arrest and deport people from Britain at their whim – i.e., without shewing any substantive evidence. The EAW legislation specifically states that the authority issuing an EAW should not provide any indication of evidence of a *prima facie* case and the country receiving a EAW is not allowed to ask for any evidence but has to trust the requesting country blindly. Past experience shows that we cannot do this as their systems of criminal justice are totally different from our own. They allow a suspect to be arrested and kept in prison for many months "pending investigation", with no right to a public hearing nor obligation on the prosecution to exhibit any evidence during this time..

We live in a country that has been remarkably favoured – partly due to our island location, partly because of the protection provided by what was once the world's most powerful navy. We have thus been spared the violent changes which our continental friends have seen to their governments within living memory.

For them, the concept of heavily-armed paramilitary police like the EGF is quite familiar. They see them every day on their streets. They will be less concerned that we would have been that policing in the EU will eventually look like, feel like, and be like a military occupation by a hostile armed foreign force.

In this year's referendum campaign, little was made of the vast difference between the UK's criminal justice and policing systems and those on the Continent. At first glance, it hardly seems like a winning argument as most people in the UK have never been before a court of law, do not have a criminal

record and do not expect to. This is to miss the point. We have had such a long and unbroken history of peaceful constitutional development that we have forgotten that, at the end of the day, criminal law is actually the handle granting complete control over a State and all its inhabitants.

Criminal law means police, handcuffs and prisons. It means the physically forceful, enforcement powers of the State over the citizens. It is under the criminal law that the State can (or cannot) send its officers into your home, breaking down the door, hauling you out of your bed and off to a prison. The State holds a monopoly of legal, even lethal, force over the citizens, and the exercise of this power is regulated by the criminal law. In our country, the State has exercised this power in a considerably more benign way than across the Channel. For 800 years its powers in England have been limited by Magna Carta. On the continent they have been enlarged and deepened by the Inquisition, with methods as adopted and adapted by Napoleon.

It is therefore critical, if Brexit is to mean Brexit, that the inevitable co-operation that will be needed between the UK and the EU on matters of criminal justice must grant no concessions to any aspect of EU criminal justice which violates basic safeguards of our own historic system. Any arrangement must include a repudiation of the European Arrest Warrant and the solemn undertaking that there will never ever be any invitation for the EGF or any other armed EU body to set foot on UK soil.

If the EAW is properly presented as "Arrest and lengthy imprisonment on no evidence and with no right to a public hearing for many months", which is what it is, but which was not made clear when Parliament voted to reconfirm it in November 2012, it will be very hard for opponents to argue against its immediate suspension, as from NOW. And procedurally a case can surely be made for Parliament to reverse its earlier decision, with immediate effect. We could

have remained opted out from the EAW without violating any part of the Lisbon Treaty.

If the government suspended the acceptance of unevidenced EAWs with immediate effect, this would show that Mrs May really is serious when she says "Brexit means Brexit".

Unfortunately, last week's online Express carries articles showing that the government is actually going in the opposite direction. I quote:- "Britain will remain a part of Europol despite our exit from the bloc," Policing Minister Brandon Lewis has told Parliament. This is not only "until we leave", for He added: "The Government is exploring options for cooperation with Europol once the UK has left the EU."

We must remember that Europol is not just an extension of Interpol; it is the embryo of what Helmut Kohl called "a European FBI". Once they get their boots on our soil we shall never be able to get rid of them, except by force, for they will only take orders from Brussels. The government surely has a duty not to let matters reach a state of armed confrontation. If we get signed up to Europol's extended powers as is now suggested, and we remain subject to the EU's power to have any of us arrested and transported with no questions asked, we shall be always under the heel of Brussels. If Brexit means Brexit, this is unacceptable

This matter must be publicised, far and wide, beyond just the readership of the online Daily Express. The people must be told!

Brexiters in Parliament, of whatever party, should raise their voices and demand that Mrs May must:

- 1) give a solemn assurance that we shall never ever under any circumstances whatsoever allow armed EU units to set foot on British soil;

- 2) suspend with immediate effect any unevidenced EAWs that are

received in Britain.