

**Cross-DPN Conference**  
17 September 2021

**The Evolution of  
Information-sharing in EU  
Counter-terrorism and Law  
Enforcement Cooperation  
Post-Brexit**

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## Background

- “Hybrid area of European integration”, no operational capacity for the EU, MS jurisdictions do not cross borders – but terrorism does. National idiosyncrasies, very close to national security and sovereignty
- The UK subject to special regime in EU JHA governance, incl. multiple opt-ins and opt-outs, such as Schengen and SIS-II, EIO, Eurodac, Prüm, etc.
- Still, the UK was also a driver to JHA cooperation, incl. principle of mutual recognition, Europol, PNR, etc.
- The UK is not only a very experienced partner in law enforcement and judicial cooperation, but also a key contributor to the EU’s databases.
- By withdrawing from the EU, the UK loses the benefits of multiple EU JHA instruments (and access to valuable data).
- Due to the mutual interest in continued cooperation, the EU and the UK have negotiated tailor-made conditions for their future relationship.

# Information exchange: short-term impact

- Before 2015: insufficient sharing; ineffective use of data and incoherent database usage (incl. SIS-II and Europol).
- First change was persecution of FTFs ; political pressure increased with each subsequent attack.
- Paris Prosecutor shares 13 November data with Europol and Eurojust; *Taskforce Fraternité* is set up; Europol gains experience.
- PNR package passed after a decade, enabling necessary data exchange.
- SIS-II usage drastically increases, leading to a consistent upward trend in input and eventually an upgrade to SIS-II legal basis and obligations to share on CT cases.
- Fragmentation of data tackled through interoperability package, connecting EU databases for irregular migration and law enforcement, including a set of new databases to close information gap.
- CTG is formalised via structured cooperation, permanent representatives, liaison officers and a common database.

## Long-term impact on intelligence and law enforcement practices

- Increased trust achieved through common work on CT cases, practitioners learned to work together and get to know each other; common trainings and multilateral meetings contribute to trust-building.
- Information-sharing and cross-sector relationships between police and intelligence significantly improved, practitioners, learned to build “investigative puzzle” cross sectors.
- Political-operational gap mitigated through common work and multilateral meetings cross-sector (High Level Groups and fusion centres contributed).
- Practitioners (and policy-makers) learned about EU channels and were able to perceive their added value through increased usage and understanding.
- A virtuous feedback cycle/loop: the more awareness of EU operational channels, the more usage, followed by upgrades to accommodate increased usage and competence.

# Law enforcement and judicial cooperation in criminal matters after Brexit

The UK-EU Trade and Cooperation Agreement includes specific provisions on:

- exchanges of DNA, fingerprints and vehicles registration data (Title II & ANNEX 39)
- transfer and processing of passenger name record data (Title III & ANNEX 40)
- cooperation on operational information (Title IV)
- cooperation with Europol (Title V & ANNEX 41)
- cooperation with Eurojust (Title VI & ANNEX 42)
- surrender (Title VII & ANNEX 43)
- mutual assistance (Title VIII)
- exchange of criminal record information (Title IX & ANNEX 44)

The agreement does not include:

- access to the Schengen Information System
- arrangements on procedural safeguards, unless included in specific provisions (surrender procedure)

## Exchanges of DNA, fingerprints and vehicles registration data (previously through Prüm and SIS-II)

The TCA allows cooperation through Prüm continue, by allowing the automated exchange through national contact points.

Under the agreement, the UK will have access to the data provided that:

- its labs are compliant with EU law, as accredited by a domestic accreditation authority
- an ex-ante evaluation and pilot-run have been submitted by the UK

Provisional application of the agreement will be allowed for nine months, extendable for another nine months by the Specialised Committee.

## Transfer and processing of passenger name record data (formally through EU PNR)

- The exchange of PNR data will continue between the UK and the EU.
- In a new provision, the UK will have to delete the PNR data of passengers after their departure from the country, unless objective evidence can be provided that certain passengers present a risk in terms of fighting terrorism and serious crime (retention up to 5 years).
- To allow the UK PNR system to be able to delete PNR data after passengers have left the country, an interim period of nine months will be allowed to give time for adaptation, extendable for one year.
- The UK must share PNR data and analysis with MS and sometimes Europol and Eurojust.
- Temporary derogation on all this for up to one year.

## Cooperation on operational information (previously through SIS-II, EIS, etc.)

- TCA allows for operational information (incl. missing persons and objects) to be requested or spontaneously provided by competent authorities within the scope of fighting crime and terrorism, if allowed by domestic law and regulations.
- Any judicial use of information must be authorised by the state which has provided it but it can be used in judicial proceedings and investigations.
- Information may be provided via any appropriate communication channel, including SIENA (which remains available to the UK).
- The UK and MS can conclude bilateral agreements between them on this matter, provided that MS act in compliance with EU law.
- Interpol de facto replaces SIS-II for information exchange.



# Cooperation with Europol

- The UK will post one or more liaison officers to Europol, and in return the EU will post one or more liaison officers to the UK.
- Exchange of information will be via the UK's designated national contact point, but direct exchange of information is not precluded.
- Access to EIS and AWF ended, however access to SIENA remains.
- Transfer of personal data of witnesses, victims, minors or other persons is prohibited unless it's strictly necessary and proportionate in individual cases.
- The security of the exchange of information will be ensured by technical and organisational measures which will be determined by administrative arrangements.
- Cooperation likely to remain functional.

## Cooperation with Eurojust

- The UK will designate at least one contact point for Eurojust and will second one liaison prosecutor into the organisation. In return, Eurojust will post a liaison magistrate to the UK. The UK must also designate a UK Domestic Correspondent for Terrorism Matters.
- Onward transfer of information to any third country or international organisation is not permitted without the consent of whoever provided the information and without appropriate safeguards regarding the protection of personal data.
- The modalities of cooperation between the parties shall be the subject of a working arrangement concluded between Eurojust and the UK.

## Surrender Procedure (previously through EAW)

A new procedure replacing the EAW aims to retain most of the EAW's features warrant (with different time limits).

Two fundamental differences:

- a state can declare ex-ante that it will not surrender its own nationals; in this case it can either bring alternative domestic proceedings or explain why not
- a state can declare ex-ante that it will apply the political offence exception (unless the warrant is for offences from Art. 1 and 2 of the European Convention on the Suppression of Terrorism)

The TCA introduces the concepts of necessity and proportionality in the cooperation through the arrest warrant, mentioning specifically the aim of avoiding long periods of pre-detention.

The TCA is applicable to EAWs which were issued before the end of the transition period where the requested person had not yet been arrested.

# Mutual Assistance

The TCA supplements the provisions and facilitates the application between MS and the UK of the pre-existing CoE Conventions and include provisions from the EIO.

Mutual assistance cannot be refused in the:

- obtaining information for criminal proceedings contained in databases for police or judicial authorities that is directly accessible by the competent authority of the requested state
- hearing of a witness, expert, victim, suspected or accused person in the territory of the requested state
- non-coercive investigative measures (defined by the requested state)
- identification of persons via phone number or IP address

A request can be refused on the basis of the principle of ne bis in idem/double criminality.

The decision on the execution request must be communicated within 45 days from receipt, and executed within 90 days from the communication.

Requests for mutual assistance may be transmitted directly by UK public prosecutors to MS competent authorities, or via Eurojust or Europol.

The Specialised Committee will establish a standard form for request of mutual assistance.

## Exchange of criminal records information (previously through ECRIS)

- A new system of exchange, based on ECRIS.
- Each state shall designate one or more central authorities which shall be competent for the exchange of information relating to criminal records.
- Each state will be responsible for recording, notifying and storing criminal record information.
- Requests in the appropriate format will be sent to the central authorities which will be responsible for reply within 20 days.
- The exchange between states of information extracted from the criminal record shall take place electronically in accordance with technical and procedural specifications.
- A common encrypted communication infrastructure should be used: the Trans European Services for Telematics between Administrations (TESTA).
- The UK shall be responsible for the development and operation of its own interconnection software (UKRIS).

## Other areas of JHA cooperation

- Anti-money laundering and terrorist financing: continued cooperation, the parties commit to support international efforts, to exchange the relevant information and to maintain a comprehensive regime, taking the Financial Action Task Force (FATF) recommendations into account, and going beyond. The TCA does not set out mechanisms for information exchange.
- Freezing and confiscation orders: the TCA replaces CoE conventions and EU instruments, aiming at deeper cooperation between the UK and EU MS. Confiscation requests and freezing measures must be executed following a court order from the requesting state; carried out in accordance with the requested state's national law and the principle of necessity and proportionality. Requests must be given the same priority as domestic ones.

Dispute settlement: the parties will hold consultations among themselves or within the Specialised Committee or the Partnership Council. If no mutually agreed solution is found within a certain timeframe, the party that considers the other in serious breach of an obligation may suspend cooperation

## Conclusion

- Added value (necessary in EU security sectors) proven via increased usage; “chicken-egg dilemmas” overcome to some extent; national authorities learned to work together, and with EU institutions and agencies.
- The UK was among the MS that realised and benefited from the EU’s added value in CT and law enforcement cooperation. This made it opt-in to several EU instruments and eventually negotiate continued engagement with EU tools and bodies.
- Some of the EU instruments that the UK highly values continue to be available, such as Prüm, SIENA, PNR, while for others alternative arrangements have been made, such as Europol and Eurojust participation, the EAW, ECRIS and mutual legal assistance.
- While these TCA clauses will enable continued EU-UK engagement in CT, law enforcement and judicial cooperation, the exchanges are conditional on restrictions and subject to longer timeframes.
- Losing access to the EU’s databases (SIS-II, EIS, ECRIS, etc.) will hamper the added value of immediate exchange in pursuit and investigations of criminality and terrorism.

Thank you!





# Conclusion

- Significant institutionalisation of EU CT policy.
- (Re-)institutionalisation post-2015 considered irreversible, even if critical juncture has closed off.
- Full integration of EU CT (or AFSJ) is considered impossible. Via lessons learned by both EU and national actors, cooperation is now more productive – and operational.
- EU added value discovered inadvertently, EU capabilities gradually engaged through consistent feedback loops.
- Policy entrepreneurs: Dutch Presidency, Rob Wainwright, Manuel Navarrete, Gilles de Kerchove, Julian King, Hans Das.
- Significant gap between policy/political and operational aspects of EU CT – but there is more awareness and measures to overcome it.
- Common trainings, projects and coordination meetings, also seconded experts and liaison officers – cohesiveness measures that aid institutionalisation.
- Trust and sharing have increased since 2015, with operational practices shifting to a “need to share” mentality.
- The EU and its institutions (notably Europol) taken much more seriously.

