

UK-EU LAW ENFORCEMENT AND JUDICIAL COOPERATION IN
CRIMINAL MATTERS UNDER PART THREE OF THE TRADE AND
COOPERATION AGREEMENT:

The Impact on Scotland

Scottish Parliament Academic Fellowship Report

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UK-EU LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS UNDER PART THREE OF THE TCA:

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1-List of Abbreviations

ACRO- Association of Police Chiefs Criminal Records Office

AI- Artificial Intelligence

CEPOL- European Union Agency for Law Enforcement Training

CJEU- Court of Justice of the European Union

COPFS- Crown Office and Procurator Fiscal Service

CICA- Crime International Co-operation Act 2003

DExEU- Department for Exiting the European Union

FAST- Fugitive Active Search Team

EA- Extradition Act 2003

EAW- European Arrest Warrant

EC3 – European Cybercrime Centre

ECHR- European Convention on Human Rights

ECRIS- European Criminal Records Information System

ECRIRS- TCN- European Criminal Records Information System – Third Country Nationals

EIO- European Investigation Order

EIS- Europol Information System

EU- European union

EUCARIS- European Vehicle and Driving Licence Information System

EUMS- European Union Member States

i24/7- Interpol Database

ICCC- International Crime Coordination Centre

ILOs- International Liaison Officers

I-LEAP- International Law Enforcement Alert Platform

J-CAT- Cybercrime Action Taskforce

JIT- Joint Investigation Team

MoU- Memoranda of Understanding

MLA- Mutual Legal Assistance

MLAT- Mutual Legal Assistance Treaty

NCA- National Crime Agency

NPCC- National Police Chiefs' Council

OSPs- Online Service Providers

PACE- Police and Criminal Evidence Act 1984

PNR- Passenger Name Record

PNC- Police National Computer

PSNI- Police Service of Northern Ireland

SCC- Scottish Crime Campus

SIENA- Secure Information Exchange Network Application

SIS II- Second Generation Schengen Information System

SPICe- Scottish Parliament Information Centre

SPOC- Single Point of Contact

TCA- Trade and Cooperation Agreement

UK- United Kingdom of Great Britain and Northern Ireland

UKCA- United Kingdom Central Authority

UKICB- International Crime Bureau

UKLB- United Kingdom Liaison Bureau at Europol

2-Abstract of the Report

This report, commissioned by the Criminal Justice Committee of the Scottish Parliament, assesses the impact of Brexit on Scotland's criminal justice system, focusing on the implementation of the Trade and Cooperation Agreement (TCA).¹ It explores how Scotland has adapted to the new post-Brexit landscape, highlighting both achievements and challenges.

The TCA has preserved essential cooperation, allowing continued exchanges of criminal records, DNA, and air passenger data. However, the UK's exit from the EU has resulted in the loss of access to several EU mechanisms, such as the Schengen Information System II and the Europol Information System, complicating data management and cross-border investigations. Scotland's proactive preparation included enhancing resources and participating in the establishment of the UK wide International Crime Coordination Centre (ICCC), which helped mitigate some disruptions. Despite these efforts, challenges remain, such as slower request processing, inability to extradite from some EU states and diminished access to EU funding and training. The report also notes that while Scotland has effectively engaged with EU partners and maintained high trust levels, issues such as intra-UK coordination and limited representation in international forums continue to pose difficulties. Overall, Scotland's criminal justice system has shown resilience, but ongoing improvements in cooperation and representation are needed. The report provides targeted policy recommendations regarding these improvements, in view of the upcoming 2026 Trade and Cooperation Agreement Review. The data for this report was compiled through an academic literature review, a roundtable with representatives of the Scottish Criminal Justice System, and semi-structured interviews with members of Police Scotland, the Crown Office and Procurator Fiscal Service, the Scottish Parliament, the Scottish Government, and EU-based police and judicial cooperation practitioners.

3- Summary of the Challenges and Policy Recommendations

This section of the report offers an itemised summary of the challenges described at length in the remainder of the text, as well as the list of policy recommendations that follow from these challenges and which the authors hope will assist in mitigating the impact of the implementation of the Trade and Cooperation Agreement (TCA) on law enforcement and judicial cooperation. Policy recommendations regarding the upcoming 2026 TCA review have also been included in this section.

3.1- Challenges emerging from the implementation of the Trade and Cooperation Agreement for the field of Police and Judicial Cooperation

¹ The views expressed in this report are those of the authors, and not those of the Scottish Parliament nor of any individuals or organisations interviewed. As such, the authors take full responsibility for any inaccuracies contained in the report.

Based on the research conducted by the authors, operational deficit can be observed in the following areas:

- The UK has lost access to the European-wide database for sharing law enforcement information called the 'Schengen Information System II' (SISII). This was used by UK law enforcement to share and receive law enforcement alerts in real time.² SISII data held at domestic level had to be deleted. The UK will not benefit from planned improvements to SISII, which aim to improve functionality and has lost access to its networking value.
- As a consequence of losing access to SISII, the UK is now reliant on EU Member States (EUMS) uploading information and wanted notices to Interpol's database (known as i24/7) in addition to uploading the information to SISII. If law enforcement in a Member State does not take this additional step, then the operational consequence is that a criminal wanted on a European Arrest Warrant (EAW) could travel to the UK undetected.
- Surrender Warrants issued under the Trade and Cooperation Agreement (known as TaCA warrants) cannot be circulated on SISII anymore. Instead, a Red Notice (a notification that a person is wanted) is circulated on i24/7. Unlike with SISII, police in Europe do not have direct access to i24/7 on their handheld devices. The fact that someone is wanted will only come to law enforcement notice if someone is stopped at an external EU border or otherwise interacts with immigration procedures and not during an unrelated interaction, such as a traffic stop. This means that the chances of opportunistic identification of a wanted person from the UK in the EU has in real terms ended.
- A Red Notice in most EU countries does not provide a power of arrest. Even if someone is identified through i24/7, UK officers must act very quickly to send the TaCA warrant to the relevant country for execution. Any delays in this process can result in a lost opportunity to gain custody.
- Unlike the procedure for circulating information through SISII, a TaCA warrant issued by an EUMS is only created and circulated when there is a clear connection to the UK. This is not as effective as an EAW which can be circulated to all EUMS through SISII regardless of where the individual is thought to be located. The introduction of a TaCA warrant therefore decreases the likelihood of wanted individuals in the EU being detected in the UK.
- The UK can no longer, or has limited ability, to extradite nationals from thirteen EUMS leading to impunity for serious offences. The inability to request surrender from Poland has had the greatest impact, although this is now resolved through amendment to Polish national law.
- Dual criminality (establishing the offence is a crime in both the issuing and executing state) must now be demonstrated in every extradition/surrender case increasing complexity and the risk of refusal.

² For further information see 'Home Office, Second generation Schengen Information System (SISII) General Information, 13 April 2015 available at https://assets.publishing.service.gov.uk/media/5a7f85a3e5274a2e8ab4caef/SISII_General_Information_document.pdf <last accessed 12/09/2024>

- Passenger Name Records data continues to be shared but the UK must now delete data of passengers after they depart the UK, unless objective evidence can be provided that certain passengers present a risk in terms of fighting terrorism and serious crime.
- The UK will not have access to the European Criminal Records Information System – Third Country Nationals (ECRIS-TCN) - a record of previous convictions of third country nationals handed down in the EU – once operational and will have to continue to inefficiently seek this information from each EU Member State one by one, making it more difficult for law enforcement to access the complete criminal history of individuals from outside of the EU.
- The UK no longer participates in the European Investigation Order (EIO) - a streamlined mechanism for obtaining evidence and assistance from authorities in EU Member States during criminal investigations - and there are reports of long delays in obtaining evidence through outdated Mutual Legal Assistance mechanisms provided for in the Trade and Cooperation Agreement.
- The domestic legislation of some EU Member States has created barriers to obtaining police-to-police cooperation despite the signing of the Trade and Cooperation Agreement. More formal processes are sometimes now required to obtain assistance, which can lead to delays in UK investigations.
- UK police officers can no longer be employed in Europol’s Operational and Analysis Centre which operates as a gateway for all information and intelligence channelled through Europol. This may lead to a loss of expertise in the long term.
- The UK has lost access to the Europol Information System (EIS), to Europol’s Analysis Work Files databases, and some access to intelligence information available to only EU Member States via the secure messaging service SIENA. It also no longer takes part in Europol’s Management Board.
- The UK has lost the ability to initiate a Joint Investigation Team with a EUMS.
- The governance structure of the Trade and Cooperation Agreement does not enable the agreement to address these operational deficits, nor to adapt to the future evolution of police and judicial cooperation instruments. The TCA is, in practice, frozen in time. The remit of the Specialised Committee on Law Enforcement and Judicial Cooperation as a body is only to monitor and review the implementation and functioning of the legal text in Part Three of the TCA as it stands.
- Although the TCA overall is governed by the Partnership Council – a body created by the TCA to ensure its implementation - there is no provision for Parliaments to scrutinise its decisions before they take place.

3.2- Policy Recommendations

Based on the observed operational challenges, we make the following recommendations, which we believe are within the purview of the identified Scottish authorities:

- The report highlights an overall increased workload for both Police Scotland and the Crown Office and Prosecutor Fiscal Service in police and judicial cooperation post- Brexit. It is vital that both organisations have the funding and personnel required to keep the public safe. It is recommended that the Criminal Justice Committee of the Scottish Parliament seek further evidence from stakeholders to understand the extent to which resourcing, and budget needs are being met.
- It is recommended that the Criminal Justice Committee write to the Lord Advocate to highlight the following issues:
 - The reported backlog of extradition cases in Edinburgh Sheriff Court.
 - The reported difficulties in transferring proceedings to EU Member States when a transfer is in the public interest. We recommend that an additional protocol or guidance document be put in place to ensure decisions on transfer are consistent, transparent and fair to all stakeholders including victims. Adequate resources should be available to transfer proceedings when extradition is unavailable or refused.
- It is recommended that the Criminal Justice Committee write to the Cabinet Secretary for Justice and to the Lord Advocate to highlight that poor prison conditions in Scotland have led to requests for assurances in extradition/surrender cases. This is causing delay in Scotland receiving wanted persons from overseas and increases the risk that extradition is refused.
- It is recommended that the Criminal Justice Committee write to the Chief Constable of Police Scotland to emphasise the need for training across all of Police Scotland, so officers know when and how to use the available tools to obtain assistance from law enforcement overseas and how to best utilise Joint Investigation Teams. All officers should know they have the power to arrest based on an Interpol Red Notice.
- It is recommended that the Criminal Justice Committee highlight to the Scottish Government the following concerns about how Scottish interests are represented:
 - Scottish bodies are not consistently consulted when bilateral agreements, including Memoranda of Understanding are negotiated between the UK Government and an EU Member State. The UK Government has signed 24 (at the time of writing) bilateral declarations with EU Member States, since 2021, which cover areas of criminal justice.
 - There is no process for enabling the Scottish Parliament to scrutinise Partnership Council decisions to ensure alignment with Scottish interests.
 - There is no representation of the Scottish Parliament in the UK-EU Parliamentary Partnership Assembly (PPA), which hinders the representation of Scottish interests. At the time of writing, the UK Government had also not yet appointed Members of Parliament to the PPA.

The authors further believe that some of the issues discussed in this report could be addressed through enhanced cooperation with the European Union. Such enhanced cooperation could take place through separate multilateral agreements, entered into by the UK Government, or through amendment to the Trade and Cooperation Agreement. We recommend that the Criminal Justice Committee write to the Secretary of State for the Home Department (in light of their responsibility for UK Government policy relating to international data sharing for law enforcement purposes), the Foreign Secretary (in light of their responsibility for the UK's relationship with Europe and the European Union) and the Secretary of State for Justice (in light of their responsibility for the criminal justice system) to highlight the following issues which the UK Government could seek to address during the 2026 review of the TCA:

- That the UK is not yet sharing vehicle registration data with EU Member States. The UK should develop its technical capabilities so that it can be evaluated and begin to share vehicle registration data with EU Member States, as already provided for in the TCA.
- Losing access to SIS II means that wanted notices must be circulated through the Interpol i24/7 database which makes it less likely that wanted people are identified and arrested as officers in the EU do not have direct access to i24/7. However, if a TaCA warrants issued by the UK could be circulated on SISII this problem would be ameliorated. It is accepted that the UK cannot have direct access to SISII, but this does not prevent introducing a mechanism for TaCA warrants issued by the UK to be circulated on SISII via Europol. This would mitigate the risk of law enforcement in EU Member States not accessing Interpol i24/7 in the same way they do the Schengen Information System II.
- Judges in some EUMS will only issue a TaCA warrant if there is 'clear connection' to the UK. The same requirement was not needed to issue a European Arrest Warrant. Amendment to the TCA could provide a clearer legal basis for the issuing of a TaCA warrant at the same time as an EAW is issued removing the need for a clear connection to the UK.
- The EU plans to make key databases interoperable and therefore centralised. This may mean the UK could lose access to vital data currently provided for in the Trade and Cooperation Agreement. Continued access to biometric and air passenger data when Prüm and PNR become centralised and interoperable databases is vital to the safety of the UK. The UK must reach an agreement on its own internal position, so it is prepared to open discussions on this issue with the EU as early as possible, as provided for in the Trade and Cooperation Agreement.
- Although the UK opted in to ECRIS-TCN before leaving the EU this is not provided for in the Trade and Cooperation Agreement. The UK should seek to negotiate access to the ECRIS-TCN system, so UK law enforcement have a complete picture of the criminal record of any third country national who has spent time in the EU before entering the UK.
- The UK has lost access to the European Investigation Order. Further improvements to the provisions on sharing of evidence are needed. Cooperation needs to be more closely aligned to the European Investigation Order than currently provided for, as reliance on Mutual Legal Assistance is outdated and slow.

- Although the UK opted in to the EU's e-evidence package before leaving the EU this is not provided for in the Trade and Cooperation Agreement. The UK should seek to negotiate an agreement on access to electronic evidence (e-evidence) now the EU has finalised its own internal rules and already opened negotiations with the USA.
- The UK has more limited participation in Europol than it did as a Member State. The UK should seek to enhance the UK's cooperation with Europol, subject to an agreement on funding. The following issues are identified:
 - The inability of UK police officers to be employed within the Operational and Analysis Centre.
 - Lack of access to Europol training.
 - The ability to initiate and lead a Joint Investigation Team.
- Due to the introduction of the nationality bar into the Trade and Cooperation Agreement and the loss of mutual recognition there is an increase in the number of individuals who are wanted in the UK, sometimes for serious offences, but cannot be surrendered/extradited from the EU state they reside in. This is leading to impunity. In such cases the UK can seek to transfer criminal proceedings to the state where the accused resides. There is no formal agreement or set of rules governing this process and to date prosecutors have found this process challenging. At the time of interviews, no case had been successfully transferred. The UK should seek to negotiate a multilateral agreement on the transfer of criminal proceedings when extradition/surrender is not possible or is refused.
- The UK is yet to notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of dual criminality will not be applied to the offences listed in Article 599(5) of the TCA.³ Twelve EU countries have made such a notification, but to be effective this requires the reciprocity of the UK. The effect of the UK's decision is that dual criminality must be established in all cases with all EU Member States. The impact of this decision needs to be understood and revisited. This decision may be causing unnecessary complexity and delay during extradition hearings.
- The Trade and Cooperation Agreement does not include provisions which replace the suite of Framework Decisions which facilitated transfer of custodial sentence, pre-trial bail or probation supervision between member states. The UK should seek to negotiate an agreement on transfer of custodial sentence, pre-trial bail or probation supervision between member states.
- The UK Government should continue to work with EU Member States to understand domestic legislative impediments to police-to-police cooperation and seek to develop bilateral agreements which address the impediments or remove them, where legally possible.
- The UK Government should seek further development of the governance structures of the TCA to ensure greater transparency and accountability, as well as introducing political

³ Which are also punishable in the requesting State by a custodial sentence for a maximum period of at least three years

mechanisms that will enable the TCA to evolve in parallel with UK and EU domestic changes to police and judicial cooperation instruments over time.

4- Introduction

Prior to its exit from the EU, the UK took part in EU law enforcement and judicial cooperation on a selective participation basis. Thanks to the signing of specific protocols (19 and 21) of the Treaty on European Union and the Treaty on the Functioning of the European Union (TFEU), the UK was able to opt-in/ opt-out from specific legislation related to Justice and Home Affairs and to the Schengen acquis.⁴ This special arrangement enabled the UK to take part in those EU instruments that were most aligned with its national interest, at the same time as it benefited from instruments specifically designed to address transnational criminality. Such instruments included, for example, the possibility of exchanging information on suspects via the Schengen Information System II, or the ability to issue European Arrest Warrants for identified suspects. The UK was often a keen participant in EU law enforcement and judicial cooperation instruments, being perceived by Member States as a leader in internal security.

The risks to law enforcement and judicial cooperation, had the UK left the EU without an agreement governing their future relationship, could have been highly significant for the security of the UK.⁵ Although the Withdrawal Agreement ensured continued cooperation for on-going investigations, the absence of an agreement at the end of the transition would have led to the UK being disconnected from all EU databases and networks, as well as losing access to all EU police and judicial cooperation instruments. The latter have, over the years, become essential to the good functioning of the UK's criminal justice system.⁶ The signing of the Trade and Cooperation Agreement only weeks before the end of the transition period meant that the worst of the 'cliff edge' consequences were avoided. The TCA has provided a good level of continuity in cooperation, with the UK and EU continuing to exchange criminal records, DNA and fingerprints and air passenger data in almost identical formats. The comprehensive provisions on surrender/extradition ensured that the process remained very familiar to those used to working with the European Arrest Warrant and required very little amendment to domestic legislation. Importantly, continued cooperation with the European Union's criminal justice agencies, Europol and Eurojust⁷, meant that for most practitioners their work has carried on with limited disruption, as already outlined in the existing literature.⁸

Preparing for Brexit also provided an opportunity to reflect and improve on domestic processes and legislation, shining a light on this little understood, but vital corner of our justice system. Scotland was

⁴ Home Office, 'Report to Parliament on the application of Protocol 19 and 21 to the TFEU' (January 2011 Cm 800)

⁵ Carrapico, H., A. Niehuss and C Berthelemy (2019) *Brexit and Internal Security- Political and Legal Concerns on the Future UK-EU Relationship*, Cham Switzerland: Palgrave macmillan.

⁶ Pencheva. M. (2021) *EU-UK Police and Judicial Cooperation in Criminal Matters*. Cham, Switzerland: Palgrave macmillan.

⁷ For further details on Europol and Eurojust, please see the Glossary at the end of the report.

⁸ Shellaker, M., S. Tong, and P. Swallow (2023) 'UK-EU Law Enforcement Cooperation post-Brexit: a UK law enforcement practitioner perspective'. *Criminology and Criminal Justice*.

<https://doi.org/10.1177/174889582311625>

well-placed to navigate the challenges of Brexit. Police Scotland's International Bureau and International Cooperation Unit were already efficiently structured and their close working relationships in Scotland have ensured that partnerships within and outside of the UK have continued and even strengthened in recent years. Significant mitigations have been put in place, where needed, to counter some of the operational deficits caused by loss of access to specific EU instruments and these are perceived as having kept Scotland safe. Such mitigations include, for example, further investment in staffing.

Despite this overall positive outlook, some important loss of capability has also taken place.⁹ The extent and impact of which is not always easily visible or quantifiable. Changes to cooperation mechanisms and processes related to the UK's departure from the EU have in many areas increased in complexity, whilst access to EU funding and training has diminished. Although some of the operational deficits caused by Brexit can and have been mitigated, others cannot. Changes which cannot be easily mitigated include the loss of access to a number of information exchange mechanisms, such as the Schengen Information System II, the Europol Information System, and parts of Europol's secure messaging service SIENA. In some cases, the UK continues to have access to databases, such as Passenger Name Record, but is now required to delete the data following passengers' departure from the UK. Additionally, the UK no longer participates in the European Investigation Order, and starting a Joint Investigation Team has become a more challenging task. The UK will also not be able to access ECRIS-TCN, having to continue to seek this information from each EU Member State individually. Finally, the UK's ability to extradite nationals from specific EUMS has become more limited, not only due to a nationality bar, but also due to dual criminality having to be demonstrated and to surrender warrants' circulation via i24/7 being less effective than via SISII.

4.1- Methodology of the Report

The present report was commissioned by the Criminal Justice Committee of the Scottish Parliament in the context of Scottish Parliament Information Centre (SPICe) fellowships awarded to the authors. It proposes to explore the impact of the implementation of the TCA on the Scottish criminal justice system by exploring how cooperation has continued to take place and what operational challenges have emerged. More specifically, the detailed aims of the fellowship, and of the report, are:

- 1- to map how cooperation under the TCA is working to date for Scottish law enforcement and judicial authorities, including mapping how Scotland's criminal justice agencies have engaged with the TCA;
- 2- to identify areas where reduced cooperation may be having a negative impact on authorities' capacity to address crime;
- 3- to assess the action Scotland has taken in response to the reduction in cooperation with EU partners;
- 4- to inform the Scottish Parliament of the impacts of Brexit on criminal justice in Scotland, as well as provide insight into how Scottish interests have been and continue to be represented in this area;

⁹ Mitsilegas, V. and E. Guild (2023) 'Police and Criminal Justice Co-operation after Brexit'. *Journal of European Public Policy*. Vol. 30 (11): 2519- 2539.

- 5- to consider how cooperation could be further enhanced moving forward.

In order to achieve these aims, the report relies on data collected through:

- A roundtable, which took place in March 2023, with 14 representatives of the Scottish Government, of the Scottish criminal justice system, including Police Scotland, the Crown Office and Procurator Fiscal Service, and Judges, as well as academics;
- 23 semi-structured interviews conducted between July 2023 and January 2024 with members of Police Scotland (including the international cooperation unit and a number of dedicated crime units), the Crown Office and Procurator Fiscal Service, the Scottish Parliament (members of the Criminal Justice Committee), the Scottish Government, and EU-based police and judicial cooperation practitioners;
- An academic literature review carried out between July 2023 and January 2024.

The report starts by mapping the landscape of Scottish institutions involved in police and judicial cooperation with EU partners and the extent of the preparations they carried out pre-Brexit. It then proceeds with identifying the legal, operational, and political structures and instruments that now apply in the context of the TCA and how these are impacting on cooperation practices. This section covers: data exchange (namely DNA and fingerprints, vehicle registration data, Passenger Name Records, criminal records, and SISII); the sharing of evidence; access to EU agencies (Europol and Eurojust); and surrender/ extradition provisions. The final section of the report reflects on the current UK-EU relationship and on the potential for future cooperation avenues in this field.

5 – Understanding Police and Judicial Cooperation in Scotland

5.1 -The structure of International Cooperation in Criminal Matters in Scotland

Scotland is unique amongst the devolved nations as it has its own Central Authority, the Crown Office, for cooperating with foreign countries to obtain assistance in investigating or prosecuting criminal offences. The Crown Agent, as the principal legal advisor to the Lord Advocate on prosecution, is responsible for both Mutual Legal Assistance (MLA)¹⁰ and extradition processes. Requests for assistance and extradition requests should be sent directly to the Crown Office and Procurator Fiscal Service (COPFS) in Edinburgh and are dealt with by the International Co-operation Unit. In practice, requests are regularly mistakenly sent directly to the UK Central Authority, but they are then redirected. The COPFS International Cooperation Unit is a small, dedicated team of less than 20 people that deals with all incoming and outgoing requests for MLA and extradition on behalf of the Lord Advocate. The overwhelming view of those interviewed was that the unit was well-structured and well-sized and consequently considerably more efficient than the structures in England. As Scotland deals with a much smaller number of requests than the rest of the UK, it can consider MLA requests within 3 working days (compared to up to 30 days by the UKCA). Scotland conducts its own risk

¹⁰ Mutual Legal Assistance is a process by which states request help from each other in gathering evidence, serving documents, or other judicial actions related to criminal investigations and proceedings.

assessment for incoming MLA requests but applies the UK guidelines.¹¹ In the rest of the UK, this function is carried out solely by the Home Office. Staff within the unit were seen as being highly specialised in their field and the relationship between COPFS and Police Scotland was evidently very good.

MLA and extradition are governed by the same legislation as is applicable in the rest of the UK. For extradition this is the Extradition Act 2003 (EA), and for MLA this is primarily the Crime (International Co-operation) Act 2003 (CICA). Extradition is a reserved matter under the Scotland Act 1998, thus only the UK Government can enter extradition arrangements or sign Treaties with other states. However, both Acts recognise Scotland as a separate jurisdiction.

From a UK perspective the practical delivery of international cooperation in criminal matters is dealt with by the International Crime Bureau (UKICB), which has three regional hubs across the UK where UK police teams work on international criminality portfolios: the National Crime Agency (UKICB-NCA) (Warrington), the Association of Police Chiefs Criminal Records Office (ACRO) (Hampshire), and the Joint International Crime Centre (JICC) (London). The UKICB-NCA also manages the network of International Liaison Officers (ILOs) based in embassies in more than 130 countries.

In Scotland the Scottish Crime Campus (SCC) houses over 2,000 people, including a large range of co-located partners, such as COPFS, the National Crime Agency, immigration enforcement, the Department for Work and Pensions, HM Revenue and Customs, the Scottish Environment Protection Agency, and Forensic Services. The physical proximity between Police Scotland and its partners, within the SCC, encourages socialisation and enables greater cooperation and information exchange between institutions. Scotland has invested in the Scottish Crime Campus (Gartcosh, Glasgow). This is the home of Police Scotland's International Crime Bureau which is composed of three main units: the police and judicial cooperation unit, the extradition unit, and the Fugitive Active Search Team (FAST). Police Scotland also have officers seconded at Europol, Interpol and the NCA, which was described as invaluable in achieving cooperation results. One of the examples provided during interviews was that Scotland has always been able to start a Joint Investigation Team (JIT) when needed. The COPFS' International Co-operation Unit are based in offices at Edinburgh, as this is where extradition hearings are held, but the unit has access to offices at the SCC and travel regularly for meetings.

The Scottish Government also has a small International Justice Cooperation Unit based in Edinburgh which works closely with the Scottish Government EU Office in Brussels, and deals with policy, although their involvement in operational issues is limited. This differs from the situation in England, where the Home Office plays a greater role in operational and policy matters. Both Police Scotland and COPFS reported having an excellent working relationship with the Scottish Government's International Justice Cooperation Unit with whom they work very closely.

Overall, all interviewees highlighted that the organisational structure for international cooperation in criminal matters in Scotland is effective and fit for purpose. The authors were repeatedly told that having all teams co-located in the SCC was very efficient. There is a strong working relationship between the Police Scotland's International Bureau, the COPFS International Cooperation Unit, and the Scottish Government's International Justice Cooperation Unit. Furthermore, EU-based

¹¹ Foreign, Commonwealth & Development Office, Overseas Security and Justice Assistance Guidance <https://www.gov.uk/government/publications/overseas-security-and-justice-assistance-osja-guidance>

practitioners reported that Scotland is a trusted partner, known to deliver excellent service. Increasingly it is recognised that Scotland is a separate jurisdiction, and it is treated as such.

5.2 International Criminality in Scotland

Scotland has similar security and crime priorities to the rest of the UK, with the exception of a lesser focus on organised illegal immigration. Serious organised crime, drug trafficking, smuggling, and trafficking in human beings were all reported to be key priorities. Police Scotland must work with officers in many other parts of the UK. An example given was county lines investigations in the Northwest of England, which have a Scottish link. Pre-Brexit, much of Police Scotland's extradition unit work was between Scotland and Poland and Romania, which was linked to the size of the Polish community in Scotland. Post-Brexit, there has been a reported increase in the need to work with non-European countries and in divergent fields. For example, it was reported there was a growing need to work with Southeast Asian countries to address Scottish nationals who travel overseas to commit sexual offences. Cooperation with EU countries, however, continues to be fundamental, as illustrated by most of the FAST unit's work being related to countries with large British minorities, namely Spain, Ireland, and the Netherlands.

The terrorist threat in Scotland is the same as in the rest of the UK, with an additional need to work with colleagues in Northern Ireland due to the close connections between the two. The increase in the number of minors involved in terrorism, mainly in online activities influenced by extreme right-wing ideology, and those who weaponise daily objects, was identified as a specific area of growing concern for Scotland. Furthermore, reports of trafficking in Human Beings are on the rise and may have been historically under reported in Scotland. Since 2019, there has been a much greater interest and a development of knowledge and expertise in Police Scotland in the fight against human trafficking. The authors were told that Police Scotland is beginning to understand how wide and prolific the problem is in Scotland, and it is working closely with Romania, Hungary, Bulgaria (sexual and agricultural work exploitation), and to a lesser extent Albania (drug-related exploitation), to better identify victims, and perpetrators' strategies. Much of this work is coordinated through Europol and is the subject of Joint Investigation Teams (JITs).

In terms of economic crime, money laundering and online fraud are the key problem areas, with much of the latter activity stemming from Nigeria. It was estimated that 90% of serious financial crime investigations have an international element. Officers are currently working with a wide range of non-EU countries, including Dubai, UAE, Nigeria, South Africa, China, Pakistan, India, Caiman Islands, Russia, Brazil, Thailand, and Puerto Rico. In this area, the challenge lies in working with an ever-increasing number of countries, where Police Scotland has no previous established contacts. However, even when working with non-EU countries, there is often a pan-European element to the investigation, so European institutions and Joint Investigation Teams remain particularly helpful.

The cybercrime unit also deals with a significant number of investigations requiring international cooperation, usually relating to pro-active cybercrime such as cyberware, ransomware, and Distributed Denial of Service Attacks. Whilst most ransomware attacks come from Russia and the Ukraine, and occasionally Belarus, network intrusion can come from anywhere in the world. The team works very closely with EU partners, particularly The Netherlands and Germany, in order to disrupt

cyber criminals' capabilities, and to achieve successful prosecutions, independently from where in the world they take place.

Most of those we spoke to emphasised the importance of Europol and Eurojust in facilitating cooperation to address these different security concerns, and that Brexit had had some, although limited, impact on the quality of their relationships with EU counterparts. Occasionally, it was recognised that bilateral cooperation could be more effective, which reflected itself in a push post Brexit to develop more bilateral relationships in some units. Some officers from EUMS that had prosecutor-led criminal justice systems felt that Scotland was easier to work with than the remainder of the UK, as Scotland's criminal justice system was more closely aligned to a prosecutor-led investigation, which requires the involvement of a public prosecutor from an early stage. Overall, from a police perspective, political considerations were set aside in favour of simply 'getting the job done', an approach that was particularly visible in the different units' preparation for Brexit.

5.3 Brexit preparations in Scotland

All interviewed Scottish practitioners were asked how their office prepared for Brexit. Overall, there was a clear, concerted effort to anticipate any possible impact arising from Brexit. Such preparations and their outcomes, however, varied considerably according to institutional autonomy and the nature of the institution's work.

5.3.1- Police Scotland

Within the teams working at Police Scotland's International Bureau, there was a high level of preparation, particularly from 2018 onwards. Planning, in the context of uncertainty as to the format of the future UK-EU relationship, was challenging and practitioners often felt they needed to prepare for the worst-case scenario, namely a 'no-deal' Brexit. There was considerable anxiety regarding whether Brexit would lead to a dip in Scotland's level of cooperation with both EUMS and EU agencies, make Scotland a less attractive jurisdiction to cooperate with in the future, and hence lead to increased levels of insecurity for residents. As a result, significant resource was spent accelerating on-going investigations and engaging with partner countries to reinforce bilateral relations and to understand what Brexit would mean from their institutional and legislative perspective.¹² In the context of cooperation with Europol liaison officers, for example, a document was created to outline how collaboration could work with each partner EUMS. Partner countries were encouraged to update their SIENA matrix to ensure that the UK would continue to receive notifications typically reserved for EU states. Ongoing cases were accelerated, and priority cases were identified. There was a concerted effort to clear outstanding requests and warrants, while also uploading relevant information to the Interpol i24/7 system in anticipation of losing access to SIS II. The UK desks at Europol and Eurojust were physically packed up and staff were prepared to move to the embassy in the Hague in the absence of a UK-EU agreement, which would have changed their diplomatic status. Impact

¹² Not all the increase in resource need directly arises from leaving the EU. Some of it relates to the growing need to cooperate with a wider range of non-EU international partners, as the number of crimes with an international aspect grows and crime threats evolve.

assessments had been prepared for different crime areas, with the potential impact of a ‘no deal Brexit’ considered as ‘*completely catastrophic*’ for the cybercrime team. The signing of the Trade and Cooperation Agreement, only weeks before the end of the transition period, was perceived as a significant relief.

Interviewees felt that Police Scotland was able to ensure that Scottish priorities were taken into consideration by both the Scottish and UK Governments. Additional resources were allocated to increase the number of police officers in the International Bureau in the lead-up to Brexit. This increase included an uplift in the number of International Liaison Officers (ILOs) sent to embassies in EUMS. The authors were told that, at its peak, there was a doubling of the number of officers, although this figure has since reduced. The expansion in personnel acknowledged that preparing for Brexit increased workloads and that post-Brexit procedural changes would lead to more labour-intensive processes. Outside the International Bureau, teams handling areas requiring significant international cooperation showed less concern about the impact of Brexit and undertook more limited preparation due to competing demands.

Police Scotland’s preparations for Brexit also benefited from the development of the UK-wide International Crime Coordination Centre (ICCC)¹³, through access to its training and resources, and through the seconding of officers. The ICCC was created in March 2019 using temporary Brexit funding to mitigate the impact of Brexit for policing in the UK and has proved a valuable resource. It aimed at identifying the EU policing tools the UK was expected to lose access to, to develop contingency planning for each of them, and raise awareness of the tools in use post-Brexit. The unit developed and delivered training for officers, built relationships with EU partner agencies, increased the use of international tools within UK policing and set up a 24/7 helpline.¹⁴ One of the main initiatives of the ICCC was to provide training and expand the number of officers licenced to use the Interpol i24/7 system, as an alternative to the SISII. It also developed an app for frontline police officers with clear guidance on the steps to take when encountering cases involving foreign nationals. Scotland had a Single Point of Contact (SPOC) within the ICCC, enabling it to work closely. The ICCC has now been brought into the National Crime Agency (NCA) and United Kingdom International Crime Bureau (UKICB) and renamed the Joint International Crime Centre (JICC). It is now a fully funded unit with permanent staff, whose importance was often alluded to by the interviewees.

Overall, Police Scotland was well-prepared for Brexit. The centralised nature of its International Bureau already provided an effective working environment. Brexit was perceived as a challenge, but also as an opportunity to further highlight the important work of the unit and increase its resources. As a result, Police Scotland’s international capability has improved since 2019. Trust between Police Scotland and its EUMS partners has remained high and is understood as not having been affected by Brexit. This result is due to significant efforts to maintain personal relationships and provide a high level of service. Much work has gone into developing relationships with the EU law enforcement community and ensuring they persist, even when people move on from their posts. This community

¹³ The International Crime Coordination Centre was operated by the National Police Chief’s Council until October 2022, when it was transferred to the National Crime Agency.

¹⁴ Thomson, C. (forthcoming 2024) ‘The Impact of Brexit on UK Policing- a Practitioners’ View’, in G. Davies and H. Carrapico (Eds.) UK-EU Police and Judicial Cooperation Post-Brexit. Hart Studies in European Criminal Law. Hart Publishing.

holds a strong sense of shared professionalism, with the focus being on delivering policing services independently from political and legal changes.

5.3.2- Crown Office and Procurator Fiscal Service

The Crown Office and Procurator Fiscal Service (COPFS) followed a similar level of preparation. Interviewees noted that Brexit provoked varying reactions on the side of EUMS, with some of them being more vocal than others and expressing their disappointment at the UK's departure and its impact on judicial cooperation. COPFS expedited existing cases, invested considerably in maintaining existing relationships with EUMS counterparts, and offered clarity regarding how to submit requests to Scotland post-Brexit. Although it has not seen any of its MLA requests being refused by EUMS, the pace at which requests are processed has slowed down. This is partly due to COPFS dealing with a diverse range of actors, including civil servants, diplomats, and prosecutors, who have differing approaches to this field. It has been difficult to separate the effects of the pandemic from those of Brexit. In particular, the courts closed during periods of COVID-19, and travel restrictions prevented individuals from leaving Scotland. There has also been an increase in appeals related to uncertainty of procedures post-Brexit. This combined scenario resulted in a backlog of cases, which COPFS was still working through at the time of the interviews, as well as increased pressure on existing staff resources.

5.3.3- Scottish Government

Political preparations were carried out by a unit within the Scottish Government, which had previously been tasked with implementing EU JHA tools and measures, and with considering the UK's 2014 mass opt outs in EU police and judicial cooperation in criminal matters.

At UK level, although most preparations were undertaken by the Department for Exiting the European Union (DExEU), the Home Office was also tasked with understanding the impact of Brexit for the area of justice and home affairs. Until 2018, Home Office efforts focused on a 'no deal' scenario, with the emphasis shifting from 2019 onwards towards shaping the final agreement. Faced with the uncertainty of what level of cooperation the agreement would enable and how EUMS would engage with the UK post-Brexit, there were numerous attempts to engage directly with individual EU States to understand how cooperation could continue in a 'no deal' scenario. In the field of police and judicial cooperation, there was always the expectation, both within the UK and the Scottish Government, that some degree of technical cooperation would take place, given the crucial importance of keeping citizens safe. The challenges to achieving a deal stemmed rather from wider political questions and how they would affect this specific field, namely what would be the format and nature of the larger deal, whether there would be a single deal or multiple ones, and what would be the role of the Court of Justice.

5.4 Promoting Scottish interests

Interviewees consistently expressed confidence that Scotland has been able to promote its interests within the context of the UK-EU relationship post-Brexit, although several challenges were identified. In general, there is a clear sense that Scotland's centralised structure has allowed it to effectively

identify its strategic priorities and operational challenges. Practitioners working within Police Scotland and COPFS, whose main responsibility focuses on international cooperation, as well as policy makers, feel that EU- Scotland relations are particularly positive and that, although foreign affairs is not a devolved competence, there is a general awareness that Scotland is a separate jurisdiction. Scotland has been able to express its views, in particular through fora such as the TCA's Specialised Committee on Law Enforcement and Judicial Cooperation, through the liaising of the Scottish Government's International Justice Cooperation Unit with its counterparts in the EU, and through UK-wide operational and policy networks operating in the field of police and judicial cooperation. This includes Home Office and Ministry of Justice-chaired boards at the UK level, and of the Scottish Joint International Criminality Board at the Scottish level which is a strategic body that feeds into police and judicial cooperation policy development.

The challenges in ensuring that Scottish interests are represented at the international level stem from several issues, including a degree of lack of coordination at the UK level, a need to invest further resources in promoting such interests, and a lack of knowledge on the side of EUMS regarding post-Brexit processes. Some lack of coordination at the UK level stands out as the main challenge, with several practitioners feeling that Scottish interests were not always considered before legislation is passed, and that no clear forum was available to discuss these problems. The authors were given several examples relating to economic crime. Legislation concerning the seizing of cryptocurrency, for example, does not list Scottish Ministers as a relevant authority, even though they are responsible for civil recovery in Scotland. Consequently, this is a responsibility which falls to Police Scotland. Legislation based on the Police and Criminal Evidence Act 1984 (PACE) was also said to cause occasional difficulties. Another important area where a lack of national coordination has been identified relates to the UK Government's development of Memoranda of Understanding (MoU) with EUMS. Whether the relevant government department consulted with Scotland, ahead of signing a MoU, depended on the specific department involved. Interviewees mentioned that MoUs had been signed in areas that aimed to enhance police and judicial cooperation, although the relevant parties in Scotland had only become aware of their existence through media reports. Even if MoUs are non-binding documents, it is still vital that Scotland understands what is being committed to and ensures the MoU is compatible with the Scottish system. For example, procedures which can be carried out by the National Crime Agency in England may need the approval of the Lord Advocate in Scotland. A lack of coordination with Scotland can lead to legal incompatibility problems, hinder implementation, and hamper the presentation of the UK as a unitary state. Although the signing of international agreements is reserved to the UK Government, clear processes should be in place to ensure consultation with relevant stakeholders in Scotland. Finally, another area where a lack of coordination at national level was identified relates to the work of UK embassies and the need for them to also represent Scottish interests abroad.

Where resources are concerned, there has been a considerable investment in liaising with counterparts in EUMS to ensure that contacts are maintained, and that EUMS are aware of post-Brexit process for cases involving Scotland. Interviewees equated no longer being able to attend EU Justice and Home Affairs related meetings with a loss of networks and of capacity to shape decision-making, an absence which is now being compensated for through the reinforcement of bilateral relations. Financial and workload resources were felt to be an effective way of ensuring productive relationships with EU police and prosecutors, but limited budgets and difficulty justifying Scotland's foreign policy often created obstacles in achieving these goals.

Lack of knowledge also constitutes an important challenge to the promotion of Scottish interests. As mentioned above, EUMS may be aware that Scotland is a separate jurisdiction, but some have had difficulties identifying the appropriate procedure and contact person in order to cooperate with Scotland post-Brexit. Consequently, it was reported that Scotland is at times left out of international meetings because EUMS are not aware of Scotland having a separate system for extradition. The work of the Scottish Government's International Justice Cooperation Unit was seen as vital in ensuring Scotland's interests were heard in this policy space.

6- Implementing TCA Law Enforcement and Judicial Cooperation Clauses: current effectiveness and challenges

Following the entry into force of the TCA in 2021, Part Three of the agreement brought reassurance to policymakers and practitioners that the UK and the EU would be able to continue to cooperate on law enforcement and judicial cooperation in criminal matters. Whereas the Withdrawal Agreement has ensured that on-going investigations would not be disrupted during the transition period, the TCA brought an end to the uncertainty actors in the field were experiencing regarding the future relationship. Part Three is composed of 13 titles enabling continued access, from a third country stance to EU agencies, information exchange, mutual legal assistance, and a surrender mechanism for wanted individuals. Although it forms the most comprehensive agreement the EU has with any other state in the field of police and judicial cooperation, it also represents a narrower relationship than what the UK used to benefit from pre-Brexit. Not only has there been a reduction in access to EU instruments and agencies, but new challenges have also emerged, such as how to ensure mutual trust between the different actors involved. This section explores the implementation of Part Three in Scotland and identifies the challenges that have come to light since 2021. Although most of the hurdles are common to the rest of the UK, they have the potential to manifest themselves differently due to the specificities of the Scottish jurisdiction.

6.1 – Access to EU Agencies

Part Three of the TCA, Titles V and VI, enables the continued access of UK authorities to EU agencies working in the field of police and judicial cooperation. Although there are numerous agencies operating within the EU Area of Freedom, Security and Justice, including for example the European Union Drugs Agency, and the European Union Agency for Law Enforcement Training (CEPOL), the TCA has limited the UK's access to the two main agencies in the field – Europol, the EU's law enforcement

cooperation agency, and Eurojust, the EU agency for criminal justice cooperation.¹⁵ Titles V and VI have also been complemented by working arrangements with each of these agencies.¹⁶

During interviews, the authors were repeatedly told just how vital Europol was to the work of Police Scotland, although it has not always been used to its fullest capacity. The agency was described as an essential avenue to engage collectively with other partners and to build trust. Despite a significant period of uncertainty, practitioners overwhelmingly reported no change in how they were treated by liaison officers from EU countries following Brexit. In fact, there was a concerted effort to find alternative mechanisms for continued cooperation under various scenarios. Face-to-face meetings and general opportunities to socialise with those from other states were perceived as crucial to reinforcing existing relationships. The authors were told, 'If the relationships are good, the cooperation is good.' As a result, the number of new Europol cases, coordination meetings, and coordination centres (including those initiated by the UK) appears to have remained steady post-Brexit.¹⁷ It was also noted however that Senior Investigating Officers do not always fully understand how Europol and Interpol operate or support their investigations. Additional training and opportunities to visit the Europol and Interpol desks would therefore be beneficial.

The United Kingdom Liaison Bureau at Europol (UKLB) currently has a staff complement of 11, making it the second-largest third-country desk after the United States. Police Scotland contributes to the UKLB staff through the seconding of one officer. The TCA enabled the UKLB to retain physical desks in the proximity of other country desks, which was perceived as crucial for operational effectiveness. In the absence of an agreement, UK liaison officers would have needed to be relocated to the British Embassy in The Hague, which had the potential to severely disrupt cooperation.

Despite an overall optimistic outlook, the current arrangements still mark a significant shift from the relationship the UK enjoyed prior to Brexit. They have resulted in a loss of strategic and operational influence and access to information for the UK. Where the first is concerned, it no longer participates in Europol's Management Board and coordination structures and has no direct means of shaping the organisation's future strategic direction. This absence is significant, especially considering that the UK's crime priorities do not always align with those of the EU; for instance, the UK is more focused on small boat crossings, while the EU is more concerned with illicit money flows. Another key factor affecting influence is that UK officers can no longer be directly employed by Europol's Operational and Analysis Centre.¹⁸ Those officers already in post, including several strategic managers overseeing analysis projects, had to leave when the UK exited the EU in 2021. The loss of UK officers from the

¹⁵ House of Lords (2021) *Beyond Brexit- Policing, Law Enforcement and Security*. Last accessed on 19 August 2024. Accessible from: <https://lordslibrary.parliament.uk/beyond-brexit-policing-law-enforcement-and-security/>

¹⁶ A Working and Administrative Arrangement between the National Crime Agency and Europol was signed in September 2021 (see <https://www.nationalcrimeagency.gov.uk/news/nca-and-europol-sign-up-to-a-new-working-arrangement>), and a Working Arrangement between Eurojust and the Home Office was signed in December 2021 (see <https://www.eurojust.europa.eu/news/eurojust-and-uk-home-office-sign-working-arrangement>).

¹⁷ Wade, M. (forthcoming 2024) 'Judicial Cooperation Between the UK and the EU in Criminal Matters Post-Brexit', in G. Davies and H. Carrapico (Eds.) *UK-EU Police and Judicial Cooperation Post-Brexit*. Hart Studies in European Criminal Law. Hart Publishing.

¹⁸ Marks, E. (forthcoming 2025) 'The importance of trust-based networks in police and judicial cooperation', in G. Davies and H. Carrapico (eds) *UK-EU Police and Judicial Cooperation Post-Brexit*. Hart Studies in European Criminal Law. Hart Publishing.

Operational and Analysis Centre is viewed as a lose-lose situation: Europol lost valuable UK expertise, and the UK loses the possibility of British officers returning with enhanced skills and training. There was a belief, for example, that the UK could have contributed to the AI-driven Child Sexual Exploitation Analysis Centre. However, the current working arrangements allow for UK representatives to be invited to participate in operational analysis projects related to relevant cases. For example, while UK officers are no longer employed by the European Cybercrime Centre (EC3), the Europol unit which provides operational support in cybercrime investigations, UK liaison officers can still engage in Joint Cybercrime Action Taskforce (J-CAT) analysis projects. Continued participation in J-CAT remains crucial, as it is considered a close-knit forum where other EU Member States conduct checks on behalf of Police Scotland officers.

In terms of information access, there has been a reduction or restriction in access to Europol databases that were widely used before Brexit. The Secure Information Exchange Network Application (SIENA), which is used by both EU and non-EU countries to exchange sensitive and restricted information, now limits the UK's access. The UK receives messages labelled 'EU Restricted' but does not receive information marked as 'EU Confidential,' which includes intelligence data. Despite this downgrade, continued access to SIENA is considered extremely important by Police Scotland. For some practitioners, SIENA is in fact currently perceived as more crucial than the Schengen Information System II (SISII), although this understanding may relate to a previous lack of exposure to SISII. In practice, many EUMS have adjusted the UK's designation to ensure continued receipt of SIENA messages. Additionally, the UK has lost direct access to the Europol Information System (EIS), the Agency's central database for criminal information and exchanges. The UK can now only store and query data through Europol's operational centre.

A Joint Investigation Team (JIT) is an important cooperation tool which enables competent authorities (both judicial and law enforcement) to establish an agreement for a limited duration and purpose to carry out a parallel criminal investigation in two or more states. The agreement can allow for the direct gathering and exchange of information and evidence without the need to use MLA and for officers to be present and take part in investigative measures conducted outside their state of origin. There are several legal bases upon which a JIT can be established. Most EUMS prefer to set up a JIT under EU law as this enables access to Europol funding.¹⁹ This is not the only legal basis upon which a JIT can be established. The UK is a signatory to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters and other crime specific treaties which can form the legal basis of a JIT with EUMS.²⁰ In practice the UK has lost the ability to initiate a JIT with another EUMS. If this is done under EU law only a EUMS can initiate the JIT. This was experienced as a frustration by practitioners, though one which has been manageable so far.

Additionally, concerns have also been voiced about the lack of funding for attending JIT meetings, with Police Scotland now having to cover overseas travel expenses. Previously, training courses for British police officers were available through networks like JCAT, but these are no longer funded by the EU. Police Scotland should ensure that additional resources for travel are allocated and that training needs are addressed. We understand that a new Operational Agreement is under negotiation with Europol, which could further enhance cooperation. As outlined above, the key priorities for improvement are:

¹⁹ Council Framework Decision of 13 June 2002 on joint investigation teams (2002/456/JHA)

²⁰ Eurojust, Guidelines on Joint Investigation Teams Involving Third Countries, June 2022.

1) The ability of UK officers to work within the Operational and Analysis Centre; 2) Access to funding and training 3) the ability to initiate and lead a Joint Investigation Team.

Regarding Eurojust, the UK has a Liaison Prosecutor supported by a team of up to five assistants. Participation in operational meetings requires the consent of the national members involved, which has not caused any significant issues for the UK so far. Although statistics indicate a modest decline in UK activity, this drop has been relatively small, and the figures for 2020 and 2021 have likely been affected by the pandemic.²¹ In fact, the latest annual report shows an upward trend in the number of coordination meetings initiated by the UK. Scotland seconds a trainee to Eurojust as part of the UK office.

6. 2- Access to Information Sharing Mechanisms

6.2.1- DNA and fingerprint exchange

Title II of Part Three of the TCA provides for the automated transfer of DNA data, fingerprint information, and vehicle registration data, mirroring Prüm rules. Similar to Prüm, the querying state is notified only if the requested profile is present in the other state's databases. If a match is found, further details can be obtained by contacting the state that holds the data or by initiating a request for mutual legal assistance. Additionally, the TCA mandates that the UK and EU Member States must allow competent authorities from other states to access all categories of data available for search and comparison under the same conditions as those applied to their domestic authorities.

Although the UK was a late adopter of Prüm - the decision to do so was delayed by the 2016 'opt in/opt out' decisions and by the technical and financial cost of installing systems to support the automated exchange of such data²² - this mechanism was described as very important, particularly in counter terrorist investigations. Following delays in implementation, the UK was only able, pre-Brexit, to exchange DNA data between June 2019 until December 2020 and fingerprint data between August and December 2020; the UK never put in place the cooperation system for vehicle registration data. From 2021 onwards, cooperation was permitted on an interim basis until June 30, 2022, contingent upon the UK fulfilling the conditions outlined in Article 539 and Annex 39 of the TCA. Following an evaluation visit on 24 and 25 November 2021, the EU evaluation team concluded the UK met the relevant requirements on DNA profiles and fingerprint data. An EU legislative Act, passed on 14 June 2022, formally confirmed this position. 27 EUMS have provided the UK with access to their DNA databases for automatic searching, and 22 EUMS provided access to their fingerprint data.²³ These

²¹ Wade, M. (forthcoming 2024) 'Judicial Cooperation Between the UK and the EU in Criminal Matters Post-Brexit', in G. Davies and H. Carrapico (Eds.) UK-EU Police and Judicial Cooperation Post-Brexit. Hart Studies in European Criminal Law. Hart Publishing.

²² House of Lords (2015) The United Kingdom's Participation in Prüm. European Union Committee. Last accessed on 19 August 2024. Available from:

<https://publications.parliament.uk/pa/ld201516/ldselect/ldcom/66/6603.htm>

²³ European Commission (2024) Report from the Commission to the European Parliament and the Council on the implementation and application of the Trade and Cooperation Agreement between the European Union and the United Kingdom of Great Britain and Northern Ireland. 1 January to 31 December. COM(2024) 127

provisions are working well with limited reported impact to the exchange of DNA and fingerprint data. Despite this positive perspective, one interviewee from a EUMS noted that after identifying a hit in the Scottish database, progressing to obtaining a full match was not always straightforward.

6.2.2-Vehicle Registration Data

The United Kingdom has not yet indicated readiness for evaluation regarding vehicle registration data. The TCA stipulates that states must use a version of the European Vehicle and Driving Licence Information System (EUCARIS) for automated searches of vehicle registration data. Cooperation was permitted on an interim basis until June 30, 2022, but has since ended. The UK is reportedly continuing technical preparations to implement the vehicle registration data component of the Prüm system. Access to this part of Prüm would help flag vehicles of interest to law enforcement. In 2022, vehicle thefts across England and Wales increased by 24.9%.²⁴ The UK National Vehicle Crime Intelligence Service, which manages three UK ports, identified £2.96 million worth of stolen vehicles in just the first nine months of 2021, primarily destined for Cyprus or Africa—an increase of 112% compared to the previous year.²⁵ Ensuring that the UK can share vehicle registration data should be a priority.

6.2.3- Passenger Name Records

Access to passenger name records (PNR) for air travel departing from the EU is provided for in Title III of Part Three of the TCA, with rules largely mirroring the EU PNR Directive²⁶, but with one notable exception. The UK is now required to delete PNR data after passengers depart the UK, unless objective evidence demonstrates that certain individuals pose a risk in relation to terrorism or serious crime.²⁷ UK systems initially lacked a mechanism for compliance with this requirement, leading to a temporary derogation from its obligations until December 31, 2023. The domestic legal implications of the derogation's end have been addressed through secondary legislation.²⁸ Legal provisions are now in

final. Brussels. Last accessed on 21 August 2024. Available from:

https://commission.europa.eu/document/download/def518e5-144b-4e73-a54a-5b078544da48_en?filename=COM-2024-127_0_en.pdf. This information was updated as of October 2024 through interviews.

²⁴ Office of National Statistics available at

<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/datasets/crimeinenglandandwales/appendixtables> <last accessed 14 September 2024>

²⁵ DirectLine, 'Cyprus, DR Congo and Ghana top destinations for stolen cars out of UK Ports (19 November 2021) <https://www.directlinegroup.co.uk/en/news/brand-news/2021/cyprus--dr-congo-and-ghana-top-destinations-for-stolen-cars-out-.html> <last accessed 14 September 2024>

²⁶ Fahey, E., E. Guild, and E. Kuskonmaz (2023) 'The Novelty of EU Passenger Name Records (PNR) in EU Trade Agreements: on shifting uses of data governance in light of the EU-UK Trade and Cooperation Agreement PNR provisions'. *European Papers*. Vol. 8 (1): 273- 299.

²⁷ This takes into account Opinion 1/15 of the Court of Justice of the EU (CJEU) regarding the draft EU-Canada PNR Agreement.

²⁸ The European Union (Future Relationship) Act 2020 (Commencement No. 3) Regulations 2023. This implemented paragraph 14 of Schedule 2 to the 2020 Act on 21 December 2023 which inserted a new regulation 13B into The Passenger Name Record Data and Miscellaneous Amendments regulation 2018. Regulation 13B replaced regulation 13AA which had provided for the operation of the interim period safeguards set out in Article 552(11)TCA.

place to ensure compliance with the TCA's obligations. PNR data for flights between the EU and the UK, as well as flights to and from the UK operated by carriers storing data in the EU, continues to be transferred to the UK and used for the purposes outlined in Article 544 of the TCA (preventing, detecting, investigating or prosecuting terrorism or serious crime). However, the requirement to delete data poses a clear disadvantage, making it more challenging to cross-check the names of persons of interest and their associates against historical flight records.

During the TCA negotiations, the UK proposed that passenger information be exchanged for rail and sea travel as well. This area could benefit from a bilateral agreement between the UK and Ireland, given the close connections between Scotland and Ireland and the potential misuse of the Common Travel Area by those involved in serious organised crime.²⁹

6.2.4- Information Exchange Mechanisms whose access was curtailed by the TCA

European Criminal Records Information System

Prior to Brexit, the UK benefited significantly from the European Criminal Records Information System (ECRIS), where it was the second most active user, requesting more records than it provided. This system was crucial for investigations, especially in human trafficking cases. Under Title IX of the Trade and Cooperation Agreement, the UK no longer has access to ECRIS but the new provisions closely mirror its functions. This provision ensures that at least one state maintains a complete record of all convictions, regardless of where they are issued.³⁰ However, significant differences exist: whereas ECRIS mandated prompt communication, the TCA requires monthly reporting of convictions, with a response time extended to twenty days instead of ten. Despite the UK's formal departure from ECRIS, EU states continue to utilise it in cooperation with the UK, which now connects via the UK Criminal Record Information System (UKCRIS). Reports suggest minimal disruption in the exchange of criminal records, and even with longer response times, efficient exchanges remain possible.

In 2019, the EU signed an agreement to establish ECRIS-TCN, a new database designed to store the past convictions of third-country nationals. Although still under construction, once operational, it will streamline access to information on non-EU nationals' criminal histories for EU law enforcement, prosecutors, and judges. Although the UK initially opted into this measure while still part of the EU, the TCA does not offer the UK access to ECRIS-TCN due to its centralised structure. Instead, the UK must rely on bilateral requests to individual EUMS to obtain data on third-country nationals. This process is resource-intensive and may lead to gaps in information compared to the streamlined access available to EU countries.

²⁹ Gemma Davies, 'Facilitating cross-border criminal justice cooperation between the UK and Ireland after Brexit: Keeping the lights on to ensure the safety of the Common Travel Area', (2021) 85(2) *Journal of Criminal Law* 77

³⁰ Gemma Davies and Adam Jackson, 'Making the Case for ECRIS: Post "Brexit" Sharing of Criminal Records Information between the EU and UK' (2017) 21(4) *International Journal of Evidence and Proof* 330

Schengen Information System II

The Second-Generation Schengen Information System (SISII) enables real-time sharing of data on wanted or missing persons and stolen objects across Europe and is the largest EU information sharing mechanism in the field of law enforcement.³¹ Although the UK was a late adopter of the SISII (it connected to the system in 2015 and its usage was limited to law enforcement purposes), the mechanism quickly became perceived as fundamental to UK policing, with officers making use of SISII 603 million times in 2019.³² The National Police Chiefs' Council (NPCC) emphasised that continued access to SISII was crucial for quickly determining whether someone is wanted in another country, missing, or driving a stolen vehicle. This system was vital for police officers to make informed decisions (such as those related to custody) in order to ensure public safety. Despite its crucial importance, the UK lost access to SISII at the end of the Brexit transition, resulting in the deletion of around 40,000 alerts on dangerous criminals and wanted suspects by the end of December 2020. Additionally, 5.7 million alerts originating from the UK were removed from SISII by the end of 2021.³³ Each country also has a national SIRENE bureau which administers the national system. Staff network through several operational steering groups. Working group meetings give national bureau members important opportunities to network. The UK has closed its SIRENE bureau and no longer benefits from its networking value.³⁴

Early in the negotiations, UK law enforcement recognised the need to mitigate the inevitable loss of access to SISII, which is not available to non-Schengen third countries. Scotland began developing mitigation strategies in 2017, working closely with the National Police Chiefs' Council (NPCC) and the Police Service of Northern Ireland (PSNI). The Interpol database, i24/7, emerged as the only viable alternative for circulating international alerts. However, its use presented several challenges:

- i. It was not integrated into the police national computer (PNC). This meant that, unlike with SIS II, there was no seamless integration. Both systems could not be checked simultaneously.
- ii. Similarly, alerts could not automatically be circulated without separately imputing them into both systems. This would require 'double keying' of information.
- iii. There was a lack of i24/7 licenses and limited knowledge of the system.

The National Police Chiefs' Council (NPCC) established the International Crime Cooperation Centre (ICCC), funded by the Home Office, to enhance UK policing's use of international crime-fighting tools.³⁵

³¹ European Commission (2024) Online Platform for EU Information Systems' Handbooks. Last accessed on 20 August 2024. Available from: <https://schengen-it-systems.ec.europa.eu/>

³² House of Lords (2021) *Beyond Brexit- Policing, Law Enforcement and Security*. Last accessed on 19 August 2024. Accessible from: <https://lordslibrary.parliament.uk/beyond-brexit-policing-law-enforcement-and-security/>

³³ Vavoula, N. (forthcoming 2024) 'The UK's (Non-)Participation to Interoperable Centralised and Decentralised Systems for Information Exchange: Paying a Heavy Price for Brexit?', in G. Davies and H. Carrapico (Eds.) *UK-EU Police and Judicial Cooperation Post-Brexit*. Hart Studies in European Criminal Law. Hart Publishing.

³⁴ Marks, E. (forthcoming 2025) 'The importance of trust-based networks in police and judicial cooperation', in G. Davies and H. Carrapico (eds) *UK-EU Police and Judicial Cooperation Post-Brexit*. Hart Studies in European Criminal Law. Hart Publishing.

³⁵ Thomson above (n1).

To facilitate this, 6,000 additional licenses were purchased, and the ICCC's network of regional Single Points of Contact (SPOCs) collaborated with police forces to boost training, provide 24-hour support, and ensure that control rooms and custody staff were equipped to conduct i24/7 checks. In Scotland, the authors were informed that all staff were granted direct access to the i24/7 system, eliminating the need to go through the National Crime Agency (NCA) for alerts. Extensive training was provided to Police Scotland officers on using i24/7. However, the numerous concurrent changes within Police Scotland, along with personnel shifts, made it challenging to maintain consistency in messaging and awareness of the available systems.

The authors were also told that the time delays that emerged after the UK lost access to SISII were of specific concern. Alerts and circulations generated in the UK must first be entered into the Police National Computer (PNC), followed by the completion of a secondary form, which is then forwarded to the NCA International Crime Bureau for uploading to the i24/7 system. While this process initially caused delays, it was partially automated using smart forms to minimize the issue of double keying. Over time, the procedures have improved, and the time delay has been reduced to mere hours. It was generally felt that the strategy to mitigate the loss of SISII by increasing reliance on i24/7 had been as successful as possible, under the circumstances.

The successful use of i24/7 also hinges on reciprocity from EU countries. The UK relies on these countries to create alerts and circulations on both SISII and i24/7. To address this, the UK has actively worked to persuade EU agencies and EUMS to engage in 'double keying'—inputting information into both systems. While many states have responded positively, others have not been as consistent. If a state fails to double key, the operational risk is significant: a criminal wanted across the EU on a European Arrest Warrant (EAW) could potentially enter the UK undetected if the alert has not been dual circulated on i24/7 as a red (wanted) notice. The extent of this operational blind spot remains unknown.³⁶

The number of red notices coming through Interpol is said to be about 90% of the number that were previously received through the SISII and so it is hoped that the UK has been successful in persuading most EUMS to use Interpol.³⁷ Assessing whether the UK has missed crucial information post-Brexit is inherently challenging. The absence of data that might have been accessible before Brexit makes it impossible to quantify the impact of such gaps, as one cannot measure the consequences of information that was never received. It is, in practice, impossible to demonstrate the impact of a negative.

To address the issue of double keying, the UK has been developing the International Law Enforcement Alert Platform (I-LEAP)³⁸. This platform, once fully operational, will provide UK law enforcement with a unified system for accessing both the Police National Computer (PNC) and Interpol data via handheld devices. The first phase of I-LEAP enables direct, real-time access to the fixed Interpol's network database (FIND) system via its i24/7 network, including facial images of subjects linked to Interpol

³⁶ Pearson above (n12).

³⁷ Pearson above (n12).

³⁸ Home Office (2024) International Law Enforcement Alerts Platform (I-LEAP) Programme Accounting Officer Assessment. Last accessed on 20 August 2024. Available from: <https://www.gov.uk/government/publications/home-office-major-programmes-accounting-officer-assessments/international-law-enforcement-alerts-platform-i-leap-programme>

notices and diffusions. After a successful pilot in 2022, several police authorities have adopted the platform, though Police Scotland had not, at the time of the interviews, implemented it.

In phase two of I-LEAP, the goal is to enable real-time reciprocal sharing of alerts with international partners, similar to the functionality of SISII. This phase, which is still in its early development stages, aims to focus on a multilateral solution with the EU, followed by bilateral agreements with other partners. To realise this goal, strict compliance with EU data protection laws will be crucial. The European Commission's 2022 proposal for a Regulation on a framework for reciprocal access to security-related information for front-line officers between the EU and third countries offers promising prospects. It suggests that a multilateral agreement with the EU could be attainable, potentially enhancing the scope and effectiveness of international law enforcement collaboration.

The EU is set to enhance SISII by incorporating additional biometric data, including photographs, fingerprints, palm prints, and DNA. These upgrades will improve the circulation of preventive alerts aimed at safeguarding vulnerable individuals and countering terrorist activities. The UK, however, will not benefit from these advancements. To mitigate risks from international criminality, it is crucial for the UK to bolster its alert exchange capabilities with EU partners. Police Scotland were early adopters and commenced a phased rollout of I-LEAP throughout Scotland on 6th March 2023- 5th February 2024. Roll out of phase two would effectively contribute to the evolving international security framework.

[Loss of Access to SISII's impact on the circulation of Arrest Warrants](#)

European Arrest Warrants (EAWs) are disseminated to all EUMS through SISII, allowing for the immediate arrest of individuals regardless of their location within the EU. This means that a person could be unexpectedly apprehended in a state where they have no prior connections, such as at a border or during a routine interaction with law enforcement, like a traffic stop. Unlike EAWs, Interpol's Red Notices did not confer arrest powers within the UK. Unless there were immediate grounds for arrest based on a crime committed in the UK, a Red Notice alone did not permit arrest. To address this issue ahead of exit, the UK enacted domestic legislation granting provisional arrest powers for Red Notices. Despite this, interviews revealed a persistent reluctance among officers to make arrests based solely on Red Notices. We are told that officers prefer to wait for an Arrest Warrant issued under the TCA (a TaCA warrant) to be certified by the UK Central Authority (UKCA). This preference can lead to delays and missed opportunities for arrests. It continues to be the case that a Red Notice does not provide a power to arrest in EUMS.

To notify the UK that an individual is wanted, EUMS must now issue both an EAW and a TaCA warrant, which increases the workload for EU officers. The UK has worked with key EU partners to encourage greater use of i24/7. However, TaCA warrants are typically only issued by judges in EUMS if there is a clear connection to the UK. We were told by EU practitioners that they have been involved in cases where TaCA warrant requests were denied due to insufficient evidence of such a connection to the UK. In such cases the state can issue an EAW which will be circulated on SISII to all other EUMS, but a wanted notice may not be circulated to the UK and there is no TaCA warrant. If that individual were then to enter the UK, their wanted status may not be known. The loss of access to SISII was frequently cited as one of the most significant losses post Brexit and has been described by interviewees as having a 'massive impact'.

In the immediate aftermath of the UK's exit from the EU, UK prosecutors were advised that a TaCA warrant should only be issued if the location of the accused was known in a particular EUMS. This meant a loss of an ability to circulate speculative warrants. One interviewee noted that the inability to circulate speculative warrants had led to a tangible decrease in the number of people identified and prosecuted. The practice in Scotland has now changed and a TaCA warrant will be issued where it is considered possible that the accused might travel to or through any EUMS.

When a TaCA warrant is issued by the UK it is not circulated on i24/7, but a wanted notice is. This wanted notice does not provide a power of arrest in most EU states. If a person comes to the attention of officials in the EU, they will contact the NCA who must provide the TaCA which enables arrest. Any delay in this process may result in a lost opportunity to apprehend a wanted person.

When the UK issues a wanted notice through i24/7 this is not as effective as circulation through SISII. Although UK officers now have access to i24/7 through the phase one roll out of I-LEAP, EUMS police do not. In most states access to i24/7 is accessed routinely only by immigration/border officials. A wanted person will therefore only be identified when crossing an external EU border or through interaction with immigration authorities, such as when renewing a passport. There is now a significantly reduced possibility of the individual being identified through unrelated interaction with law enforcement, such a routine traffic stop.

Post Brexit the ability of UK police to locate wanted individuals abroad now heavily relies on the quality of intelligence. Fugitives often spend only a brief time in Europe before acquiring false documents and fleeing to other parts of the world. This has been labour intensive. However, Police Scotland have now developed enhanced skills in this area.

The impact of the loss of the ability to circulate warrants through SISII is set out below in **fictional** case example.

AB is wanted in the Scotland on fraud charges after failing to surrender on bail. He is thought to be in Dubai. The UK has no extradition arrangement with the United Arab Emirates and officers must hope he moves to a different country. There is intelligence that he has business connections in EUMS Y and may be planning to travel there soon. In fact, AB is no longer in Dubai but has already entered the EU via EUMS Z. A few weeks later he is involved in a minor car accident attended by EUMS Z police.

Pre Brexit: The UK would issue a European Arrest Warrant which would be circulated via SISII to all EUMS including EUMS Z. Despite having no previous connection to EUMS Z, AB could be identified as being wanted when police checked his details against the EUMS Z police national computer. The EAW would provide a power of arrest. Surrender proceedings can then follow.

Post Brexit: Police Scotland would issue a TaCA based on intelligence that AB may travel to a EUMS. A red notice is circulated to all EUMS via i24/7. As AB is already in the Schengen Area his wanted status is not likely to come to the attention of EUMS Z police officers if he is not recorded on their database as wanted. Unless he leaves the Schengen Area through a check point, he is unlikely to be apprehended.

Case Example 1: Wanted in the UK

BC is wanted in EUMS Z in connection with drug trafficking offences. There is intelligence she is now in the Republic of Ireland. BC has in fact travelled to Scotland from Ireland via ferry where she remains. She came to the attention of police during a drugs investigation but there is no evidence she has committed a crime in Scotland.

Pre Brexit: EUMS Z issues an EAW which is circulated via SISII. When BC is investigated by police, if they correctly identify her, they will know there is a warrant outstanding. She can be arrested and surrender proceedings can commence.

Post Brexit: EUMS Z issues an EAW which is not circulated to the UK. As the Republic of Ireland has an open border with the UK EUMS Z authorities also apply for a TaCA. This is rejected by the judge as there is no clear connection to the UK. The officer in EUMS Z does not issue a Red Notice on i24/7. Her wanted status will remain unknown to Scottish police.

Case example 2: Wanted in the EU

The Trade and Cooperation Agreement sets out provisions on surrender which very closely mirror those of the European Arrest Warrant. The EU and UK negotiators must have intended for surrender to continue in as seamless a manner as possible. As illustrated above because of the changes to the way surrender warrants are issued and circulated the new provisions make it significantly less likely that a wanted person will be detected. The two primary issues are:

- Some courts of EUMS will only issue a TaCA warrant if there is a known connection to the UK, even if a EAW can be issued.
- Police in EUMS do not access i24/7 in the same way they do SISII.

The first issue may be remedied if the provisions of the TCA made it clear that if an EAW can be issued a TaCA warrant can also be issued without any further evidence of a connection to the UK. This is necessary and proportionate as the UK has an open border with the EU via Ireland and due to the physical proximity and the high volume of movement of persons between the UK and the EU.

The second issue could be remedied by TaCA warrants being circulated via SISII. It is accepted that the EU made it clear during negotiations that the UK could not have access to SISII which is reserved only for Schengen States. However, TaCA warrants could be sent to Europol who could upload to SISII. If this was done quickly and reliably it would solve the problem of EUMS officers not accessing i24/7 in the same way they do SISII.

6.2.5- Interoperability of Information Exchange Mechanisms

The EU is currently advancing a program to enhance the interoperability of its large-scale IT systems for third-country nationals.³⁹ The EU initiative aims to centralise and integrate currently decentralised systems to improve data sharing.⁴⁰ As a Member State, the UK did not have access to the entirety of these individual systems, namely those related to border controls, which were restricted to Schengen

³⁹ Vavoula, above (n33).

⁴⁰ EU-LISA (2019) Interoperability- EU IT Systems Working Together for a Safer Europe. Last accessed on 20 August 2024. Available from: <https://www.eulisa.europa.eu/Publications/Information%20Material/Leaflet%20Interoperability.pdf>

countries. This interoperability process, which began with the Prüm database, is already being expanded with the entry into force of the Prüm II Regulation in April 2024.⁴¹ The expansion will include sharing of facial recognition data, photographs from drivers' licenses, and police records, creating a comprehensive biometric surveillance network. The Prüm II regulation outlines a new framework to facilitate easier and faster data exchanges between Member States, potentially revolutionising cross-border information sharing and security. It will be some years before Prüm II is operational. The UK Government has said that consultation on this issue will not start until the EU implementing legislation is closer to adoption. A decision on whether the UK will seek to join Prüm II has not been made. Although international affairs are reserved under the UK's devolution settlement some aspects of forensic and biometric policy are devolved to Scotland and so coordination on the UK response is required.⁴² Centralisation is also planned for Passenger Name Records (PNR).

If all these systems transition to a centralised model, amendments to the TCA will be necessary for the UK to maintain its current access. The TCA anticipates such changes and stipulates that any substantial amendments to Prüm, or similar systems, must be addressed through formal negotiations. The EU is responsible for notifying the UK of its intention to pursue an amendment via the Specialised Committee for Law Enforcement and Judicial Cooperation. This notification will initiate a nine-month consultation period, which can be extended for an additional nine months. If no agreement is reached within this timeframe, there could be a suspension of cooperation.⁴³ As discussed above, access to DNA, fingerprints and flight passenger name records are vital resources for the UK, and it is important that discussions (both internally and with the EU) take place as early as possible to ensure continued connectivity.

6.3- Access to Mutual Legal Assistance

Prior to Brexit, the UK could issue a European Investigation Order (EIO), a legally binding request to other EUMS to gather evidence or carry out investigative measures within a set deadline. Following the entry into force of the TCA, however, this capability is no longer available. The UK now relies on the European Convention on Mutual Assistance in Criminal matters 1959, supplemented by Title VII of the TCA, for cooperation with EUMS.⁴⁴ The TCA introduced a standardised form for mutual assistance requests, although the latter was only finalised in the first half of 2023. Although the new form closely mirrors the information required by the EIO, reducing disruption, the time limits under the TCA are longer than those applicable to the EIO. We did hear reports of significant delays in

⁴¹ Official Journal of the European Union (2024) Regulation 2024/982 of the European Parliament and of the Council of 13 March 2024 on the automated search and exchange of data for police cooperation, and amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations 2018/1726, 2019/817 and 2019/818. Last accessed on 20 August 2024. Available from: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202400982

⁴² Home Office, 'Explanatory Memorandum on European Union Legislation' (20 March 2024) https://assets.publishing.service.gov.uk/media/65faffda9316f5001164c415/2024-03-20_Prüm_II_EM.pdf <last accessed 14 September 2024>

⁴³ Vavoula above (n33).

⁴⁴ Davies, G., Arnell, P., Bock, S., and Worner, L., 'Police Cooperation and Exchange of Information under the EU-UK Trade and Cooperation Agreement (TCA)', (2021) 12(2) *New Journal of European Criminal Law* 262

obtaining evidence from teams dependent on mutual legal assistance, but this was variable. Further research would be needed to authoritatively state the impact of Brexit on evidence exchange.

Not all requests for cooperation require formal procedures like the European Investigation Order (EIO). Many exchanges of information can occur on a police-to-police basis if no coercive measures are necessary. The TCA stipulates that police-to-police cooperation should continue, subject to certain data protection requirements. Despite this, interviewees reported that post-Brexit, there appears to be increased hesitancy among some EUMS to engage in police-to-police cooperation with the UK. Officers from different EUMS, currently stationed in the UK, reported that legal barriers to sharing information with the UK have increased. Their domestic laws now restrict unfettered police-to-police exchanges to within the EU, necessitating prosecutor approval for sharing information with the UK. This additional layer of approval has slowed down the process and increased the number of refusals. As a result, investigations have become more time-consuming and resource-intensive for Police Scotland.

The UK is attempting to address this issue through bilateral instruments. The authors were told, for example, that a Cooperation Agreement is being finalised with Belgium to facilitate deeper cooperation and better information exchange.⁴⁵ As bilateral negotiations are handled by the Home Office, it is crucial that Scotland's interests are adequately represented in these discussions to ensure that it benefits from any improvements in information-sharing arrangements.

6.3.1- Sharing of E-evidence

Mutual legal assistance treaties (MLATs) have struggled to provide law enforcement with rapid access to electronic evidence stored on overseas servers. The SIRIUS report highlighted that “digital data held by Online Service Providers (OSPs) is essential to nearly all criminal investigations.”⁴⁶ To address this, the European Commission has introduced the ‘e-evidence package,’ allowing law enforcement in one EU member state to request data directly from a service provider in another member state without the need for mutual legal assistance.⁴⁷ This legislation also encourages EU law enforcement agencies to establish or expand units for cross-border data requests, enhance training on electronic evidence access, and secure communication with strong passwords and two-factor authentication.

⁴⁵ The agreement was negotiated by the Conservative Government and expected to be finalised in the first half of 2024. For further information, please see: <https://www.gov.uk/government/news/pm-meeting-with-the-prime-minister-of-belgium-23-january-2024> For an example of media coverage of this agreement, please see: <https://www.brusselstimes.com/890102/de-croo-in-london-belgian-uk-cooperation-more-intense-than-ever>

⁴⁶ Europol (2022) SIRIUS EU Digital Evidence Situation Report. Last accessed on 20 August 2024. Accessible from: https://www.europol.europa.eu/cms/sites/default/files/documents/SIRIUS_DESR_2022.pdf

⁴⁷ The e-evidence package is composed of two main pieces of legislation: 1) [Regulation \(EU\) 2023/1543](#) on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings (*O.J. L 191, 28.7.2023, pp. 118–180*); and 2) [Directive \(EU\) 2023/1544](#) laying down harmonised rules on the designation of designated establishments and the appointment of legal representatives for the purpose of gathering electronic evidence in criminal proceedings (*O.J. L 191, 28.7.2023, pp. 181–190*). The Regulation will apply from August 2026 onwards, and the Directive is expected to be transposed into domestic law by February 2026.

As a non-EU member state, the UK will not benefit directly from this new legislative package. However, the UK has enacted its own laws enabling it to enter into international agreements for direct access to electronic evidence, the Crime (Overseas Production Orders) Act 2019. So far, the UK has signed such an agreement only with the United States, which took effect in November 2022. With the EU having finalized its internal arrangements for e-evidence sharing, there is potential for negotiating international agreements. An agreement with the EU—whether through a separate accord or an amendment to the TCA—could significantly enhance the UK’s ability to access electronic evidence more swiftly.⁴⁸

6.4 - TCA provisions on surrender/ extradition

The European Arrest Warrant (EAW) revolutionised extradition within the European Union by establishing a streamlined and simplified judicial process known as surrender.⁴⁹ Under the TCA, the UK can no longer participate in the EAW system but is subject to new surrender arrangements that retain many of the EAW’s features, such as time limits and grounds for mandatory refusal. The key differences between the EAW and the TCA surrender arrangements include the introduction of proportionality as an overarching principle and the addition of three new grounds for refusal: 1) political offences, 2) nationality, and 3) dual criminality.

Extradition requests to Scotland are proportionately fewer compared to those received by the rest of the UK, yet cooperation with EUMS remains crucial. Most requests stem from Poland and Romania, with frequent interactions also involving Spain and the Netherlands. Evaluating the impact of the new surrender provisions is challenging due to their coinciding with the COVID-19 pandemic, which significantly disrupted normal operations. During the pandemic, court closures and travel restrictions hindered the surrender process and led to a backlog of cases. As of September 2023, this backlog persisted, exacerbated by a temporary suspension of extradition to Poland pending the resolution of rule-of-law disputes. Additionally, Brexit resulted in a short-term increase to the number of challenges to surrender requests, leading to an increase in appeals and placing additional strain on the team. However, it is felt that this has now settled. Despite a boost in financial resources following Brexit, staffing challenges persist, affecting the team’s ability to manage the increased workload effectively.

6.4.1- Proportionality

The European Arrest Warrant was heavily criticized in the British press for its frequent use in trivial cases which was argued to be disproportionate. This was addressed through amendment to the EAW

⁴⁸ Davies, G., ‘Police Access to Electronic Evidence Stored Overseas: Cooperation between the EU and UK post-Brexit’ in Heffernan, L., *Criminal Law and Justice in the European Union* (Clarus Press Spring 2022)

⁴⁹ Official Journal of the European Union (2002) Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States. (O.J. L 190, 18.7.2002, pp. 1-20) Last accessed on 20 August 2024. Available from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32002F0584>

Handbook but not through amendment to the Framework Decision.⁵⁰ The TCA's surrender provisions explicitly incorporate the principle of proportionality in the legal text. This principle can be assessed both when an arrest warrant is issued and during its execution. If the information provided is deemed insufficient for evaluating proportionality, the executing authority is required to request additional details from the issuing state. Under the Extradition Act 2003 proportionality was always a factor to be considered. The Act requires the potential sentence in an accusation case to be 12 months imprisonment and in a conviction case that a period of 4 months must remain to be served. The introduction of proportionality into the TCA has therefore had no impact on outgoing requests. For incoming requests, there have been no known cases which have been denied on the basis of proportionality.

6.4.2 - Political offence exception

The TCA has (re)introduced a political offence exception into UK–EU surrender arrangements in Art 602(1) as was found in the EAW. This broadly speaking means a state cannot refuse to extradite for political offences, an offence related to a political offence or inspired by a political motive.⁵¹ However, the terms of the TCA say that Member States can notify the Specialised Committee that this exception will only apply to specific terrorism related offences.⁵² This would mean that except for these offences the state does not apply the political offence exception and can refuse to extradite if the offence is considered political, related to a political offence or inspired by a political motive. Twelve Member States have issued this declaration, but the UK has not.⁵³ So far, the return of a bar to extradition for political offences in these states has not resulted in any refusals to extradite to Scotland.

6.4.3 – Nationality Bar

Under the TCA, EU Member States (EUMS) can notify the UK that they will not extradite their own nationals. This provision has been invoked initially by ten Member States⁵⁴, exceeding Home Office expectations. Additionally, 13 other Member States have stipulated conditions for the surrender of their nationals, primarily focusing on reciprocity, temporary surrender or consent. For instance, Portugal will only surrender its nationals in cases involving certain terrorist or organised crime

⁵⁰ House of Commons Library, 'The European Arrest Warrant' (Briefing Paper No 07016, 18 April 2017)

⁵¹ Paul Arnell and Clive Walker, 'The Resurrection of the Political Offence Exception to Extradition in UK Law' (2024) *New Journal of European Criminal Law*

⁵² See 602(2) TCA which includes Articles 1 and 2 of the European Convention on the Suppression of Terrorism 1977, including conspiracy or association to commit these offences, and terrorism as defined in Annex 45 of the TCA.

⁵³ Belgium, Czech Republic, Denmark, France, Croatia, Italy, Cyprus, Poland, Portugal, Slovakia, Finland, and Sweden. For the complete list of notifications and conditionality of surrender, please visit:

https://assets.publishing.service.gov.uk/media/65438f5bd36c91000d935c47/2023-07-27_EU_Notifications_to_the_UK.pdf

⁵⁴ Poland, Croatia, Finland, France, Germany, Greece, Latvia, Slovakia, Slovenia and Sweden. For the complete list of notifications and conditionality of surrender, please visit:

https://assets.publishing.service.gov.uk/media/65438f5bd36c91000d935c47/2023-07-27_EU_Notifications_to_the_UK.pdf

offences. The Czech Republic and Austria, on the other hand, will only surrender their own nationals if the requested persons consent to the surrender. Furthermore, the definition of who is considered a national for the purposes of the extradition exception has been broadened. The Court of Justice of the European Union's ruling in the Petruhhin case⁵⁵ has compounded the effects of the nationality bar by mandating that EUMS notify the home state of a requested person if they are sought by a third country and prioritise European Arrest Warrants (EAWs) over third-country requests.

In August 2023, Poland amended its domestic law and stepped away from its decision to not surrender its own nationals to the UK under the TCA. Surrender is now conditional to reciprocity and to the criminal act being committed outside of Polish territory. The previous inability to extradite Polish nationals had impact in two notable cases in Scotland. One case involving an allegation of being concerned in the supply of controlled drugs. This case has been transferred to Poland and is awaiting trial. The other case involved sexual abuse of children and surrender occurred after Poland amended its domestic law.

6.4.4 - Dual criminality

It is common for international agreements on extradition to require 'dual' or 'double' criminality. This means that the facts underlying the extradition request must be a crime in both the issuing and the executing state. The EAW Framework Decision however contains a list of offences for which dual criminality is assumed. The TCA contains an almost identical list in Article 599(5). However, there is no longer an assumption of dual criminality for offences falling within the list. Dual criminality is only exempted if both the issuing and executing states have made a formal notification to the Specialised Committee on this issue. Twelve EUMS has issued such a notification; however, this only operates based on reciprocity and the UK has not made such a notification.⁵⁶ In addition the UK has amended the Extradition Act 2003 to delete reference to the assumption of dual criminality that applied under the EAW Framework for Part 1 countries.⁵⁷ Dual criminality must therefore now be proven in every case. The authors were told that this has led to an increase in challenges based on dual criminality, adding to the workload of extradition teams, although refusals on this ground remain relatively rare. Why the UK has chosen not to waive dual criminality as a policy decision is unclear and this should be revisited with further evidence of its impact sought.

⁵⁵ Case C-182/15 *Petruhhin v Latvijas Republikas Ģenerālprokuratūra* EU:C:2016:630. Last accessed on 20 August 2024. Accessible from: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=177901&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=4293987>

⁵⁶ Belgium, Ireland, Greece, Spain, France, Italy, Latvia, Lithuania, Austria, Poland, Portugal, The Netherlands. For the complete list of notifications see https://assets.publishing.service.gov.uk/media/65438f5bd36c91000d935c47/2023-07-27_EU_Notifications_to_the_UK.pdf <last accessed 16 September 2024>

⁵⁷ Section 12, European Union (Future Relationship) Act Amended the Extradition Act 2003 to repeal section 64(5) which aligned with the EAW Framework list.

6.4.5 – The Role of Human Rights in Surrender

Post-Brexit, human rights considerations have taken on an enhanced role in the process of surrender. As a third country, the UK no longer benefits from the principle of mutual trust that previously underpinned cooperation within the EU. This shift has been notably observed by practitioners working in extradition, where human rights challenges have become more prevalent. One significant impact has been the increased frequency of challenges related to prison conditions. Courts in EUMS are now more likely to scrutinise the human rights implications of surrendering individuals to the UK, particularly concerning the conditions in which they might be detained.

In Scotland we are told that assurance about prison conditions have been asked for on three occasions to date.⁵⁸ There have been other requests for assurances that the surrendered persons will not be sent to Belmarsh prison, which is not part of the Scottish prison estate. The position that the UK no longer benefits from the principles of mutual trust and recognition was formally acknowledged in July 2024 by the Grand Chamber of the Court of Justice of the European Union (CJEU).⁵⁹ The court confirmed that executing judicial authorities must now carry out their own independent assessment of the UK's compliance with the European Charter of Human Rights. The CJEU concluded that EU executing judicial authorities must conduct a thorough examination of every case, assessing the risk of fundamental rights violations without relying on mutual trust or recognition principles. This decision could have far-reaching implications for surrender with EUMS and may change how UK courts assess outgoing requests. It is likely that requests for assurances, including those relating to prison conditions, will rise over the coming months and years.

For outgoing extradition requests from Scotland, the legal landscape is already complex. The Extradition Act 2003 includes an additional ground for challenging extradition: the possibility of contesting the Scottish Ministers' decision to extradite on the basis that it is incompatible with the European Convention on Human Rights (ECHR). This provision, unique to Scotland, does not exist in England and Wales, adding a layer of complexity to Scottish extradition cases compared to those in other parts of the UK. This difference underscores the distinct legal challenges Scotland faces in the post-Brexit extradition framework, where human rights considerations are increasingly central.

6.4.6- Transfer of Proceedings and Prisoner Transfer

When a state refuses to surrender an individual based on their nationality or any other reason under the TCA, it is expected that the state should consider prosecuting the individual domestically. This can be facilitated through the Transfer of Proceedings, a formal request for prosecution transmitted by the Crown Office. However, there is no domestic legislative framework in the UK specifically designed for transferring proceedings to another jurisdiction. Instead, such transfers rely on several international agreements, most notably the 1959 Convention on Mutual Assistance in Criminal Matters. Unfortunately, these agreements are considered outdated and are infrequently used, limiting their effectiveness in modern legal contexts. The authors were told that Scottish attempts to

⁵⁸ See for example the case of Sharples reported at: <<https://www.thejournal.ie/man-to-be-extradited-scotland-richard-sharples-6367578-Apr2024/>> last accessed 20 August 2024

⁵⁹ Alchaster (C-202/24; ECLI:EU:C:2024:649)

transfer proceedings to the EU were encountering significant difficulties, although they have known relatively more success than England, Wales, or Northern Ireland. Although several cases are currently in progress, none, at the time of the interviews, have yet resulted in a trial. A significant challenge lies in persuading the other state to take on the costly prosecution of an offence that did not occur within its territory. In one case, where public interest was deemed particularly high, the Crown Office and Procurator Fiscal Service (COPFS) agreed to bear the costs associated with transferring the proceedings, including translating evidence, in an effort to ensure that prosecution occurs. However, even when another state is willing to assume responsibility for a prosecution, there are still concerns. These include the protection of vulnerable witnesses, the length of time the proceedings may take, and uncertainties regarding the admissibility and availability of evidence.

In April 2023, the European Commission proposed new rules aimed at simplifying the process of transferring criminal proceedings between Member States.⁶⁰ The EU's interest in improving the transfer of criminal proceedings suggests that enhanced cooperation in this area could be a feasible avenue for further development under the TCA. To capitalize on this potential, the Crown Office and Procurator Fiscal Service (COPFS) should ensure that adequate funding is available to support the transfer of proceedings to EUMS, particularly when public interest demands such action. Additionally, it may be beneficial to develop new protocols or guidance to ensure that decisions on transfers are consistent, transparent, and fair to all parties, including victims. This would help standardise the process, providing clarity and fairness in cross-border prosecutions.

Finally, the TCA lacks a mechanism to replace the suite of Framework Decisions that previously facilitated the transfer of custodial sentences, pre-trial bail, or probation supervision between EU member states. The absence of such a mechanism has led to significant legal challenges and delays in prisoner transfers, undermining the rehabilitation of offenders. Bilateral agreements could help address these issues and should be considered a priority for future cooperation between the UK and EUMS. Moreover, some countries are willing to extradite their nationals only on the condition that they are transferred back to serve their sentences in their home country. However, the authors have been informed that this process has been far from straightforward, often proving time-consuming and difficult for teams to manage. Addressing these challenges through improved bilateral agreements or a multilateral agreement could streamline the process, ensuring better outcomes for both justice and rehabilitation.

7- Outlook for the future relationship

As detailed in this report, the implementation of the police and judicial cooperation provisions of the TCA in Scotland has generally yielded positive outcomes, despite notable challenges. While it remains difficult to quantify the exact impact of these challenges on Scottish security, there is clear evidence that changes in the UK-EU relationship are affecting the efficiency of Scotland's criminal justice system and its ability to protect the public. Although some of these challenges may be difficult to overcome due to the UK's status as a non-Schengen third country, others are within reach. For instance, while

⁶⁰ Wilson, T. (forthcoming 2024) 'Prisoner Transfer Between the UK and EU27: a striking omission from the TCA?', in G. Davies and H. Carrapico (Eds.) *UK-EU Police and Judicial Cooperation Post-Brexit*. Hart Studies in European Criminal Law. Hart Publishing.

direct access to SISII may be unlikely in the near future, negotiating the circulation of TaCA warrants on SISII could ensure that individuals are apprehended anywhere in the EU, even when their precise location is unknown. The upcoming review of the TCA, therefore, presents a valuable opportunity to assess the impact of its implementation, address issues within the agreement's scope, and explore complementary agreements to tackle unresolved challenges.

The TCA includes a provision for a review every five years, with the first scheduled for 2026 under Article 776. Additionally, Part III of the TCA contains its own review clause (Article 691), allowing for an earlier review of the Law Enforcement and Judicial Cooperation provisions if both parties agree. Expected topics for the 2026 review include the operation of provisions regarding Passenger Name Records (PNR) and the retention of notifications concerning surrender and extradition, as the current UK and EUMS notifications are set to expire in 2026.⁶¹ Although there was some initial uncertainty regarding the exact scope of the upcoming review, the European Commission has clarified that it will not entail a complete revision of the TCA's legal text. Instead, the focus will be on the practical implementation, interpretation, and development of the agreement. It also indicated that the lack of appetite to open TCA re-negotiations was related to current political priorities associated with the Ukraine war and the conflict in the Middle East, as well as internal concerns over immigration, and the rise of the far right.⁶²

The UK-EU relationship, however, is evolving within a rapidly changing political landscape. The period following the 2016 Brexit Referendum was characterised by significant tensions in the relationship, which were particularly exacerbated by the negotiations of the Withdrawal Agreement and of the Trade and Cooperation Agreement. The discussion on the part of the UK Government regarding a possible departure from the European Convention on Human Rights, along with the proposals to replace the UK Human Rights Act with a Bill of Rights, and the Data Protection Act with the Data Protection and Digital Information Bill, further exacerbated these tensions. Under the Government led by Rishi Sunak, the relationship entered a more positive phase, marked by increased dialogue and a greater openness to closer cooperation. The former Prime Minister played an important role in de-escalating tensions by addressing post-Brexit issues through the signing of the Windsor Framework, a Memorandum of Understanding on financial services cooperation, and the UK's re-entry into the Horizon and Copernicus research programs. Building on these initiatives, the current UK Government has committed to strengthening ties with the EU, as highlighted during the Labour Party's election campaign.⁶³ While carefully navigating red lines related to the single market, customs union, and free movement, the UK Government is actively pursuing negotiations to reduce trade barriers (sanitary and phytosanitary issues), secure mutual recognition of professional qualifications, expand touring opportunities for musicians, and establish a security and defence pact. Despite its assertions that current political priorities lie elsewhere, the EU appears fairly open to advancing discussions in various

⁶¹ Fella, S. (2024) The UK-EU Trade and Cooperation Agreement: review clauses. Research Briefing. 10 July. House of Commons Library.

⁶² O'Carroll, L. (2024) 'EU would not rush to reopen Brexit talks with Labour, say Brussels sources'. The Guardian. 1 July 2024. Last accessed on 21 August 2024. Available from: <https://www.theguardian.com/politics/article/2024/jul/01/eu-would-not-rush-to-reopen-brexit-talks-with-labour-say-brussel-sources>

⁶³ Stewart, H. (2024) 'The EU Quandary: Labour's efforts to build good relations and keep red lines'. The Guardian. 30 March 2024. Last accessed on 21 August 2024. Accessible from: <https://www.theguardian.com/politics/2024/mar/30/the-eu-quandary-labours-efforts-to-build-good-relations-and-keep-red-lines>

areas. This openness is supported by EUMS which have signed numerous bilateral declarations with the UK since 2021, including over 20 declarations containing provisions for closer police and judicial cooperation.⁶⁴ However, the EU remains particularly cautious about avoiding a Swiss-style relationship, where the UK might selectively engage in cooperation while disregarding broader commitments. The EU is keen to ensure that existing agreements with the UK are fully implemented and adhered to. In this context, the European Commission has issued several demands to demonstrate the UK's commitment to closer relations. These include fully implementing the Withdrawal Agreement—particularly concerning the rights of EU citizens residing in the UK—and properly enforcing the Windsor Framework, especially in certifying animal and plant products and establishing a pet-checking scheme at the border.⁶⁵ Furthermore, the European Commission has signaled its readiness to refer the UK's infringements related to the Withdrawal Agreement, specifically regarding the rights of EU citizens and their families, to the European Union Court of Justice if swift corrective action is not taken.⁶⁶ The Commission's lack of optimism rests on the view that the change in UK Government has not translated in a real change in foreign policy towards the EU, as evidenced by the Prime Minister's rejection of key EU priorities, such as a youth mobility scheme.⁶⁷

Overall, it is foreseeable that some of the issues highlighted in this report could be addressed during the upcoming 2026 review of the TCA. This review is expected to be conducted by the Partnership Council or the Specialised Committees under it—specifically, the Law Enforcement and Judicial Cooperation Specialised Committee, where the Scottish Government is represented. However, while Scotland has a seat at the table, the committee is expected to present a unified UK position, and there is currently no forum to discuss or shape that position with Scotland beforehand. Therefore, establishing such a forum would be crucial to ensure that Scottish interests are effectively represented during the TCA review process.

Regarding law enforcement and judicial cooperation issues that fall outside the scope of the TCA review, the outlook is more complex. While the EU has shown some openness to closer cooperation, it has also made it clear that a change in the UK Government alone is not seen as a pivotal shift in UK-EU relations. Given the EU's interest in ensuring the TCA functions effectively, the most pragmatic approach for the UK Government might be to work cooperatively and gradually with the EU, leveraging the existing TCA governance structures to highlight the growing number of issues arising from its implementation. This approach could open the door to emphasising the need to update Part III of the agreement to accommodate legislative and policy changes on both sides. Should cooperation between the UK and individual EUMS begin to significantly exceed the framework of the TCA, this could also exert additional pressure to revise the agreement.

⁶⁴ Davies, C. and J. Wachowiak (2024) 'UK-EU relations Tracker Q1 2024'. UK in a Changing Europe. Last accessed on 21 August 2024. Accessible from: <https://ukandeu.ac.uk/reports/uk-eu-relations-tracker-q1-2024/>

⁶⁵ Foster, P. and A. Bounds (2024) 'EU Issues UK with List of Demands if it wants better Relationship'. Financial Times. 1 August 2024. Last accessed 21 August 2024. Accessible from: <https://www.ft.com/content/43593399-6e31-4b9f-81ec-a06851938706>

⁶⁶ European Commission (2024) July Infringement Package. 25 July 2024. Last accessed on 22 August 2024. Accessible from: https://ec.europa.eu/commission/presscorner/detail/en/inf_24_3228

⁶⁷ Stone, J. (2024) 'Brussels questions whether Starmer really wants a Brexit reset'. Politico. 12 September. Last accessed on 15 September. Available from: https://www.politico.eu/article/keir-starmer-european-union-brexit-relationship-reset/?utm_source=email&utm_medium=alert&utm_campaign=Brussels%20questions%20whether%20Starmer%20really%20wants%20a%20Brexit%20reset

8- Glossary

Brexit: The withdrawal of the United Kingdom (UK) from the European Union (EU) on January 31, 2020.

Crown Office and Procurator Fiscal Service (COPFS): The principal public prosecution service in Scotland, responsible for investigating deaths, conducting criminal prosecutions, and handling extradition requests.

Court of Justice of the European Union (CJEU): The principal judicial authority of the EU, responsible for interpreting EU law and ensuring its uniform application across all Member States.

Dual Criminality: A principle in extradition law requiring that the conduct in question be considered a criminal offense in both the issuing and executing states.

European Arrest Warrant (EAW): A legal framework that simplifies and accelerates the extradition process between EU member states. Post-Brexit, the UK no longer participates in the EAW system.

European Criminal Records Information System (ECRIS): An EU database that facilitates the exchange of information on criminal convictions between EU member states. The UK no longer has access to ECRIS after Brexit.

ECRIS-TCN: A system under development by the EU to store information on the criminal records of third-country nationals. The UK will not have access to this system.

European Investigation Order (EIO): A legal mechanism that allows EU member states to request evidence from each other quickly and efficiently. The UK can no longer issue EIOs post-Brexit.

Europol: The European Union's law enforcement agency that supports EU Member States in combating serious international crime and terrorism. The UK's access to Europol has been reduced post-Brexit.

Extradition: The process of formally transferring an accused or convicted person from one country to another to face trial or serve a sentence. The European Arrest Warrant is a streamlined cross border judicial procedure which is referred to as surrender rather than extradition. This terminology is also used in the Trade and Cooperation Agreement which sets out rules for surrender.

I-LEAP (International Law Enforcement Alert Platform): A UK-led initiative to integrate the Police National Computer (PNC) with Interpol's i24/7 system, enhancing access to international law enforcement alerts.

Interpol i24/7: A secure global police communications system used by Interpol member countries to share information on crime and criminals.

Interpol Red Notice: An international request for cooperation or an alert issued by Interpol to locate and provisionally arrest a person pending extradition.

International Crime Coordination Centre (ICCC): A UK-wide coordination body created to help UK police forces adapt to the post-Brexit loss of EU policing tools and facilitate international cooperation.

Joint Investigation Team (JIT): A collaborative team formed between law enforcement agencies from multiple countries to investigate cross-border crime. Post-Brexit, the UK must now find two EU member states to initiate a JIT.

Mutual Legal Assistance (MLA): A process by which states request help from each other in gathering evidence, serving documents, or other judicial actions related to criminal investigations and proceedings.

Nationality Bar: A restriction on extraditing nationals of a country to a foreign state, invoked by several EU member states under the TCA.

Passenger Name Records (PNR): Information collected by airlines about passengers, including travel itineraries and contact details, which is shared with law enforcement agencies to combat serious crime and terrorism.

Police Scotland: The national police force of Scotland, responsible for law enforcement and maintaining public safety across the country.

Political Offence Exception: A ground for refusing extradition based on the nature of the offense being political, reintroduced in the TCA for certain EU member states.

Proportionality Principle: A legal standard that ensures the actions taken in judicial cooperation, such as issuing arrest warrants, are balanced and justified relative to the offence's severity.

Prüm: The Prüm Decisions provided for a decentralised database for automated search and comparison of data from national data files in the area of DNA, fingerprint data, and vehicle registration data.

Prüm II: A regulation which would add new categories of data, such as facial images of suspects and convicted criminals and police records, to the automated data exchange. It also provides for the use of central routers to which national databases and Europol could connect.

Schengen Information System II (SISII): A large-scale EU database used by law enforcement agencies to share alerts on wanted or missing persons and stolen or lost property. The UK lost access to SISII after Brexit.

Secure Information Exchange Network Application (SIENA): A secure messaging system used by Europol for exchanging sensitive information between law enforcement agencies in the EU. UK access is now restricted.

TaCA Warrant: A surrender warrant issued under the Trade and Cooperation Agreement.

Trade and Cooperation Agreement (TCA): The agreement signed between the UK and the EU, effective from January 1, 2021, which governs various aspects of their post-Brexit relationship, including trade, and police and judicial cooperation.

Transfer of Proceedings: The process of transferring the jurisdiction of a criminal case from one country to another when extradition is not possible or refused.

UK Criminal Record Information System (UKCRIS): The UK's system for managing criminal record information, which is used for exchanging records with EU states post-Brexit.