

18 June 2018

TF50 (2018) 51 – Commission to EU 27

Subject: Police and judicial cooperation in criminal matters (slides)

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU.

Objective: Presented at the Council Working Party (Art. 50) on 15 June.

Remarks: These slides are for presentational and information purposes only. The contents are without prejudice to discussions on the framework of the future relationship.

These slides provide a comparison with UK positions.

Published on the TF50 website on 18 June 2018

Framework for the future relationship

Police & judicial cooperation in criminal matters

**Art.50 Working Party
15/06/2018**



Context

European Council guidelines

1/ 29 April 2017: The European Council stands ready to establish a partnership in the field of fight against terrorism and international crime

2/ 23 March 2018:

13. (i) Law enforcement and judicial cooperation in criminal matters should constitute an important element of the future EU-UK relationship in the light of the geographic proximity and shared threats faced by the Union and the UK, taking into account that the UK will be a third country outside Schengen. The future partnership should cover effective exchanges of information, support for operational cooperation between law enforcement authorities and judicial cooperation in criminal matters. Strong safeguards will need to be established that ensure full respect of fundamental rights and effective enforcement and dispute settlement mechanisms.

14. In the light of the importance of data flows in several components of the future relations, it should include rules on data. As regards personal data, protection should be governed by Union rules on adequacy with a view to ensuring a level of protection essentially equivalent to that of the Union.

The EU-27 security interest

The future EU-UK relations should guarantee Union's security interests:

- **Crime and terrorism do not stop at the borders.** The Union needs to cooperate with third countries on the basis of **reciprocity**, i.e.:
 - to **exchange** information,
 - to **support** common actions against crime and terrorism
 - to **cooperate** so that criminals do not escape punishment and justice is rendered.
- The EU-27 needs to ensure **integrity of the Area of Freedom Security and Justice** without internal frontiers- a common legal framework based on the principle of mutual trust that guarantees daily security of its citizens and free movement of persons. Balanced relations with third country partners to be preserved.

Factors determining the EU-27 approach

EUCO guidelines:

- EU-27 security interest
- Non-member cannot have the same benefits as a member
- Taking into account that the UK will be a third country outside Schengen
- Balance of rights and obligations
- Autonomy of the EU decision-making process
- Effective enforcement and dispute settlement
- Strong safeguards to ensure full respect of fundamental rights, adequacy of data protection standards

The UK positions so far:

- No free movement of persons
- No ECJ jurisdiction, *"dispute resolution in which both parties have the necessary confidence"*;
- *"Long standing commitment to human rights"*
- Bespoke arrangements on data protection



The EU-27 approach to the EU-UK agreement: OBJECTIVES and COMPONENTS

Objective	<i>"Law enforcement and judicial cooperation in criminal matters should constitute an important element of the future EU-UK relationship, while taking into account that the UK will be a third country outside Schengen"</i>
Components (building blocks)	<ul style="list-style-type: none">- Effective exchanges of information- Support for operational cooperation between law enforcement authorities- Judicial cooperation in criminal matters- Measures against money laundering and terrorism financing

The EU-27 approach the EU-UK agreement : CONTENT

<p>Exchange of information</p>	<p>Streamlined information exchange between law enforcement authorities Effective exchanges of data with Europol (no access to Europol Information System; The Danish arrangement is not a precedent for the relations with the UK, as Denmark is an EU MS, Schengen member, accepts full ECJ jurisdiction and the EU data protection legislation) Effective exchanges with Eurojust (limited connection to Eurojust Case Management System for the UK liaison prosecutor i.e. as for other third countries) PNR cooperation</p>
<p>Support for operational law enforcement cooperation</p>	<p>Participation in the Europol analyses projects, if MS participating in the project agree; liaison officers No participation in Europol Management Board</p>
<p>Judicial cooperation in criminal matters</p>	<p>Effective extradition (time-limits, streamlined procedures) Mutual legal assistance, where existing international law instruments not sufficient (e.g. exchange of criminal records) Eurojust: support for judicial cooperation; the UK liaison prosecutor No participation in the Management Board of the EU agency</p>
<p>Measures against money laundering/terrorism financing</p>	<p>Prevention of money laundering/terrorism financing : publicly available registers on beneficial owners of companies, semi-publicly accessible registers on beneficial owners of trusts</p>

The EU-27 approach to the EU-UK agreement : SAFEGUARDS

Fundamental rights	The UK remains a party to the European Convention of Human Rights "Guillotine clause", if the UK leaves the Convention or is condemned by the European Court of Human Rights (ECHR) for non- execution of an ECHR judgment in the area concerned
Data protection	Adequacy of the UK data protection standards confirmed by an adequacy decision "Guillotine clause" if adequacy decision withdrawn or declared invalid by ECJ
Dispute settlement	Mechanism for ensuring the reciprocal application of the agreement; Effective enforcement and dispute settlement

The EU- 27 approach to the EU-UK agreement : FORM

Form	<p>Internal security as a component of a wider EU-UK partnership</p> <p>Detailed modalities to be designed at the end of negotiations, as the form follows the content</p>
Approach to evolution	<p>To support continuing cooperation between the Union and the UK, the EU-27 may consider to engage in cooperation with the UK in relation to new measures under the conditions set out for third countries.</p> <p>Dialogue on relations and exchanges of views on their evolution within the Joint Committee</p> <p>No incorporation mechanism</p>

Analysis of the UK proposal: OBJECTIVES and COMPONENTS

	The UK proposal	What it would mean for the EU-27
Objective	<i>" a deep and special partnership (...) to retain the cooperation we have built [on internal security]"</i>	Shared understanding of importance of close law enforcement and judicial cooperation
Content (building blocks)	<ul style="list-style-type: none">- Practical operational cooperation- The EU agencies- Data- driven law enforcement	Broad convergence on the building blocks of the future relations

Analysis of the UK proposal: CONTENT

	The UK proposal	What it would mean for the EU-27
Content	<p>Sustaining operational cooperation on the basis of existing EU measures (UK like a MS)</p> <p style="text-align: center;">BUT</p> <p>different institutional framework (i.e. no ECJ) and different safeguards (i.e. on data protection, fundamental rights)</p> <p><i>Particular interests:</i> <i>European Arrest Warrant</i> <i>European Investigation Order</i> <i>Prisoners Transfer</i> <i>Joint Investigation Teams (JITs)</i> <i>Europol and Eurojust (incl. access to databases)</i> <i>SIS II</i> <i>ECRIS</i> <i>EU PNR</i></p>	<p>Operational cooperation with the UK as it was a MS</p> <p>Asymmetry of rights and obligations: the same rights but different constraints than Member States</p> <p>Risk for integrity of the JHA area</p> <p>Core instruments of the JHA <i>acquis</i> based on mutual trust/mutual recognition, membership in the agencies and access to EU databases extended to a country outside of the EU framework, Schengen, safeguards and ECJ jurisdiction</p> <p>There is no presumption of mutual trust outside of the EU institutional framework underpinned by common principles</p> <p>Risk for integrity and good functioning of Schengen (cf. asymmetry of rights and obligations, ECJ case law on coherence of Schengen <i>acquis</i>)</p>

Analysis of the UK proposal: CONTENT

	The UK position	What it would mean for the EU-27
Fundamental rights	"Long standing commitment to human rights"; no further details given; no Charter	Not clear; potential risk of lowering the standards of protection for individuals
Data protection	<i>"bespoke UK-EU model (...) which builds on the existing adequacy model"</i>	No possibility to compromise on adequacy Third country has to offer adequate data protection standards to have regular cooperation with the EU (→ECJ case-law on adequacy stems from EU primary law)
Uniform application of law/ Dispute settlement	<i>"Dispute resolution in which both parties have the necessary confidence"</i> ; no direct jurisdiction of ECJ	No clarity on the dispute settlement the UK wishes Only ECJ is competent for interpretation of the EU law concepts

Analysis of the UK proposal: nature of relation

	The UK position	What it would mean for the EU-27
Dialogue	Strategic dialogue on development of new policies (no details)	Not clear. It is important for the EU-27 to exchange with the UK experience and expertise, but without a risk for autonomy of the EU-decision making process.
Evolution of relations	<p>Dynamic relations:</p> <p>The UK able to continue cooperating on "future version of current tools", where mutually beneficial (=like a MS)</p> <p>New EU tools and measures to be incorporated if in the interests of both parties (the UK status aligned with the MS)</p>	<p>Sort of opt-ins to the EU JHA measures; no third country has a choice to join the EU JHA measure</p> <p>These two elements should be seen together, e.g.:</p> <p>The EU has a close dialogue and consultations with Schengen Associated Countries (with regard to Schengen measures only), as they have a rolling obligation to adopt new EU laws to ensure coherence.</p>

Conclusions

- Shared EU-27 and UK commitment to security
- Common objective
- Broad convergence on building blocks of future relations
- As required by the EUCO guidelines, the EU approach guarantees effective law enforcement and judicial cooperation, while:
 - respecting the choices made by the UK, i.e. to become a third country outside Schengen, and
 - taking into account the UK "red-lines" communicated so far.
- Need to ensure reciprocity