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European Union Committee

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Beyond Brexit: policing, law enforcement and security

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The European Union Committee

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SUMMARY

On 24 December 2020, the UK and EU agreed the Trade and Cooperation Agreement (TCA). When ratified, this will form the basis for cooperation between the Parties for years to come. In this report, we consider Part Three of the TCA on Law Enforcement and Judicial Cooperation in Criminal Matters, which sets out the detailed and sometimes complex arrangements enabling effective cooperation on a range of policing and criminal justice measures.

We broadly welcome the provisions for the UK and EU to continue sharing passenger name record data and for continued UK access to EU databases covering fingerprints, DNA and criminal records. All of these play an essential part in cooperation between UK law enforcement agencies and their EU counterparts. We are also pleased to see that the TCA includes an ambitious agreement on arrangements for extradition.

We welcome the provisions in the Agreement that tie collaboration between the UK and the EU to the Parties' ongoing commitment to the rule of law, the European Convention on Human Rights, and data protection rights.

An unavoidable consequence of the UK's new status as a country outside the EU is that the Agreement does not provide for the same level of collaboration that existed when the UK was a Member State. Moreover, the influence and leadership the UK previously enjoyed in shaping the instruments of EU law enforcement and judicial cooperation will come to an end. For example, its involvement in Eurojust and Europol will no longer include a role in their overall management or strategic direction.

One of the most significant consequences of the UK's new third country status is the loss of access to the Schengen Information System (SIS II). The importance of this system, and the real-time access it provides to data about persons and objects of interest, including wanted and missing persons, has been emphasised repeatedly in evidence to this Committee, and its predecessors. As a substitute, UK authorities have turned to the Interpol I-24/7 database. But the effectiveness of this as an alternative rests upon the willingness of EU States to upload the same information onto the Interpol system that they circulate on SIS II, and the Government did not provide clear evidence on how it would persuade EU Member States to do so. It also depends upon the completion of technical improvements to UK systems so that I-24/7 data is available to its frontline law enforcement in minutes, not hours. The Government should report on a regular basis to Committees of both Houses on the progress on both these matters.

Despite the Government's achievement in negotiating the TCA, there are many reasons, at this early stage, to be cautious about drawing firm conclusions as to its likely effectiveness in practice. These include the following, which we recommend our successor Committee keeps under close review:

(1) the provisions are detailed and complex, and many of them are untried;

(2) the capacity of UK law enforcement agencies to share key data is subject to an EU evaluation of how the UK handles that data;

(3) if the UK chooses not to stay aligned with EU data protection rules in the future, this could risk the Agreement's suspension, or even termination;

(4) the UK's data protection regime could be successfully challenged in the courts, triggering a dispute between the Parties;

(5) the data protection arrangements set out in the Agreement that seek to insulate it from any future loss of data adequacy are yet to be tested; and

(6) the operational effectiveness of the extradition arrangements, which replace the European Arrest Warrant.

The Government should therefore keep Parliament fully updated on the implementation and operation of the Agreement, including how it intends to address any possible disputes that could result in suspension of the vital collaboration the Agreement enshrines.

We are concerned about the consequences of the Government choosing not to negotiate an agreement on future cooperation on family law. The EU Justice Sub-Committee warned in 2017 of the effect on the lives of many UK citizens if important EU Regulations governing child maintenance, divorce and international child abduction were not replaced after Brexit. In contrast, the Government has now told us that provisions under the Hague Conventions are an "entirely satisfactory" replacement. In 2017 we concluded that the Lugano Convention could provide a partial solution, at least in relation to child maintenance and civil law, but the Government only applied to join in April 2020 and the EU is yet to signify its support for UK membership. We call on the Government to explain the reasons for this delay, and to outline the steps it is taking to engage with the EU to reach a resolution.

Beyond Brexit: policing, law enforcement and security

CHAPTER 1: INTRODUCTION

Background

1. As a Member State of the European Union, the UK played a key role in the complex system of cooperation among EU countries on criminal justice and law enforcement, which began at Tampere in 1999 and gathered pace after the 11 September 2001 terrorist attacks. The UK led in developing the European Arrest Warrant (EAW), the Europol and Eurojust agencies, and some of the shared databases and alerting systems which underpinned cooperation on justice and security among EU Member States. The UK's contribution to this body of EU law is set out in many reports produced by our predecessor Sub-Committees.

2. Close collaboration between criminal justice and law enforcement authorities became an integral part of keeping citizens safe in the UK and across the EU. However, there was little on the subject in the Political Declaration of October 2019 and, in contrast to other areas of the future relationship negotiations that took place in 2020, little public discussion of the future of UK-EU security cooperation.

3. It has been clear to us throughout our work on future UK-EU security cooperation that a 'cliff-edge' departure from the EU on 1 January 2021 would have had grave consequences for the UK and its law enforcement community—and would also have been highly damaging for the EU. It would have brought a sudden end to UK participation in EU police and criminal justice measures that had been developed over 20 years, compelling the UK to fall back onto out-dated legal instruments, in many cases unused for decades.

4. On 24 December 2020 the UK and EU ('the Parties') signed the Trade and Cooperation Agreement (TCA), which included Part Three on Law Enforcement and Judicial Cooperation in Criminal Matters (hereafter also referred to as 'the law enforcement agreement').[1] As this agreement avoids such a 'cliff-edge' departure, it is, in broad terms, to be welcomed. At the same time, we recognise that effective future UK-EU police and law enforcement cooperation cannot be achieved simply by agreeing the words on the page of a Treaty, but depends upon both Parties demonstrating a spirit of goodwill and problem-solving.

This inquiry

5. This report is based on an inquiry undertaken between December 2020 to February 2021 by the EU Security and Justice Committee, whose Members

1 Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, (24 December 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948119/EU-UK_Trade_and_Cooperation_Agreement_24.12.2020.pdf [accessed 21 February 2021]

are listed in Appendix 1. We are grateful to all our witnesses, who are listed in Appendix 2.

6. Our inquiry examined the main provisions of Part Three of the TCA, which set out how the UK, as a third country outside the EU, will continue to collaborate with the EU 27 on a range of policing and criminal justice mechanisms. These include: the surrender of criminal suspects; the sharing of passenger name record, fingerprint, DNA and number plate data; the exchange of evidence; and cooperation with Europol and Eurojust. In the time available to us, we were not able to look at other EU law enforcement mechanisms covered by Part Three, such as the European Investigation Order and Mutual Legal Assistance.

7. The report does not address the other areas falling within the Committee's remit, on which it has taken evidence since its inception in April 2020, but which are not within the scope of the law enforcement agreement. These areas include UK-EU future cooperation on asylum and migration, foreign and defence policy, and EU sanctions policy. Future scrutiny of these very important policy areas will pass to the Committee's successors.

8. In the final chapter we return to the significant body of work undertaken by our predecessor EU Justice Sub-Committee in the area of civil and family law, which is not addressed in the TCA but is an integral part of the EU's system of judicial cooperation, and is of real importance to many UK citizens.

9. The report provides an initial analysis of Part Three of the Agreement, the provisions of which are detailed and complex, and the operational details of which are yet to be negotiated and agreed. But these are very early days in the implementation and development of a highly complex series of measures. We have therefore sought to look forward, not back, and to highlight the issues and uncertainties which our successor Committees will need to keep under review in order to determine the Agreement's ultimate effectiveness.

10. **We make this report to the House for debate.**

CHAPTER 2: OVERVIEW OF THE AGREEMENT ON LAW ENFORCEMENT AND CRIMINAL JUSTICE COOPERATION

Titles

11. The Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters, contained within Part Three of the TCA, is divided into thirteen titles. These are summarised in Box 1.

Box 1: Summary of the main Titles of the law enforcement agreement

Title I: General Provisions

The objectives of the agreement include cooperation between the Parties in relation to the "prevention, investigation, detection and prosecution of criminal offences and the prevention of and fight against money laundering and financing of terrorism".[2] It emphasises that cooperation is based on the Parties' "longstanding respect" for democracy, the rule of law and the protection of fundamental rights and freedom of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights (ECHR), and on the "importance of giving effect to the rights and freedoms in that Convention domestically".[3]

Title II: Exchanges of DNA, Fingerprints, and Vehicle Registration Data (Prüm)

This section establishes "reciprocal cooperation" between the UK's and the Member States' respective law enforcement authorities governing the "automated transfer" of DNA profiles, fingerprints (referred to as 'dactyloscopic data' in the text) and "certain domestic vehicle registration data".[4]

Title III: Transfer and Processing of Passenger Name Record Data (PNR)

This Title deals with the transfer, use and processing of "passenger name record data" gleaned from flights between the Union and the UK, and provided to the UK's "competent authority"; it also establishes "specific safeguards" governing its use.[5] All such data must be processed "strictly" for the purposes of "preventing, detecting, investigating or prosecuting terrorism or serious crime" or, in "exceptional cases", where it is necessary "to protect the vital interests of any natural person."[6]

2 Trade and Cooperation Agreement, 31 December 2020 (Article LAW.GEN.1:Objective (1))
3 *Ibid.*, (Article LAW.GEN.3)
4 *Ibid.*, (Article LAW. PRUM.5: Objective)
5 *Ibid.*, (Article LAW.PNR.18: Scope)
6 *Ibid.*, (Article LAW.PNR.20: Purposes of the use of PNR data sub paragraphs (1) and (2)). Terrorism offences are listed in ANNEX LAW-7 of the TCA and serious crime is defined as any offence punishable by a custodia sentence or a detention order for a maximum period of at least three years under the domestic law of the UK (see Article LAW.PNR.19: Definitions (f)).

Title IV: Cooperation on operational information

Title IV provides for national police and customs authorities ("or other authorities competent under domestic law"[7]) that work to prevent, investigate, detect or prosecute criminal offences, execute criminal penalties, safeguard public safety, and prevent money laundering or the financing of terrorism, to "assist each other through the provision of relevant information". Cooperation is, however, made subject to the conditions of domestic law and the scope of the competent authorities' powers.[8]

Title V: Cooperation with Europol

The objective of this Title is to establish "cooperative relations" between Europol and the UK "domestic law enforcement"[9] authorities for the purposes of "preventing and combating serious crime, terrorism and forms of crime which affect a common interest covered by a Union policy."[10] Cooperation between Europol and the UK is facilitated by a UK designated "national contact point."[11]

Title VI: Cooperation with Eurojust

This Title establishes cooperation between Eurojust and the "competent authorities"[12] of the UK to combat the serious crimes[13] for which Eurojust is competent under EU law.[14]

Title VII: Surrender

This Title deals with extradition arrangements between the UK and (most) EU Member States based on the issuing of an arrest warrant.[15] Its provisions broadly replicate arrangements under the European Arrest Warrant (EAW). The surrender agreement under Title VII includes notable additions/changes to the extradition system under the EAW, which take account of the UK's status outside the EU, including being based on the "principle of proportionality."

7 *Ibid.*, (Article LAW.OPCO.1: Cooperation on Operational Information (2)
8 *Ibid.*, (Article LAW.OPCO.1: Cooperation on Operational Information (1) (a) – (d))
9 *Ibid.*, (Article. LAW.EUROPOL.47: Definitions (b))
10 *Ibid.*, (Article. LAW.EUROPOL.46: Objective)
11 *Ibid.*, (Article. LAW.EUROPOL.49(4))
12 *Ibid.*, (Article. LAW.EUROJUST.61: Objective)
13 *Ibid.*, (Article. LAW.EUROJUST.63: Forms of crime listed in ANNEX-LAW 4 of the law enforcement agreement)
14 The list includes over 30 crimes, for example: terrorism; organised crime; drug trafficking; money laundering; immigrant smuggling; murder and GBH; robbery and aggravated theft; crimes against the financial interests of the Union; and, trafficking in human beings. Where the list of crimes to which Eurojust is competent is changed under Union law, the SCLE&JC can, following a proposal from the EU, amend Annex LAW-4 accordingly under Article LAW.EUROJUST.63(3)
15 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.SURR.76: Objective)

Title VIII: Mutual Assistance

Title VIII's objective is to "supplement" the application between the UK and the EU Member States of three Council of Europe (CoE) Conventions[16] designed to foster Mutual Assistance in Criminal Matters by facilitating the gathering of evidence between CoE Member States. Under Title VIII, requests for assistance must be "necessary and proportionate", taking into account the rights of the suspect or accused.[17]

Title IX: Exchange of Criminal Record Information

Like Title VIII, this Title facilitates an aspect of the operation between the UK and the EU Member States[18] of the CoE Mutual Legal Assistance in Criminal Matters Convention,[19] dealing with "information extracted" from criminal records.[20] The provisions include rules on data handling. For example, data must only be used for the purposes for which it was requested and onward transmission to third countries is restricted.[21]

Title X: Anti-money Laundering and Counter Terrorist Financing

The objective of Title X is to "support and strengthen" action by the EU and the UK to prevent money laundering and terrorist financing.[22] To that end the Parties agree to support "international efforts"[23] and undertake to "exchange relevant information within their respective legal frameworks."[24] They also promise to "maintain a comprehensive regime to combat money laundering and terrorist financing."[25]

Title XI: Freezing and Confiscation

Building on measures that are already law in the UK, this Title's objective is to foster cooperation between the Parties "to the widest extent possible", for the purpose of "investigations and proceedings aimed at the freezing of property" with a view to the "subsequent confiscation thereof" within the framework of criminal proceedings.

Institutional oversight

12. The responsibility for supervising and overseeing the operation of TCA, including Part Three, lies with the Partnership Council (PC). The PC has wide-ranging powers, including to adopt decisions and make

16 European Convention on Mutual Assistance in Criminal Matters (20 April 1959): https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/09000016800656ce [accessed 2 March 2021], and its two Protocols: Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (17 March 1978): https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680077975 [accessed 3 March 2021] and Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters *(8 November 2001):* https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168008155e *[accessed 3 March 2021]*

17 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.MUTAS.116)

18 Articles 13 and 22(2) of the 1959 European Convention on Mutual Assistance in Criminal Matters, and its two Protocols of 1978 and 2001.

19 The two Protocols to the 1959 European Convention on Mutual Assistance in Criminal Matters of 1978 and 2001.

20 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.EXINF.120: Objective)

21 *Ibid.*, (Article LAW.EXINF.128). Rules governing onward transmission include, for example: disclosure on a case-by-case basis; only if necessary; only for the purpose of criminal proceedings; or to prevent an immediate threat to public security.

22 *Ibid.*, (Article LAW.AML.127: Objective)

23 *Ibid.*, (Article LAW.AML.128(1))

24 *Ibid.*, (Article LAW.AML.128(2))

25 *Ibid.*, (Article LAW.AML.128(3))

recommendations regarding the TCA's implementation and amendment.[26] It is also responsible for overseeing 19 Specialised Committees created to regulate specific aspects of the Agreement's operation. These include the Specialised Committee on Law Enforcement and Judicial Cooperation (the SCLE&JC), which oversees the operation of Part Three of the Agreement.[27] The UK Government has indicated that, "except where there are exceptional decisions that cannot be deferred", institutional oversight of the TCA should only commence once the EU has completed its ratification processes for the Treaty, bringing to an end the period of its provisional application.[28] At the time of writing, the EU was expected to complete its ratification by the end of April 2021. In a letter to the Chair of the EU Select Committee on 23 February, the Chancellor of the Duchy of Lancaster, the Rt Hon. Michael Gove MP, said, "we do not consider that the Partnership Council and other bodies established under Title III of the Agreement should begin their work formally during the period of provisional application.[29] On the same day, the Government accepted the EU's request to extend provisional application of the TCA to 30 April, pending ratification by the European Parliament.[30]

Conclusions and recommendations

13. **We regret the Government's decision to defer establishing the Partnership Council and other bodies and urge it to review this position. We urge the Government to work with the European Commission to set up the Committee swiftly, and for it to operate inclusively and with transparency.**

14. Further analysis of the institutional oversight of the TCA can be found in the report on the TCA by the EU Select Committee.[31]

Specialised Committee on Law Enforcement and Judicial Cooperation

15. Sir Julian King, former EU Commissioner for the Security Union, told us that the SCLE&JC would be "one of the more important" bodies overseen by the Partnership Council, "because of the nature of this part of the Agreement, some of the important practical arrangements and the underpinning, including the protection of fundamental rights and the data adequacy dimensions."[32]

16. Dr Nóra Ni Loideáin, of the Institute of Advanced Legal Studies, commented: "This is a hugely important body. It is also an evolving body, because it will report to the overall Partnership Council, which can decide to expand the specialised enforcement committee's powers. That is a very significant provision."[33]

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26 *Ibid.*, (Article INST.1: Partnership Council (4)v)
27 *Ibid.*, (Article INST.2: Committees (r))
28 Letter from the Rt Hon. Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office to the Earl of Kinnoull, Chairman of the European Union Committee dated 23 February 2021: https://committees.parliament.uk/publications/4775/documents/48216/default/ [
29 *Ibid.*
30 Written Ministerial Statement HCWS791, Session 2019–21 by Rt Hon Michael Gove, Chancellor of the Duchy of Lancaster and Minister for the Cabinet Office
31 European Union Committee, *Beyond Brexit: the institutional framework* (21st Report, Session 2019–21, HL Paper 246)
32 Q 2
33 Q 12

17. Professor Valsamis Mitsilegas, from Queen Mary University of London, highlighted the SCLE&JC's role in resolving disputes between the Parties, particularly in relation to alleged breaches of data protection rights under the Agreement: "This will be the committee that will enable consultations between the Parties if there is a breach that might lead or not to a suspension of the Agreement."[34] Dr Ni Loideáin also highlighted the important role the SCLE&JC would play in relation to data adequacy under the GDPR and the law enforcement Directive.[35]

Termination and Suspension

18. Both Parties enjoy a right to terminate the Agreement in its entirety with 12 months' notice.[36] Additionally, either Party may "at any moment" terminate Part Three of the Agreement "by written notification through diplomatic channels", with nine months' notice. However, if Part Three "is terminated on account" of either the UK or an EU Member State having "denounced" the ECHR,[37] then termination becomes effective on the date of denunciation,[38] with the SCLE&JC overseeing the "appropriate" conclusion of all Part Three based cooperation.[39]

19. We asked Home Office Minister Kevin Foster MP why the law enforcement agreement contained a termination clause specifically engaging both Parties' adherence to the ECHR. In response, the Minister told us:

> "The UK has always been a country that strongly upholds the traditions of human rights and advocates them around the world. We have also always had strong protections around data protection, which predate EU obligations. We do not think that making commitments that we would fundamentally behave reasonably or honour some of the commitments we have made would particularly infringe our abilities. If we did that, we would not sign up to virtually any international agreement."[40]

20. We also asked the Minister why Part Three of the TCA required its own nine-month termination clause, three months shorter than the termination clause provided for the Treaty as a whole. The Minister replied:

> "We believe the notice periods in there are appropriate. They strike the balance between certainty in terms of operation and allowing each side the reassurance that if the good faith we would expect in delivering these agreements is not met, we would have an opportunity to withdraw if necessary."[41]

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34 *Ibid.*
35 Q 19
36 Trade and Cooperation Agreement, 24 December 2020 (Article FINPROV.8)
37 A party may denounce the Convention under Article 58 of *the Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No 11 and No 14*, 4 November 1950 ECHR. https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680063765 [accessed 3 March 2021]. There is a six-month-notice period, during which the Convention continues to apply. Denunciation of the Convention also carries with it termination of membership of the Council of Europe.
38 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.OTHER.136): "on the date that such denunciation becomes effective, or if the notification of its termination is made after that date, on the fifteenth day following such notification".
39 *Ibid.*, (Article LAW.OTHER.136: Termination)
40 Q 39
41 Q 40

21. Asked what circumstances could trigger such a termination, the Minister told us: "At the moment, I do not foresee that is something we would be looking to do … it would not be particularly productive to speculate on all these different types of circumstances, given that we are talking about partner nations that we are close allies of and have worked well with for a long period of time."[42]

22. Part Three in its entirety, or any of its individual Titles, can also be suspended following a "serious and systemic" deficiency within one Party as regards either (i) "the protection of fundamental rights or the principles of the rule of law", or (ii) "the protection of personal data", including where this has led to a "relevant adequacy decision ceasing to apply."[43] Written notification through diplomatic channels should specify the details of the deficiency on which the suspension is based.[44]

23. Cooperation under the relevant Title (or Titles) will "provisionally" cease on the first day of the third month following the date of notification, leaving the other Party free to suspend cooperation under all remaining Titles with three months' notice, again using written notification through diplomatic channels.[45]

24. Prof Mitsilegas told us that the law enforcement agreement's emphasis on the Parties' adherence to the European Convention on Human Rights "is an important provision", particularly if the UK decided to "abolish the Human Rights Act and therefore to change the way ECHR rights are enforced within the UK."[46]

25. Dr Ni Loideáin agreed that the EU would also be monitoring how the UK continued to give effect to the ECHR, including the outcome of the forthcoming Independent Human Rights Act Review.[47]

26. Dr Ni Loideáin observed that it was not clear from Part Three of the TCA what actions might constitute a "serious and systemic breach", as "the devil really is in the details".[48] However, she highlighted that the EU might allege that the UK had committed such a breach, "where our domestic courts have called into question current laws concerning law enforcement".[49] As an example, she cited a case where "our own Court of Appeal stated that

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42 *Ibid.*

43 "Relevant adequacy decision" is defined within the Agreement in relation to the relevant EU law (the General Data Protection Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), 4 May 2016 OJ L 119/1; Directive 2016/680 of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, 4 May 2016 OJL 119/89 and UK law (the Data Protection Act 2018)

44 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.OTHER.137: Suspension (1) and (2)).

45 *Ibid.*, (Article LAW.OTHER.137(5) and (6))

46 Q 13

47 Ministry of Justice, 'Independent Human Rights Act Review', (7 December 2020): https://www.gov.uk/guidance/independent-human-rights-act-review# [accessed 14 February 2021]

48 Q 13

49 *Ibid.*

we have critical defects in the current legal framework governing the use of automated facial recognition".[50] She explained:

> "I am not saying that this equates to a serious and systematic deficiency, but it could entirely be taken as an example of one that would constitute a serious and systematic deficiency if that is an area of law the Government do not address … One of the specific issues there was that the current legislation lacks clear and precise rules for giving guidance to police officers as to who should be on automated facial recognition watchlists and where such systems should be deployed. That lack of clear and precise rules is very relevant to the rule of law principle."[51]

Dispute settlement

27. Part Three of the TCA includes its own bespoke dispute settlement mechanism, set out in Title XIII. These provisions are discussed in the report on the TCA by the EU Select Committee.[52]

Review

28. Every five years, the Parties shall "jointly review" the entire Agreement's implementation and operation.[53] Part Three on Law Enforcement and Judicial Cooperation includes an additional provision, stating that "this part shall be jointly reviewed" every five years, but also "at the request of either party where jointly agreed." The Parties will decide how either review is to be conducted, but the Agreement states that any review must address "in particular, the practical implementation, interpretation and *development*" (emphasis added) of Part Three of the TCA.[54]

Conclusions and recommendations

29. **The Government has succeeded in securing an Agreement on Law Enforcement and Criminal Cooperation with the EU that will enable the UK law enforcement community to continue to collaborate and exchange sensitive information with European counterparts. We welcome this, since failure to reach an agreement would have brought to an abrupt end to years of effective collaboration, which has played a vital role in helping to protect the citizens of the UK and EU Member States. But the institutions that will oversee the operation and development of the Agreement: the Partnership Council, and (of particular relevance to Part Three), the Specialised Committee on Law Enforcement and Judicial Cooperation, have yet to be constituted, let alone meet.**

30. **It is clear that the Specialised Committee will have an important role to play in overseeing the operation of the law enforcement Agreement and, significantly, its data protection rules.**

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50 Dan Sabbagh 'South Wales Police lose landmark facial recognition case', *The Guardian* (11 August 2020): https://www.theguardian.com/technology/2020/aug/11/south-wales-police-lose-landmark-facial-recognition-case [accessed 16 March 2021]

51 QQ 13 and 19

52 European Union Committee, *Beyond Brexit: the institutional framework* (21st Report, Session 2019–21, HL Paper 246)

53 Trade and Cooperation Agreement, 24 December 2020 (Article FINPROV.3)

54 *Ibid.*, (Article LAW.OTHER.135: Review and evaluation)

31. **We welcome the provisions that establish the rule of law and human rights as "essential elements" of the entire Trade and Cooperation Agreement, and those that tie termination and/or suspension of aspects of the Agreement to either denunciation of the ECHR or deficiencies within either Party in the protection of fundamental rights. It is essential that cooperation between the UK and the EU of the kind facilitated by this Agreement is tied to respect for the rights embodied in the European Convention on Human Rights, and to respect for data protection rules.**

32. **Alongside the TCA's wider review clause, Part Three has its own five-year review clause and a complex array of provisions covering its termination and suspension based on the Parties' conduct linked either to the fulfilment of specific obligations and/or compliance with human rights and data protection standards. We anticipate that Parliament and our successor Committee will wish to be fully consulted as part of the review process, and we look to the Government to facilitate this nearer the time.**

CHAPTER 3: FUTURE UK-EU SHARING OF LAW ENFORCEMENT AND CRIMINAL JUSTICE DATA

Title II: DNA, fingerprint and vehicle registration data (Prüm)

EU evaluation of UK systems compliance under the agreement

33. Title II makes provision for the "automated transfer" between the Parties of DNA profiles, fingerprints (referred to as 'dactyloscopic data' in the text) and "certain domestic vehicle registration data" (hereafter referred to as Prüm[55] data).[56]

34. The UK's ability to apply and comply with the rules set out in Title II and the technical rules listed in Annex LAW-I of the law enforcement agreement is subject to an "evaluation visit and pilot run" (or runs) undertaken by the EU.[57] On the basis of an overall evaluation report, "the Union shall determine the date or dates from which personal data may be supplied by Member States to the United Kingdom pursuant to this Title."[58] However, provision is made to allow data to continue to flow after 31 December 2020 on the basis of the TCA, but for "not longer than" nine months. The SCLE&JC can extend this period once for a further nine months.[59]

35. Home Office Minister, Kevin Foster MP, expressed confidence that the UK would pass the EU's tests for Prüm data:

> "We are confident that our operating processes are still fully in line with the Prüm requirements, given our experience of passing the previous evaluations. If any matters arise on a technical level during the evaluation that cannot be resolved between the evaluating team and the UK specialists, we would look to refer the matter to the specialised committee."[60]

Comparison with previous UK-EU arrangements

36. Witnesses welcomed the Agreement on Prüm. Mr Steve Rodhouse, Director General (Operations), National Crime Agency, told us: "This deal continues our access to the Prüm system. It makes the UK safer, because it will allow us to make more links between people and crime scenes that we would

55 The UK participated in the initial 'Prüm Decisions': Council Decision 2008/615 JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime 6 August 2008 OJ L 210/1 and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime 6 August 2008 OJ L 210/12, establish a framework for cross-border police cooperation to support the prevention and investigation of crime but failed to implement them fully. At their core is a decentralised system for the automated exchange of DNA profiles, fingerprint and vehicle registration data held in the national databases of the EU Member States (there is no central EU database). One of the main benefits of Prüm for law enforcement is the ability to compare DNA and fingerprints found at a crime scene in one Member State with data held in other Member States to see if there is a match ("hit"). Information revealing the identity of a possible suspect can only be exchanged once a match has been confirmed. The UK left the Prüm system as part of the Protocol 36 block opt-out decision in 2014 and opted back in in 2015. See: European Union Committee, *The United Kingdom's participation in Prüm* (5th Report, Session 2015–16, HL Paper 66)

56 Trade and Cooperation Agreement, 24 December 2020 (Article LAW. PRUM.5: Objective)

57 *Ibid.*, (Article LAW. PRUM.18: Ex ante evaluation (1))

58 *Ibid.*, (Article LAW. PRUM.18: Ex ante evaluation (2))

59 *Ibid.*, (Article LAW. PRUM.18: Ex ante evaluation (3))

60 Q 41

not otherwise have seen."[61] Assistant Chief Constable Ayling observed: "Regarding the exchange of information related to DNA and fingerprints, there is little material difference in how we will use the system access and its benefit for UK policing."[62]

37. Dr Ni Loideáin described Prüm as "arguably one of those glass-half-full situations. It is still a significant area where we have influence and can still contribute to law enforcement and day-to-day exchanges."[63] Sir Julian King also said the arrangements "look pretty good".[64] When compared to similar sharing arrangements between the EU and other third countries, he added: "The UK is not a member state; it has left. Therefore, the precedents that you have to measure it against are the arrangements that are available to other third countries. Against that, these look like effective arrangements."[65]

Future UK alignment with EU standards on Prüm data

38. The law enforcement agreement is not clear about the extent to which the UK will be obliged to follow any subsequent EU legislative amendments concerning Prüm data. It states that, in the event the Title is "amended substantially" by the EU, "it may notify the United Kingdom accordingly with a view to agreeing on a formal amendment of this Agreement in relation to this Title. Following such notification, the Parties shall engage in consultations."[66]

39. Prof Mitsilegas described the provisions relating to the sharing of Prüm data as "very detailed", noting that they "envisage what happens if the EU develops its rules further in the future and whether the UK needs to align with these rules, and there are mechanisms for that as well".[67]

40. As for future alignment in relation to Prüm data, Chris Jones, EU Director at the Home Office, insisted that the Agreement was not "dynamically aligned".[68] He explained:

> "In the longer term, it is possible that those standards may evolve. The UK would then have a choice as to whether or not to move its standards to meet the requirements under the Prüm system. There is no compulsory requirement for us to align with the EU Prüm system. The technology, of course, will not stay static in the long term."[69]

41. The Minister also reflected upon what would happen if future changes by the EU to the system of sharing of Prüm data, in advance of their evaluation of the UK's systems, put that evaluation at risk:

> "First, we would look to see whether we could resolve it at a technical level. That would be the first resort, if it was more about how the system operated rather than the fundamental principles. If we could not, the second part would be to go to the specialised committee. Ultimately, there would need to be a decision, for which Ministers would be

61 Q 31
62 Q 31
63 Q 18
64 Q 4
65 *Ibid.*
66 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.PRUM.19)
67 Q 18
68 Q 41
69 *Ibid.*

accountable to Parliament, around the decision. There are so many options in this space."[70]

Title III: Passenger Name Record data (PNR)

42. This Title deals with the transfer, use and process of "passenger name record data", drawn from flights between the EU countries and the UK, and provided to the UK's "competent authority"; it also establishes "specific safeguards" governing its use.[71] All such data must be processed "strictly" for the purposes of "preventing, detecting, investigating or prosecuting terrorism or serious crime", or in "exceptional cases" where it is necessary "to protect the vital interests of any natural person."[72]

UK obligations

43. Title III sets out the detailed obligations placed on the UK, and its competent authority, regarding the handling of sensitive PNR data.[73] These include requirements that:

- the safeguards applicable to the handling of PNR data are applied on an equal basis and without unlawful discrimination;[74]
- the processing of special categories of personal data is prohibited;[75]
- the UK must implement regulatory, procedural or technical measures to protect PNR data against accidental, unlawful or unauthorised access, processing or loss;[76]
- the UK shall ensure compliance verification and the protection, security, confidentiality, and integrity of PNR data through, for example, encryption, limited access by officials, and retention in secure physical environments;[77]

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70 Q 49
71 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.PNR.18: Scope)
72 *Ibid.*,(Article LAW.PNR.20: Purposes of the use of PNR data sub paragraphs (1) and (2)). Terrorism offences are listed in ANNEX LAW-7 of the TCA and serious crime is defined as any offence punishable by a custodia sentence or a detention order for a maximum period of at least three years under the domestic law of the UK (see Trade and Cooperation Agreement, 24 December 2020 (Article LAW.PNR.19: Definitions (f)).
73 The Commission describes Passenger Name Record data system established by Directive 2016/681 of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime 4 May 2016 OJ L 119/132 as: "unverified information provided by passengers and collected by air carriers to enable the reservation and check-in processes". It contains, for example, the dates of travel and its itinerary, ticket information, contact detail, travel and payment information, seat number, and baggage information. The Commission says that this is useful because it can provide the authorities with "important elements from a criminal intelligence point of view, allowing them to detect suspicious travel patterns and identify associates of criminals and terrorists, in particular those previously unknown to law enforcement". Adding that the processing of PNR data has "become a widely used essential law enforcement tool, in the EU and beyond, to prevent and fight terrorism and other forms of serious crime, such as drugs-related offences, human trafficking, and child sexual exploitation". European Commission, 'Migration and Home Affairs' (no date) https://ec.europa.eu/home-affairs/what-we-do/policies/law-enforcement-cooperation/information-exchange/pnr_en [accessed 3 March 2021]
74 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.PNR.23)
75 *Ibid.*, (Article LAW.PNR.24)
76 *Ibid.*, (Article LAW.PNR.25(1))
77 *Ibid.*, (Article LAW.PNR.25(2)(a) – (d))

- the UK competent authority is obliged to inform the SCLE&JC of any significant incident of accidental, unlawful or unauthorised access, processing or loss of PNR data;[78] and
- the Government must ensure that breaches of data security are subject to "effective and dissuasive corrective measures", which "may include sanctions".[79]

The UK PNR derogation

44. Under the terms of the law enforcement agreement, the UK may derogate from the obligation to delete all PNR data after individuals leave the UK, providing it adheres to specific safeguards to protect PNR data, for an interim period. The process for supervising the UK's derogation is set out in Box 2. In order to establish a need to retain data, the UK shall identify "objective evidence" from which "it may be inferred that certain passengers present the existence of a risk" in terms of the fight against terrorism and serious crime.[80] Every year an "independent administrative body" in the UK must assess the UK's approach to retaining the PNR data of individuals identified on the basis of objective evidence as presenting a risk in terms of terrorism or serious crime.[81]

Box 2: Supervision of the UK PNR derogation

Under the terms of Part Three of the TCA, the UK has been permitted to derogate from the obligation to delete all PNR data after individuals leave the UK if it applies additional safeguards designed to protect PNR data for an interim period. These additional safeguards reflect the Court of Justice of the EU's Opinion 1/15 of 26 July of 2017[82] on the legality of the EU/Canada PNR Agreement, and are listed in Part Three (Article Law.PNR.28 Paragraph 4(11)).[83]

The law enforcement agreement states that the UK has been allowed to derogate from this principle on the basis of "special circumstances" that prevent the Government from "making the technical adjustments necessary to transform the PNR processing systems" (which the UK operated while EU law applied) "into the systems which would enable PNR data to be deleted" in accordance with paragraph 4. These "special circumstances" are not explained further.

78 *Ibid.*, (Article LAW.PNR.25(4))
79 *Ibid.*, (Article LAW.PNR.25(5))
80 *Ibid.*, (Article LAW.PNR.28(4))
81 *Ibid.*, (Article LAW.PNR.28(7))
82 Court of Justice of the European Union, Opinion 1/15 (26 July 2017)
83 These additional safeguards include for example: access to PNR data by a limited number of people and only where necessary; deletion of PNR data as soon as possible "using best efforts, taking into account" special circumstances; increased use of documentation and logging of the processing of PNR data.

The length of the interim period during which this derogation will apply will be set by the Specialised Committee on Law Enforcement and Judicial Cooperation, after considering a report by the "independent administrative body" on the application of the additional safeguards and on whether the "special circumstances" mentioned above persist. If they do, then the Partnership Council, which oversees the Operation of the entire TCA, may extend the interim period for a year. The Partnership Council can also extend the interim period for a further year, if the UK has made "substantial progress" towards transforming its PNR processing system.

Finally, if the UK considers that a refusal by the Partnership Council to grant either extension is not justified, the UK Government can suspend this Title with one month's notice.

45. We asked the Government to explain the "special circumstances" that permit the UK derogation under Part Three. Mr Jones told us:

> "The phrase 'special circumstances' reflects the position the UK is in. Formerly, as a member state, we were cooperating under the PNR directive. As a third country, the EU is now required to treat us as a third country and therefore the CJEU opinion in respect of the EU-Canada Agreement applies to the UK in this respect. At the moment, our technical systems are not set up in a way that can fully comply with the requirements in the Agreement."[84]

46. We also asked the Minister to clarify the exact nature of the "independent administrative body" that will annually police the UK's adherence to standards in relation to PNR data retention. He told us:

> "The National Border Targeting Centre's independent compliance governance team, a functionally independent part of the UK's passenger information unit, not involved in the operational use of PNR data, has been designated by the Home Secretary as the independent body to undertake this work."[85]

47. On 22 February the European Data Protection Supervisor issued a non-binding Opinion questioning the legality of aspects of these arrangements, including the use of the TCA as the sole legal basis for exchanging PNR data with the UK, and the potential three-year length of the derogation.[86]

Comparison with previous UK-EU arrangements

48. All our witnesses agreed that the continued sharing of PNR data between the UK and EU Member States was of critical importance to law enforcement agencies. Vice Admiral Sir Charles Montgomery, former Head of UK Border

84 Q 42
85 *Ibid.*
86 The European Data Protection Supervisor is the European Union's independent data protection authority. It exercises a number of roles including: advising, on request, the EU institutions on matters relating to the processing of personal data, for example, on proposals for legislation and international agreements such as the TCA; monitoring the protection of personal data and privacy when EU institutions and bodies process the personal information of individuals; monitoring new technology that may affect the protection of personal information; intervening before the CJEU to provide expert advice on interpreting data protection law; and, cooperating with national supervisory authorities and other supervisory bodies to improve consistency in protecting personal information. See: EDPS *Opinion on the conclusion of the EU and UK trade agreement and the UK and EU exchange of classified information agreement* (22 February 2021) https://edps.europa.eu/system/files/2021–02/2021_02_22_opinion_eu_uk_tca_en.pdf [accessed 3 March 2021]

Force, described how PNR data had been "of almost equal importance" to the UK, when a Member State, as the data shared via the Schengen Information System (SIS II), discussed at paragraphs 57–74 below.[87]

49. Mr Steve Rodhouse told us that the new provisions "build upon previous capabilities inasmuch as there will be more frequent pushes of data by the airlines. We certainly do not anticipate a reduction in that very, very important capability."[88] These comments were echoed by Assistant Chief Constable Ayling: "There is little practical change in how we can access and use that information. In fact, there may be future opportunities with a slight readjustment of the thresholds to extend the use, particularly in matters of safeguarding."[89]

50. Sir Julian King emphasised that, to be effective, the new system had to ensure that PNR data continued to be exchanged between the UK and EU "before the plane lands."[90]

Future alignment with EU standards on PNR data

51. On the question of UK alignment with future EU legislative changes to the handling of PNR data, the Minister told us:

> "It would be for us to consider what we wish to do if the Union wished to make different standards or to use information in different ways, if they were signing up to agreements with third parties that may see our information shared further on. Again, we would have to consider carefully which partners internationally we would be happy for that to happen with. If the Union were to decide to make an agreement to share information with some countries in the world, I suspect we would not be as happy that it was deciding to do that."[91]

Title IV: Operational data

52. The provisions of Title IV relate to cooperation on sharing operational information. Mr Steve Rodhouse told us, though, that "from the NCA's perspective, we do not anticipate relying on Title IV in any case, because there are alternative powers under the Crime and Courts Act for bilateral sharing of information".[92]

53. We also asked whether the provision in Article 5 of Title IV, requiring national police and customs authorities, where "urgent cases" were concerned, to respond to a request for information "as soon as possible", could undermine the Title by implying a lack of urgency in other cases. In response, Assistant Chief Constable Ayling said: "There is nothing in there that offers us opportunity or gives me cause for concern."[93] Mr Rodhouse commented:

> "From the perspective of the National Crime Agency, we will always endeavour to share important information as quickly as possible. I do not see that this undermines Title IV. The operational reality is such that you will always try to share important information, subject to safeguards

87 Q 29
88 Q 31
89 *Ibid.*
90 Q 4
91 Q 42
92 Q 29
93 *Ibid.*

> on information sharing, as swiftly as possible so that it can be used to best effect."[94]

Title IX: Criminal records data

54. Mr Rodhouse welcomed the continued sharing of criminal records data between the UK and EU:

> "I cannot overstate the importance of understanding the criminal history of somebody when courts are making decisions or investigators are understanding their background. It is phenomenally important."[95]

55. Comparing the new arrangements under Title IX to those that applied when the UK was a Member State, under the European Criminal Records Information System (ECRIS),[96] Prof Mitsilegas explained that, as a third country, the UK no longer had access to ECRIS but, at the same time "if you read the annexes, the system is built on the ECRIS infrastructure for EU Member States. It says that the UK must build its own infrastructure and it will interact with a member state's infrastructure, which in turn will be built up on the ECRIS infrastructure."[97]

56. Dr Ni Loideáin believed that the sharing of criminal records data between the UK and EU Member States would be slower under the new arrangements, because "we have to set up new systems now to ensure that we make that access a real possibility every day for our law enforcement authorities. That will take some time, and I think investigations will face some delays because of that."[98]

57. However, Assistant Chief Constable Ayling explained that under the Agreement, the UK was now building its own infrastructure for the sharing of criminal records data, which "was now being termed UKRIS". He expressed confidence in the new system: "It is difficult to look too far ahead, but all the indications are that the system is resilient. It will continue to mirror what was previously in place."[99]

58. Mr Rodhouse did not expect the sharing of criminal records data under Title IX to be slower than it was under ECRIS, but cautioned that time would tell: "My understanding is that we do not expect any reduction in the timescales by which we share and obtain data from the EU. The average time is six days. Of course, we are 25 days in so we will see."[100] Assistant Chief Constable Ayling added:

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94 *Ibid.*
95 Q 31
96 The Commission's website says that the European Criminal Records Information System (ECRIS) was established in April 2012 in order to improve the exchange of information on criminal records throughout the EU. All EU countries are currently connected to ECRIS. It ensures that information on convictions is exchanged between EU countries in a uniform, fast and compatible way, provides judges and prosecutors with easy access to comprehensive information on the criminal history of persons concerned, including in which EU countries that person has previously been convicted and removes the possibility for offenders to escape the consequences of their previous convictions in another EU Member State. European Commission, 'European Criminal Records Information System': https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris_en [accessed 3 March 2021]
97 Q 18
98 *Ibid.*
99 Q 32
100 Q 31

> "The arrangement was always that the exchange would take place expeditiously, and in any case within 10 days. I understand that it has now been changed to 20 days but all the indications we currently have are that there is no drop in that cooperation, and the timescales are pretty much the same as they were before 1 January."[101]

59. Part Three of the TCA does not provide for the exchange of criminal records data in respect of third country nationals.[102] Instead, the Government explained that it would seek to access such information by making "bilateral requests" to EU Member States for data about third country nationals.[103]

Loss of access to the Schengen Information System (SIS II)

60. The Schengen Information System (SIS II) is described by the European Commission as the "most widely used and largest information sharing system for security and border management in Europe". It "provides a mechanism for EU Member States to share and act on real-time data on persons and objects of interest including wanted and missing persons".[104] Witnesses to past inquiries have repeatedly highlighted the vital role this system has played in supporting the operations of UK law enforcement agencies. At a joint evidence session held by the EU Justice and Home Affairs Sub-Committees in February 2020, Deputy Assistant Commissioner Richard Martin, of the National Police Chiefs' Council, told us that in 2019 UK police checked SIS II "603 million times".[105]

61. The UK's stated negotiating position, published in February 2020, made clear that it was seeking a future agreement on law enforcement cooperation between the UK and EU that provided "capabilities similar to those delivered by SIS II".[106] The Government restated this aspiration in its Draft Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters, published during the future relationship negotiations in May 2020. At the same time the Government acknowledged that:

> "The draft EU legal text does not provide for the real-time exchange of alerts on persons or objects. The European Commission has set out its view that it is not legally possible for a non-Schengen third country to cooperate with the EU through the SIS II database, and that the Agreement need not provide similar capabilities."[107]

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101 *Ibid.*

102 The UK opted into Regulation 2019/816 of 17 April 2019, establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System. and amending Regulation (EU) 2018/1726, OJL 135/1 22 May 2019. This enables the Member State to develop the ECRIS system to include records of third country nationals, but the UK's participation ended when the transition period ceased on 31 December 2020

103 Q 46

104 European Commission, 'Schengen information System': https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/schengen-information-system_en [accessed 16 February 2021]

105 Oral evidence taken before the EU Justice and EU Home Affairs Sub-Committees session on criminal justice cooperation after Brexit on 3 March 2020 (Session 2019–20) Q 5

106 HM Government, *The Future Relationship with the EU: The UK's Approach to Negotiations*, CP 211, (February 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf [accessed 16 February 2021]

107 HM Government, *Draft Agreement on Law Enforcement and Judicial Cooperation in Criminal Matters* (May 2020), part 10: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886019/DRAFT_Agreement_on_Law_Enforcement_and_Judicial_Cooperation_in_Criminal_Matters.pdf [accessed 16 February 2021]

62. Sir Julian described the loss of access to the System as one of "two headline challenges" of Part Three of the TCA (the other being the European Commission's forthcoming data adequacy decision in respect of the UK).[108] He emphasised the historic importance of SIS II to UK policing and law enforcement agencies:

> "The Schengen Information System was the go-to system for those on the front line. In many cases, they were able to plug in directly in real time to get access to information that was fed in from all the Member States; tens of thousands of alerts on wanted people and, indeed, objects of interest. That, as you know, was being used extensively, hundreds of millions of times a year, by UK police and law enforcement—billions of times a year if you look across the whole of the EU. It had become a real everyday working tool. That stops."[109]

63. Dr Ni Loideáin agreed, emphasising the loss of access to a system providing policing data in real-time would be "a blow" to police officers across the UK, adding: "That is what will hit officers in the short to medium term immediately."[110]

64. Assistant Chief Constable Ayling echoed these comments, while emphasising that action was being taken to mitigate the loss of access to SIS II: "The reality is that it is a significant loss of capability in terms of access to data, which is automated and integrated within our systems. Nevertheless, there are contingencies in place."[111]

Interpol I-24/7 system

65. In November 2020 we held two evidence sessions with law enforcement practitioners to discuss future UK-EU police cooperation.[112] Witnesses told us that the fallback for UK police forces, to replace SIS II after the end of the transition period on 31 December 2020, was the Interpol I-24/7 database.[113] Assistant Chief Constable Ayling described this as an arrangement that "falls a long way short of the benefits provided by SIS II. However, it is sufficient, in that it enables us to discharge our responsibilities effectively, and it delivers a mechanism whereby we can cooperate."[114]

Double-keying data

66. Mr Rodhouse identified two challenges to ensuring the effectiveness of the Interpol I-24/7 system as a replacement for SIS II. First, EU Member States needed to enter information onto the Interpol I-24/7 system in the same way as they did with SIS II:

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108 Q 1
109 Q 5
110 Q 18
111 Q 27
112 Oral evidence taken before the EU Security and Justice Sub-Committee session on post-Brexit police cooperation on 3 November 2020 and 17 November 2020 (Session 2019–21)
113 The International Criminal Police Organisation, known as 'Interpol', facilitates crime prevention and crime control worldwide across its 194 Member States, providing expertise, support and training. It operates 18 different databases, containing information and data relating to criminals and crimes. The databases contain millions of records on a range of intelligence from fingerprints, stolen property, passports to vehicles and weapons. All databases are accessed via I-24/7, Interpol's global police communication system. Member countries of Interpol, including the UK, upload data onto Interpol's databases, according to "a strict legal framework and data protection rules." See: Interpol: 'Who We Are': https://www.interpol.int/en [accessed 16 February 2021]
114 Q 27

> "We are reliant on the UK and, probably more significantly, EU Member States making use of that system, both to circulate data that would be useful to us in the UK in protecting the public, and to make our data alerts available on the front line to their law enforcement officers, in the same way Schengen Information System data was."[115]

67. Assistant Chief Constable Mark McEwan, Lead for EU Exit at the Police Service of Northern Ireland, told us on 17 November 2020 that EU Member States would have to enter the same data twice, onto both the I-24/7 System and SIS II, to ensure that the UK did not lose access to that information: "We are reliant on European partners double-keying, entering those records and data on to two systems."[116]

68. Mr Rodhouse explained that EU Member States would also be making a decision, in each case, about whether to use this process: "Rather than just circulate via SIS II, we want them to take out Interpol notices as well. Clearly, they will make a judgment as to whether that is the right thing to do in the particular case."[117] He explained that work was ongoing to "encourage" EU Member States to undertake this 'double-keying process':

> "In terms of encouraging EU Member States to take out Interpol notices … we have seen a spike in Interpol notices in recent weeks. A couple of countries have done this, Belgium and Italy in particular. In our messaging, we have been very clear with all our international liaison officers for some time about the importance of this. There seems to be a very strong overlap and no big loss in our access to alerts data."[118]

Assistant Chief Constable Ayling echoed those comments, telling us that "at this stage we are confident in the use of that system".[119]

69. We asked the Minister to explain what steps the Government was taking to encourage EU Member States to use the I-24/7 system, in addition to SIS II. He replied: "We have been engaging with Member States to encourage them to put appropriate information on to this system and to use it as a system we can share with."[120]

Getting Interpol data to the frontline

70. The second challenge in respect of the I-24/7 system is ensuring that information from the database is made promptly available to frontline UK law enforcement officers, via the Police National Computer (PNC). Mr Rodhouse explained the process:

> "The route for making that jump between I-24/7 and front-line officers is typically through the UK's International Crime Bureau, which we operate here at the NCA. When I-24/7 or Interpol notice alerts arrive in the UK, we now have a process to put them on the Police National Computer in a very short time. We are talking a number of hours, not a number of days."[121]

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115 Q 21
116 *Ibid.*
117 Q 25
118 Q 27
119 Q 24
120 Q 44
121 Q 25

71. He then outlined the ongoing technical work to help improve this process:

> "We are investing in robotic process automation to make sure that that is done very quickly and efficiently. We are really pleased with the way that is going. It allows us to effectively and efficiently make sure that data is available in the UK within a small number of hours. It is not real time, but it is swift. There are reasons to be positive here."[122]

72. In written evidence to the inquiry, Mr Rodhouse gave additional information about the work to reduce the time required to upload Interpol Notices onto the PNC:

> "Currently, manual upload of an Interpol notice onto the PNC via the UK International Crime Bureau (UKICB) will generally take a few hours. However, we are in the testing phase of utilising Robotic Processing Automation (RPA) to support our processes, with an aim to 'go live' in February. The whole process for one record using an RPA approach takes approximately 15 minutes."[123]

73. Mr Jones acknowledged these issues: "The timescales are not real-time in the way that they were under SIS II, but once we receive an Interpol notice or diffusion, it is a matter of hours for the NCA to be able to get that to our front-line policing systems."[124] He then confirmed that plans were in place to speed up the delivery of data: "We are looking, with Interpol, to see whether we can make that a more real-time system. That is something we are looking to do by the end of this calendar year."[125]

International Law Enforcement Alert Platform[126]

74. Both Assistant Chief Constable Ayling and the Government referred to the UK's "longer-term" plans to improve the exchange of alert data, between the UK, EU and third countries through the International Law Enforcement Alert Platform (ILEAP). Assistant Chief Constable Ayling explained the work to develop the platform was in its "very early stages". Its purpose was "about increasing the functionality of the Interpol system of notices to make it more readily accessible for UK policing".[127]

75. The Government said it was "keen to explore" the development of ILEAP with Member States, and anticipated that this work would be completed "over the next two or three years". In the meantime, "the immediate priority" was to "get the platform up and running with Interpol … this year".[128]

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122 Q 31
123 Written evidence from National Crime Agency (PBS0001)
124 Q 49
125 *Ibid.*
126 HM Government, *2025 UK Border Strategy*, CP 352 (December 2020): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/945380/2025_UK_Border_Strategy.pdf [accessed 20 February 2021] "ILEAP will enable real-time alert data sharing between UK law enforcement agencies and international partners (including INTERPOL databases) and will ensure the UK can continue to respond in real time to intelligence identifying potential security threats. The platform represents the practical enabler for future security data sharing agreements. This new capability will be critical to mitigate the UK's withdrawal from EU-wide real-time alert data sharing agreements." (p 45)
127 Q 24
128 Q 49

76. The Government also confirmed that it wanted "to connect the alerts to Border Force as well as front-line policing systems".[129]

Protecting the UK border

77. Vice Admiral Sir Charles Montgomery said SIS II had been "the most important" database for the UK Border Force.[130] He emphasised that any replacement systems and processes employed to mitigate the loss of access to SIS II needed to retain its key components:

> "Whatever replaces the Schengen Information System will weaken border security unless it retains the agility, responsiveness and comprehensiveness of data that comes across the border. While I take the NCA and the NPCC's assurances very seriously, I personally want to hear more about the ability to sustain that agility and responsiveness through the systems."[131]

78. Sir Charles also emphasised the need to ensure that data from Interpol was as accessible to UK border security agencies, via the Warnings Index, as it had previously been from SIS II:[132]

> "From a border perspective … it is about the connectivity between the Schengen Information System and the Warnings Index. The Warnings Index is key to controls at the border. SIS II to the Warnings Index was pretty well seamless. Interpol to the Warnings Index was a manual process. We were working to make a more automated process, but it was slower and clunkier. It is important to keep an eye not simply on the linkage between Interpol and the police national computer, but on how that information is translated to the Warnings Index."[133]

Conclusions and recommendations

79. **We welcome the fact that Part Three of the Trade and Cooperation Agreement provides for the continued sharing of law enforcement and policing data, which is vital for the protection of UK citizens.**

80. **The ability of UK agencies to exchange data with the EU under Part Three of the Agreement has been made subject to many important caveats. First, the UK's handling of DNA, fingerprint, and vehicle registration data on the basis of the Prüm system will be subject to an evaluation by the EU later this year.**

81. **Second, the obligation to delete PNR data the moment the subject leaves the UK's jurisdiction is subject to a complex derogation, which itself is subject to additional safeguards set down by the Court of Justice of the European Union in its Opinion on the Canadian PNR Agreement. We also note that on 22 February 2021 the European Data Protection Supervisor questioned the use of the TCA as a legal basis for sharing PNR data with the UK and the length of three-year period to which the derogation may apply.**

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129 *Ibid.*
130 Q 32
131 Q 22
132 Intelligence on persons of interest is collated in the Warnings Index system, which can be used by border officials or the National Border Targeting Centre.
133 Q 24

82. **Third, by their nature, the data sharing arrangements are reciprocal. The Prüm system, for example, is supported by an Annex to the TCA containing 91 pages of EU legislation. The Government told us that it will be a matter of 'choice' whether or not it remains aligned to EU legislation as it evolves. If it does not, the UK could lose access to vital policing and law enforcement data, or find itself facing a formal dispute with the EU. Therefore, it will be necessary for Parliament to constantly monitor the development of EU legislation in this field.**

83. **The Government is confident that the UK's former EU membership will enable it to satisfy all these requirements. Given their complexity and seriousness, we do not share that confidence.**

84. **The Government should be congratulated for securing an agreement whereby criminal records data will be shared with the EU on a very similar basis to that which applied when the UK had access to the European Criminal Records information Service (ECRIS), including within comparable time frames. It will be important for parliamentary committees to continue to monitor the future effectiveness of the replacement system now being built, to assess whether it provides capability comparable to ECRIS, in terms of the data that can be accessed and the speed with which it is made available to UK law enforcement agencies.**

85. **The UK's loss of access to the Schengen Information System leaves the most significant gap in terms of lost capability. It means that, for the time being, law enforcement officers can no longer immediately have access to real-time data about persons and objects of interest, including wanted and missing persons. The fallback system, the Interpol I-24/7 database, currently provides data in a matter of hours, not seconds. However, we note that work is underway to increase the speed at which Interpol Notices are available to UK frontline law enforcement officers.**

86. **At the same time, we note that the effectiveness of the Interpol I-24/7 database as a substitute for the Schengen Information System depends heavily on EU Member States accepting the additional workload of 'double-keying' data into both systems, on a continuing basis. We did not receive any clear evidence from the Government on how it planned to secure such commitments from EU Member States to do so.**

87. **We therefore remain concerned about the effect of the loss of access to SIS II on the operational effectiveness of UK police and law enforcement agencies. We recommend that the Government report on a regular basis to relevant committees of both Houses on progress in improving current processes for uploading Interpol alerts onto the Police National Computer, and on its progress in encouraging EU Member States to 'double-key' data into Interpol databases.**

Data protection and conditionality

88. Cooperation in Part 3 of the TCA is based not only on the Parties' "longstanding respect" for democracy, the rule of law and the protection of fundamental rights and freedom of individuals, but also on the Parties' "long-standing commitment" to ensuring a "high-level of protection" of

personal data.[134] To "reflect" this commitment, the Parties undertake that the personal data processed under Part Three of the Agreement shall be subject to "effective safeguards", such as:

- lawful and fair processing in compliance with the principles of "minimisation, purpose limitation, accuracy and storage limitation";
- processing of special categories of personal data is only permitted to the "extent necessary and subject to appropriate safeguards";
- data subjects are granted "enforceable rights of access, rectification and erasure";
- onward transfers of data to third countries to be allowed "only subject to conditions and safeguards"; and
- the supervision of compliance with all data protection standards and their enforcement must be ensured by an "independent" authority.[135]

Part Three of the TCA can, as we have noted (see paragraph 19) be suspended in whole or in part if either Party demonstrates a "serious and systemic" deficiency in respect of "the protection of personal data", including where this has led to a "relevant adequacy decision ceasing to apply".[136]

89. Dr Ni Loideáin described the suspension provision in relation to data protection as "a very significant provision that makes all the other arrangements under Part 3 extremely vulnerable".[137] As a country outside the EU, she noted, the UK will be expected to apply higher standards of data protection:

> "As a third country we are no longer being given that margin of appreciation which the European Court of Human Rights accorded us, for instance in the Big Brother Watch judgment in 2018[138] with regard to the bulk and generalised access that intelligence authorities and security agencies have to that kind of data."[139]

She also referred to the successive legal challenges to EU-United States agreements on data transfers: "The Schrems judgment of 2015 and the recent Schrems II judgment of 2020 also confirm that these particular safeguards and requirements now apply to us as a third country."[140]

90. Prof Mitsilegas also referred to the UK's bulk retention of data, authorised under the Investigatory Powers Act 2016:[141]

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134 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.GEN.4(8))
135 *Ibid.*, (Article LAW.GEN.4(9)(a) – (h))
136 "Relevant adequacy decision" is defined within the Agreement in relation to the relevant EU law (the General Data Protection Regulation 2016/679 and Directive 2016/680) and UK law (the Data Protection Act 2018) see Trade and Cooperation Agreement, 24 December 2020 (Article LAW.OTHER.137(3) and (4)).
137 Q 13
138 European Court of Human *Rights, Big Brother Watch and others v the UK* Case 58170/13 (13 September 2018)
139 Q 19
140 Court of Justice of the European Union, *Data Protection Commissioner v Facebook Ireland and Maximillian Schrems* C-311/18 (16 July 2020)
141 Court of Justice of the European Union, *Privacy International v The Secretary of State of State for Foreign and Commonwealth and others* C-623/17 (6 October 2020)

> "It is not enough for the Government to say that the GDPR is transposed into the UK law and this is enough. We need to look at the bigger picture, including the elephant in the room—the bulk retention of data and access to this data by national security and intelligence authorities for the UK. This is a big issue, and it is currently contrary to the Court of Justice case law."[142]

91. Prof Mitsilegas also emphasised the EU's continued monitoring of the UK's data protection regimes: "Although the UK is a third country, it is subject to ongoing monitoring by the EU and its institutions with regard to the adequacy of its data protection arrangements. It cannot really be a clean break if you want to have close cooperation in this way."[143]

92. Sir Julian King noted that the EU's interest in UK data protection standards could extend to "the so-called 'onward transfer of data'—the data-sharing arrangements, particularly on the law enforcement side, between, for example, UK authorities and authorities in other countries, specifically the United States." Such areas "will get very closely scrutinised."[144]

93. Mr Jones emphasised that, in return, the UK could find the EU in breach of the data protection principles enshrined in Part Three: "The UK may have concerns about serious and systemic data protection breaches by the EU, or vice versa. That is the legal test under this Agreement that needs to be applied."[145]

Data adequacy

94. At the time of writing, the UK was seeking a data adequacy decision from the European Commission, under both the General Data Protection Regulation (GDPR) and Law Enforcement Directive (LED).[146] To date, the Commission has published draft decisions in favour of granting the UK adequacy in respect of both the Law Enforcement Directive and GDPR. However, subsequently, the European Data Protection Supervisor has published an Opinion on the TCA which expresses concerns about some of its data protection safeguards, including in relation to Part Three.[147]

95. Until the decision is confirmed, the TCA provides for a temporary "bridging mechanism", for up to a maximum of six months, to allow the continued

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142 Q 20
143 *Ibid.*
144 Q10
145 Q 47
146 Data adequacy is a status granted by the European Commission to countries outside the European Economic Area (EEA) who provide a level of personal data protection comparable to that provided in European law. When a country has been awarded the status, information can pass freely between it and the EEA without further safeguards being required. The Commission's draft decisions in favour of awarding the UK adequacy under both GDPR and the LED are not the end of the process. Before adequacy can finally be conferred upon the UK, the Commission's draft decisions must also be endorsed by the European Data Protection Board, and the European Parliament. At the time of writing, these had not yet been given.
147 On 19 February 2021 the Commission published draft decisions in favour of awarding UK adequacy in respect of both GDPR and the Law Enforcement Directive. See: European Commission, 'Press Statement: Data protection: European Commission launches process on personal data flows to UK', 19 February 2021: https://ec.europa.eu/commission/presscorner/detail/en/ip_21_661 [accessed 24 February 2021]. The European Data Protection Supervisor's report on the TCA, which is a process independent of the data adequacy decision, was published on 22 February 2021, see: https://edps.europa.eu/sites/edp/files/publication/2021_02_22_opinion_eu_uk_tca_en.pdf [accessed 24 February 2021]

lawful transfer of personal data from the EU to the UK.[148] If adequacy is granted, the UK will join other third countries including Israel, Switzerland, and Japan which the European Commission has declared to be a safe place to send personal data from the EEA, in accordance with the GDPR's strict rules about international data transfers.

96. Quite apart from the data adequacy regime, Part Three of the TCA enshrines a commitment by the Parties to uphold specific data protection standards, which are themselves supported by safeguards set out in the Agreement. While these provisions might appear to insulate the law enforcement agreement from any adequacy decision, either now or in the future, it is important to note that the suspension clause relating to a "serious and systemic" deficiency within one Party in "the protection of personal data" specifically includes the possibility that this has led to a "relevant adequacy decision ceasing to apply".[149]

97. Dr Ni Loideáin noted that the then pending adequacy decision would not be the end of the story:

> "Data adequacy decisions are reviewed periodically, so it is not like after six months we no longer have to worry about the UK legal provisions in law enforcement and security. Given recent judgments of the Court of Justice, national security matters will also come under the scope of that review, since the Schrems judgment and more recent judgments."[150]

98. On the other hand, Home Office Minister Kevin Foster MP told us:

> "Part Three of the TCA … is not innately bound up with whether we get an adequacy decision. There is still an ability to operate those provisions without that determination having been made. Although we do not expect it to be a refusal, we could still operate the provisions without it, given that there are a number of mechanisms for doing so; for example, with appropriate safeguards."[151]

Mr Jones added:

> "The Agreement provides some high-level data protection principles up front … drawn from conventions such as the Council of Europe Convention. Those principles are key underpinnings for data protection for law enforcement and criminal justice cooperation. They are supplemented in the individual capabilities covered by the agreements, with specific data protection rules. Whether that is on Prüm, for DNA and fingerprint exchange, PNR or some of the other areas, there are specific data protection provisions."[152]

99. We also asked the Minister about the possible consequences to Part Three of the TCA if an adequacy decision were to be successfully challenged in the CJEU.[153] He declined to speculate, but observed that a "high bar" would need

148 Trade and Cooperation Agreement, 24 December 2020 (Article FINPROV.10A: Interim provision for transmission of personal data to the United Kingdom)
149 *Ibid.*, (Article LAW.OTHER.137(3) and (4))
150 Q 11
151 Q 47
152 Q 47
153 Court of Justice of the European Union, *Maximillian Schrems v Data Protection Commissioner (Safe Harbor)* C-362/14 (6 October 2015)

to be cleared for the law enforcement agreement to be suspended.[154] More broadly, he commented: "If we got to the stage where our data-handling was found to have serious deficiencies, first, I suspect that would raise some quite immense questions about our own criminal justice system. Secondly, it would probably be an issue that had been raised a time before." He added that such concerns could be "raised via an adequacy process without the whole system being suspended or removed, unless, as touched on, there are serious and systemic problems".[155]

100. We note that, in recent times, there have been repeated instances of Home Office errors in the handling of police and criminal justice data, leading to concerns raised in the EU about the reliability of UK data sharing processes.[156]

Conclusions and recommendations

101. **As we anticipated in 2017 in our Report on Brexit and Data Protection, now that the UK is a third country it will be held to higher standards by the EU in respect of data protection. For example, it will no longer be able to benefit from the national security exemption in the EU Treaties that is available to EU Member States when their individual data retention and surveillance regimes are tested before the CJEU. In the Privacy International case the CJEU has already questioned the former UK law on the acquisition and use of bulk communications data.**

102. **Similarly, it is clear to us that to maintain the necessary confidence among the UK's EU partners about its policing and criminal justice data sharing processes, the Home Office should always ensure the highest standards of data handling.**

103. **Despite the Government's claims that the UK has left the CJEU's jurisdiction, there is abundant scope for legal challenge on data protection grounds that could have implications for the UK. The Schrems and Schrems II cases demonstrate the real possibility of a successful challenge to the award of a data adequacy decision to the UK by the Commission. Moreover, Part Three can be suspended in the event of "serious and systemic" deficiencies in respect of the protection of personal data, including where these have led to a relevant adequacy decision ceasing to apply.**

104. **In summary, a positive adequacy decision will support the operation of the TCA, but CJEU judgments in respect of UK data protection standards may yet have an indirect but far-reaching impact. The provisions designed to insulate the TCA from any negative decision on data adequacy are yet to be tested.**

154 Q 47
155 *Ibid.*
156 In March 2021, the media reported that the Home Office had failed to pass on to EU Member States the details of over 112,00 criminal convictions; in January 2021, the Home Office admitted accidentally deleting 15,000 records from the Police National Computer, including fingerprint and DNA records; in February 2020 our predecessor Committee asked the Home Office to respond to reports that, between 2012 and 2019, it had failed to pass on the details of 75,000 convictions of foreign criminals to their home EU countries.

CHAPTER 4: FUTURE UK INVOLVEMENT IN EU LAW ENFORCEMENT AND CRIMINAL JUSTICE AGENCIES

Title V: UK's future involvement in Europol

105. Title V establishes "cooperative relations" between Europol[157] and the "domestic law enforcement"[158] authorities of the UK in "preventing and combating serious crime, terrorism",[159] and other crimes which affect a common interest covered by a Union policy. The specific crimes are listed in ANNEX LAW-3 to the Agreement.[160]

106. To facilitate cooperation, the UK will designate a "national contact point". This will act between Europol and the competent authorities of the UK. The national contact point will act as a conduit for information and personal data between Europol and the UK's competent authorities. In addition, the UK will second "one or more" liaison officers to Europol's offices in The Hague, while Europol "may" do likewise to the UK.[161] The Agreement requires the UK to ensure that these liaison officers enjoy "direct access" to relevant domestic databases,[162] and that they will act and work appropriately within the constraints of their working and administrative arrangements,[163] while reflecting the UK's new status "as not being a Member State".[164]

107. As well as the "exchange of personal data", cooperation with Europol on the basis of this Agreement "may" include:

- the exchange of "information such as specialist knowledge";
- "general situation reports";
- "results of strategic analysis";
- "information on criminal investigation procedures";
- "information on crime prevention methods";
- "participation in training activities"; and
- the "provision of advice and support in individual criminal investigations" and "operational cooperation".[165]

157 Europol is the EU's law enforcement agency, which aims to achieve a more secure Europe by supporting Member States in their fight against serious organised crime and terrorism. It was originally established as an intergovernmental body in 1995 and became operational in 1999. Europol supports the work of Member States' law enforcement authorities by gathering, analysing, and sharing information and coordinating operations.

158 Trade and Cooperation Agreement, 24 December 2020 (Article. LAW.EUROPOL.47: Definitions (b))

159 *Ibid.*, (Article. LAW.EUROPOL.46: Objective)

160 *Ibid.*, (Article. LAW.EUROPOL.48: Forms of crime(1)). The list includes over 30 crimes including: terrorism; organised crime; drug trafficking; money laundering; trafficking in human beings; murder and GBH; robbery and aggravated theft. Under sub-paragraph 3, where the list of crimes to which Europol is competent is changed under Union law, the SCLE&JC can, following a proposal from the EU, amend Annex LAW-3 accordingly.

161 Trade and Cooperation Agreement, 24 December 2020 (Article. LAW.EUROPOL.49(4))

162 *Ibid.*, (Article. LAW.EUROPOL.49(5))

163 *Ibid.*, (Article. LAW.EUROPOL.49(6))

164 *Ibid.*, (Article. LAW.EUROPOL.59: Working and administrative arrangements (2))

165 *Ibid.*, (Article. LAW.EUROPOL.49: Scope of cooperation)

The bulk of the rest of the Title contains rules governing the handling of the exchange of information and/or personal data.

108. Of the UK's future role in Europol, Prof Mitsilegas told us: "I do not think it will be the same, which it is a great shame, because Europol is a great example of the UK's influence in justice and home affairs. It is the model of intelligence-led policing that has largely been exported from the UK to the EU, and now, sadly, you are a third country." [166] Dr Ni Loideáin also regretted the diminished influence the UK would have as a third country in Europol: "This is a clear demonstration of that operational downgrade, and it is particularly unfortunate in the context of Europol, because the UK has played such a significant role in the future direction and intelligence-led policing focus of Europol."[167] Mr Rodhouse highlighted in particular that the UK would not "be part of the Europol management board in the future".[168]

109. Nonetheless witnesses felt that the UK could still play an important role in Europol. In the words of Mr Rodhouse:

> "The relationship with Europol is very, very important. It has been so and will continue to be so. A large number of the serious and organised crime threats we face, if not all, feature people, data, money or commodities travelling through Europe to the UK. It is really important for us to engage at scale in a multilateral venture such as Europol."[169]

110. Dr Ni Loideáin also emphasised that the UK's continuing participation was of mutual benefit:

> "Europol is also hugely reliant on the co-operation and support, and specifically data transfers from EU Member States, so the UK will still have a lot to contribute to co-operation there. We are highly valued in the capacity and the resources that we contribute at the law enforcement and security level, the national DNA database being the second largest in the world, and our huge involvement in exchanges like Prüm are good evidence of that."[170]

111. On a practical level, Mr Rodhouse thought that "very little will change in our relationship with Europol. We will still have the UK liaison bureau. We have not withdrawn people from there. We continue to have the right people in place."[171] He also observed that, at least in the first few weeks, "we have seen no deterioration in the volume, speed, quantity or quality of the intelligence we share through Europol. We continue to be able to do that. That is a really strong picture for us."[172]

166 Q 17
167 *Ibid.*
168 Q 26
169 Q 26
170 Q 17
171 Q 26
172 *Ibid.*

Title VI: UK's future involvement in Eurojust

112. Title VI establishes cooperation between Eurojust[173] and the "competent authorities"[174] of the UK to combat the serious crimes for which Eurojust is competent under EU law.[175] To facilitate cooperation the UK will "put in place or appoint" at least "one contact point" to Eurojust within the UK's competent authority, and designate one of them as "Domestic Correspondent for Terrorism Matters".[176] The UK will second a "Liaison Prosecutor" to Eurojust in The Hague, who "may be assisted" by up to five individuals.[177]

113. The detailed working arrangements covering all these provisions are yet to be decided. Title VI states that these will be discussed by the UK and Eurojust in line with the relevant provisions governing third country arrangements in the Eurojust Regulation,[178] in particular those governing the handling of personal data with third countries.[179] The Government confirmed to us that it was currently discussing "some detailed technical working arrangements between the UK, Europol and Eurojust. That is the live negotiation that we are hoping to conclude shortly."[180]

114. On the work that remained to be done, Sir Julian King observed:

> "It is important to note there that quite a lot of the follow-up work on how exactly the UK and UK representatives will be engaged with those agencies is left to be developed by the management boards of those agencies. That is welcome, because the management boards are made up of front-line practitioners who attach a great deal of importance to effective co-operation. They will be looking to try to build the best possible working relationship, respecting the fact that the UK and UK representatives will be coming from a non-member state."[181]

115. Mr Rodhouse also expressed confidence in the UK's new relationship with Eurojust: "I understand, from work we continue to do in the agency, that

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173 Eurojust is the EU's agency for criminal justice cooperation. It is comprised of national prosecutors, magistrates, or police officers from each Member State. Its purpose is to assist Member States by coordinating investigations and prosecutions in criminal matters in the Member States; in particular, by facilitating requests for mutual legal assistance and extradition, and by supporting the exchange of information between national authorities engaged in investigating transnational crime. Eurojust acts after requests from the relevant individual Member State authorities. In future, it will work closely with the European Public Prosecutor's Office. It also supports Joint Investigation Teams (JITs) which comprise of agreements between competent authorities of two or more States for the purpose of carrying out criminal investigations.

174 Trade and Cooperation Agreement, 24 December 2020 (Article. LAW.EUROJUST.61: Objective)

175 The list includes over 30 crimes, for example: terrorism; organised crime; drug trafficking; money laundering; immigrant smuggling; murder and GBH; robbery and aggravated theft; crimes against the financial interests of the Union; and, trafficking in human beings. Where the list of crimes to which Eurojust is competent is changed under Union law, the SCLE&JC can, following a proposal from the EU, amend Annex LAW-4 accordingly under Article LAW.EUROJUST.63(3)

176 Trade and Cooperation Agreement, 24 December 2020 (Article. LAW.EUROJUST.65: Contact points to Eurojust)

177 *Ibid.*, (Article. LAW.EUROJUST.66: Liaison Prosecutor)

178 See for example Trade and Cooperation Agreement, 24 December 2020 (Article. LAW.EUROJUST.66(7); (Article. LAW.EUROJUST.67(2); (Article. LAW.EUROJUST.74); and (Article. LAW.EUROJUST.75)

179 Regulation (EU) 2018/1727 of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA (Articles 47(3) and 56(3)) OJ L 295/138, 21 November 2018

180 Q 48

181 Q 4

our engagement with Eurojust remains strong, and I believe we still have a presence there undertaking the work."[182]

116. Dr Ni Loideáin thought that, over time, the UK's relationship with both agencies could develop: "There is scope there to expand our role somewhat further within Europol and Eurojust in future, and that kind of investigation could be explored by the specialised law enforcement committee. I do not think this is the end of the matter at all."[183]

117. Prof Mitsilegas noted that if the EU's mandate for either Eurojust or Europol changed in the future, "then, in order to avoid a new agreement between the two parties, it would be for the specialised committee to decide to extend the mandate as applied to the United Kingdom".[184]

Conclusions and recommendations

118. **The UK has secured an agreement to continue its involvement with Europol and Eurojust that reflects its status as a country outside the EU, but with a continuing close relationship on law enforcement and criminal justice. It is similar to arrangements agreed with countries such as the USA and Canada. As a result, the UK will continue to share data and expertise, but no longer have a role in the overall management of those agencies, or a say in their strategic direction.**

119. **The UK still has much to offer both agencies, in terms of experience and operational intelligence. We hope that the UK's engagement and influence will be maintained to the greatest possible extent permitted under the arrangements in Title V, for the benefit of both Parties. But we note that as with many of the provisions in Part Three, continued UK cooperation with Europol and Eurojust may be dependent upon the UK's data protection regime continuing to meet EU standards.**

120. **The detailed working arrangements of the UK's involvement are yet to be concluded. There is also potential, over time, for the UK's relationship with both agencies to develop, under the auspices of the Specialised Committee on Law Enforcement and Judicial Cooperation. We call on the Government to report to relevant select committees of both Houses, at least annually, on the development of UK's important relationships with Europol and Eurojust.**

182 Q 26
183 Q 17
184 Q 12

CHAPTER 5: THE EXTRADITION PROVISIONS

Title VII: The surrender agreement

Replacing the European Arrest Warrant

121. The surrender agreement in Title VII broadly replicates arrangements to which the UK was formerly party under the European Arrest Warrant, which the European Commission describes as "the most successful instrument of judicial cooperation in criminal matters in the Union".[185] Under Title VII, following a suspicion or a conviction for a criminal act punishable in State A by a custodial sentence for a maximum period of at least 12 months,[186] the judicial authorities in State A can issue an arrest warrant for an individual to be executed by the authorities in State B. There are limited grounds for refusal.[187]

122. Prof Mitsilegas observed that the new surrender agreement represented "a significant ambition to provide some continuity, rather than rupture of what we had".[188] Mr Rodhouse concurred: "We are reassured by the fact that the new arrangements retain the majority of the features from the European Arrest Warrant system."[189] He also highlighted that it "includes mandated time limits for the surrender of individuals to countries."[190]

123. The new provisions in Title VII also largely mirror the surrender agreement agreed between the EU and Iceland and Norway, with some exceptions.[191] As Assistant Chief Constable Ayling told us:

> "The arrangement is a streamlined version of the Norway-Iceland Arrangement. It allows for direct transmission with limited grounds for refusal and a timelimited process. Those were the key aspects for us to ensure the workability of it."[192]

185 The Commission describes the European Arrest Warrant as a "simplified cross-border judicial surrender procedure … for the purpose of prosecution or executing a custodial sentence or detention order". The system has been in force since 1 January 2004 across all EU Member States and replaced lengthy 'political' extradition procedures that used to exist between EU countries. See: European Commission, 'European arrest warrant': https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en] [accessed 3 March 2021]

186 Trade and Cooperation Agreement, 24 December 2020 (Article LAW.SURR.79: Scope (1))

187 See Trade and Cooperation Agreement, 24 December 2020 (Articles LAW.SURR.80 and 81). A warrant shall be refused if: the offence for which it is issued is covered by an amnesty in the executing state; if the executing judicial authority is informed that the requested person has been finally judges by the state in respect of the same acts; or, if the person if the person subject to the arrest warrant, owing to their age, may not be held criminally responsible for their acts under the law of the executing State. Grounds for when a warrant can be refused include, for example, if: the act on which the arrest warrant is based does not constitute an offence under the law of the executing state; if the person is being prosecuted in the executing state for the same act on which the arrest warrant is based; and, if the judicial authorities of the executing State have decided either not to prosecute for the offence or to halt proceedings.

188 Q 14

189 Q 23

190 *Ibid.*

191 The EU surrender agreement with Norway and Iceland came into force on 1 November 2019, bringing the two countries into the European Arrest Warrant system.

192 Q 23

124. Prof Mitsilegas described the new surrender provisions as "ambitious" and "unprecedented" between the EU and a third country:

> "The time limits remain very ambitious, so the speed element remains. Also, there is an annexe pro forma of the arrest warrant that is more or less the same as the pro forma of the European Arrest Warrant. This shows the willingness to continue to have an exchange on the basis of pro forma forms with a minimum of formality in a sense, so not too much red tape. The abolition of the requirement to verify dual criminality remains to make it easier, and there are also limited grounds to refuse to execute a warrant. This is unprecedented in relation to the EU's relationship with non-Schengen, non-EU third countries."[193]

125. At the same time, witnesses reserved judgement on the long-term effectiveness of the new arrangements. Sir Julian King said: "I think it is an area where, first, we need to see how it comes into force, secondly, we need to see how it works in practice and, thirdly, we will have to monitor carefully as we get closer to the review arrangements to make sure that it remains effective."[194] Mr Rodhouse agreed: "We need to see how these systems work in practice. It is very early days."[195]

126. Prof Mitsilegas also expressed concern over the possible effect on the new surrender provisions of the UK's loss of access to the Schengen Information System: "The elephant in the room here is how the system of speed will operate in practice with the UK no longer having access to the Schengen Information System alerts, because this hinders a lot of the speed in the process."[196]

127. We asked the Minister how the Government intended to encourage Member States to prioritise warrants issued under these new arrangements. In response, he told us:

> "We are engaging with European Governments around this process and our wish to ensure that those who are due to answer for potential offences or who have a case to answer here in the United Kingdom are returned, and similarly the other way around, of course; we do not want the UK to become a place where a European criminal believes they can flee in order to avoid justice."[197]

Proportionality and defendants' rights

128. Cooperation under Title VII is based on the principle of proportionality, a principle missing from the text of the Framework Decision establishing the

193 Q 14
194 Q 10
195 Q 23
196 Q 14
197 Q 44

EAW and the Norway-Iceland Agreement.[198] The Government explained that its presence "reflects the law in the UK and the practice of our courts and prosecutors in taking into account the importance of, first of all, making sure that people are not extradited for trivial offences".[199]

129. Prof Mitsilegas noted that the principle of proportionality "was promoted by the UK Government, and … is there to underpin the operation of the system now".[200] He also observed that the Parties "have made every effort possible to avoid politicisation, first by keeping the judicial character of extradition, which is a big innovation in international law, where extradition is mostly a matter for the Executive".[201]

130. Alongside the proportionality provision, the new surrender arrangements include a provision setting out the rights of individuals, including to legal assistance, to be informed of the contents of the warrant for their surrender, and to an interpreter.[202] These rights, however, are only conferred "in accordance with domestic law". The TCA also includes an over-arching provision stating explicitly, with an exception for the EU with regard to Part Three of the TCA, that it does not confer any additional, enforceable rights upon individuals.[203]

131. Prof Mitsilegas described the Agreement as "quite elliptical" on defendants' rights:

> "It mentions a few of them, but we need to rely on member state systems. EU Member States are bound by detailed provisions on minimum standards on the rights of the defendant there. The monitoring there will be by judicial authorities that still have the right to refuse to execute an extradition request, an arrest warrant, if they feel that the fundamental rights of the suspect will be breached if the arrest warrant is executed."[204]

132. The Minister emphasised that the principle of proportionality in Title VII, and its possible exemptions, meant that a judge considering a surrender warrant under the new system "will be able to consider a range of factors: UK human rights obligations; whether something is an offence here in the United Kingdom; whether it is a political charge".[205]

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198 Title VII is based on the "principle of proportionality". Cooperation under this Title "shall be necessary and proportionate" taking into account the "rights of the requested person" and the "interests of the victim" whilst "having regard to the seriousness of the act, the likely penalty" that would be imposed and the "possibility of a State taking measures less coercive than the surrender of the requested person"; particularly with a "view to avoiding unnecessarily long periods of pre-trial detention". See Trade and Cooperation Agreement, 24 December 2020 (Article LAW.SURR.77: Principle of proportionality). In the Court of Appeal Luxembourg, Judgment of the Court (First Chamber) *Parquet général du Grand-Duché de Luxembourg and Openbaar Ministerie* (Public Prosecutors of Lyon and Tours) Case C-566/19 (12 December 2019) the CJEU said at paragraph 68 that it requires the judicial authority competent to issue an EAW to "review … observance of the conditions necessary for the issuing of the European arrest warrant and examine whether, in the light of the particular circumstances of each case, it is proportionate to issue that warrant".

199 Q 45

200 Q 14

201 *Ibid.*

202 Trade and Cooperation Agreement, dated 24 December 2020 (Article LAW.SURR.89: Rights of a requested person (1) – (5))

203 *Ibid.*,(Article COMPROV.16: Private rights). This provision is discussed further in European Union Committee, *Beyond Brexit: the institutional framework* (21st Report, Session 2019–21, HL Paper 246)

204 Q 16

205 Q 44

133. We then asked the Minister whether a recent ruling by a Dutch court, which refused to extradite an individual to Poland because of concerns about the rule of law and judicial independence in that country, highlighted the kinds of points that UK courts could take into account when considering applications for extradition under Part Three.[206] He replied: "I would not want to start straying into the territory of what the judiciary decides is an appropriate thing to take into account when judging a warrant."[207]

Title VII exemptions

134. Under the Agreement, a state may refuse to execute a surrender warrant on three grounds: (i) if the alleged offence does not exist in the executing state;[208] (ii) if surrender is sought for a political offence;[209] or (iii) if the requested person is a national of a state that has invoked fundamental constitutional principles barring the extradition of its own-nationals.[210]

135. Asked whether the UK was likely to invoke the first of these grounds, the Minister replied:

> "Our general position is that we would not look to extradite someone from this jurisdiction for a matter that is not an offence in this jurisdiction, for very obvious reasons. There are various nuanced offences across EU Member States where that would apply, where there are things that are not matters of criminality here in the UK."[211]

136. He also commented on the political offence exemption:

> "Traditionally, an important part of our extradition process has certainly always been that we will not remove people from this jurisdiction if we are satisfied it is a political charge that has been brought. In the context of the 27 EU Member States, that is not usually an issue, given the very strong independence of their criminal justice systems and the quality of the jurisprudence they have."[212]

137. As to the third ground, the Minister confirmed that the UK would not seek to invoke the own national exemption, and would only refuse to surrender its own citizens "where it would not be an offence within the jurisdiction of the United Kingdom or where we were satisfied there was a political motivation".[213]

138. Prof Mitsilegas thought the political offence exemption was an area where the "the UK will lose out". He also noted that the surrender agreement's

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206 Hans Von Der Burchard, 'Dutch court escalates rule of law battle with Poland', *Politico* (10 February 2021): https://www.politico.eu/article/dutch-court-escalates-rule-of-law-battle-with-poland/ [accessed 11 March 2021]

207 Q 44

208 Trade and Cooperation Agreement, 24 December 2020 (LAW.SURR.79(2))

209 *Ibid.*, (LAW.SURR.82)

210 *Ibid.*, (LAW.SURR.83). A similar ground for refusing extradition from EU 27 states to the UK applied during the transition period (Withdrawal Agreement, Article 185) and was reflected in the October 2019 Political Declaration on future UK-EU relations. See European Union Committee, *Brexit: the revised Withdrawal Agreement and Political Declaration* (1st Report, Session 2019–21, HL Paper 4), para 297.

211 Q 43

212 Q 43

213 *Ibid.* After the evidence session. the Minister wrote to the Committee on 3 February 2021 to inform it of the EU Member States that intend to invoke this exception. Written evidence from Home Office (PBS0002)

"spirit" was "pro-cooperation", and that "Member States should extradite their own nationals unless there are serious constitutional requirements".[214]

Conclusions and recommendations

139. **On extradition, the Government has succeeded in achieving in under a year what it took Norway and Iceland a decade to agree with the EU. The surrender provisions in Title VII are ambitious and unprecedented, for a non-EU, non-Schengen country, in establishing a streamlined process for the extradition of criminals and criminal suspects between the UK and the EU States. But these new untested arrangements which concern the liberty of the individual merit continued parliamentary scrutiny.**

140. **The new extradition process retains the key features of the European Arrest Warrant, remaining principally a judicial rather than a political process, with additional aspects reflecting the UK's news status as a third country. We note that, as during the transition period, EU states will be able to invoke constitutional rules as a reason not to extradite their own nationals. In correspondence, after we concluded taking evidence, the Government confirmed that 10 EU States (Croatia, Finland, France, Germany, Greece, Latvia, Poland, Slovakia, Slovenia and Sweden), will be invoking constitutional rules as reason not to extradite their own nationals to the UK. Austria and the Czech Republic will only extradite their own nationals to the UK with their consent.**

141. **The Government has welcomed the inclusion of a principle of proportionality and the provision addressing a range of individual rights. We note, however, that these rights are all made subject to national law and that the Trade and Cooperation Agreement explicitly states that it does not confer any rights on individuals to be directly invoked in domestic courts, but the EU is exempt in this regard by virtue of Article COMPROV.16. We call on the Government, therefore, to explain the extent to which UK citizens subject to extradition requests under the terms of the TCA will be able to rely upon the rights set out in the Agreement in UK courts. We also ask the Government to provide the rationale for the apparent imbalance embodied in Article COMPROV.16 between the rights enjoyed and enforceable by citizens in the EU before their national courts in comparison to those who are resident in the UK.**

142. **The European Arrest Warrant operates between the Member States on the basis that they respect the rights and freedoms set out in the Charter of Fundamental Rights, the ECHR and their common constitutional traditions (Article 6 TEU). The decision by a Dutch court in February to refuse to extradite an individual to Poland, citing concerns about judicial independence in that country, could have significant implications for the operation of the EAW and the UK-EU arrest warrant agreement, particularly because Part Three of the TCA does not appear to include a means for a UK court to refuse a surrender warrant on similar grounds. We ask the Government to explain, therefore, what impact this decision will have on those surrender arrangements.**

214 Q 14

143. **We call on the Government also to maintain the existing practice of regularly publishing statistics on the issuing and execution of extradition warrants between the Parties under the new arrangements. This information should include data on the extent to which EU Member States are fulfilling the timing requirements for the execution of warrants under the new system and on the numbers of surrenders made and refused.**

CHAPTER 6: UK-EU FAMILY LAW POST-BREXIT

Introduction

144. From June 2016 onwards the former EU Justice Sub-Committee paid close attention to the impact of Brexit on UK-EU civil justice cooperation, focusing in particular on the so-called Brussels Regulations (see Box 3). The Sub-Committee repeatedly called on the Government to negotiate adequate alternative arrangements with the EU. The TCA does not contain any provisions addressing this aspect of post-Brexit cooperation.

Box 3: EU Justice Sub-Committee work on civil justice cooperation since June 2016

In March 2017 the EU Justice Sub-Committee published a report entitled *Brexit: justice for families, individuals and businesses*,[215] which highlighted the importance of the three Brussels Regulations governing jurisdiction and the recognition and enforcement of judgments in civil and family law matters across the EU. The three Regulations are:

- the Brussels I Regulation (recast) (BIR) which applies to civil and commercial matters;[216]
- the Brussels IIa Regulation (BIIa), which applies to family law and matters of parental responsibility; [217] and
- the Maintenance Regulation (MR) which facilitates the enforcement and recognition of maintenance orders.[218]

The 2017 report highlighted the "significant role" the three Regulations play "in the daily lives of UK and EU citizens, families and businesses, who work, live, travel and do business within the EU". The Committee was particularly concerned by the impact on the UK family law system of the potential loss of the Brussels IIa Regulation (BIIa) and the Maintenance Regulation (MR).

The Committee noted that, in contrast to the "commercially focused" BIR, the BIIa and the MR dealt with the "personal lives of adults and children". It concluded that the two Regulations "bring much-need clarity and certainty to the intricacies of cross-border family relations."[219] Adding that, "In contrast to the civil and commercial field, we are particularly concerned that, save for the provisions of the Lugano Convention on cases involving maintenance, there is no satisfactory fall-back position in respect of family law."[220]

215 European Union Committee, *Brexit: justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134)

216 Regulation (EU) No 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters OJ L 351/1, 20 December 2012

217 Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 OJ L 338, 23 December 2003

218 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations OJ L 7/1, 10 January 2009

219 European Union Committee, *Brexit: justice for families, individuals and businesses?* (17th Report, Session 2016–17, HL Paper 134), para 82

220 *Ibid.*, para 135

The report highlighted specific concerns about the loss of provisions dealing with international child abduction, and concluded that "a return to the common law rules for UK-EU [family] cases would be particularly detrimental for those engaged in family law litigation".[221]

The report considered the alternatives, concluding that in the civil and commercial field, the so-called Lugano Convention offered "at least a workable solution to the post-Brexit loss of the BIR".[222]

With regard to family law, and alternatives to the BIIa and the MR, the Committee concluded that the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children offered "substantially less clarity and protection for those individuals engaged in family law based litigation".[223] [224]

The Sub-Committee revisited these themes in a long letter dated 16 October 2018,[225] to which the then Lord Chancellor, Rt Hon David Gauke MP, responded on 29 October 2018. Disappointingly, the Government's response merely expressed optimism and confidence that a deal would be done and reassurance that extensive work behind the scenes was being undertaken to address these problems, but provided little new or concrete information.

The absence of a UK-EU Agreement on civil and family law

145. The EU's negotiating Directives,[226] agreed at the end of February 2020, said:

> "In areas not covered by existing international family law instruments and taking into account the United Kingdom's intention to accede to the 2007 Hague Maintenance Convention, the Parties should explore options for enhanced judicial cooperation in matrimonial, parental responsibility and other related matters."[227]

In contrast, the Government's Command Paper (CP 211) on the UK's negotiating objectives, published on 27 February 2020, proposed merely cooperating with the EU through "multilateral precedents set by the Hague Conference on Private International Law and through the UK's accession as an independent contracting party to the Lugano Convention 2007".[228]

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221 *Ibid.*, para 136
222 *Ibid.*, para 126
223 *Ibid.*, para 138
224 The Government's disappointing response was received very late in December 2017, only once the date for the debate in the House on 20 December 2017 was agreed; neither took the subject matter forward.
225 Letter from Lord Boswell of Aynho, Chairman of the European Union Committee, to the Rt Hon David Gauke MP, Lord Chancellor and Secretary of State for Justice dated 16 October 2018: https://www.parliament.uk/globalassets/documents/lords-committees/eu-justice-subcommittee/JusticeforFamilies/LBtoDG-Follow-uptoCtteeRpt-CivilJusticeCooperation-161018.pdf
226 Recommendation for a Council Decision authorising the opening of negotiations for a new partnership with the United Kingdom of Great Britain and Northern Ireland, COM (2020) 35 final
227 Note from the General Secretariat of the Council dated 25 February 2020 Annex to Council Decision authorising the opening of negotiations with the United Kingdom of Great Britain and Northern Ireland for a new partnership agreement, para 59: https://data.consilium.europa.eu/doc/document/ST-5870-2020-ADD-1-REV-3/en/pdf [accessed 23 March 2021]
228 HM Government, The Future Relationship with the EU: The UK's Approach to Negotiations, CP 211, (February 2020), para 64: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868874/The_Future_Relationship_with_the_EU.pdf [accessed 16 February 2021]

146. **On 27 February 2020 the Government confirmed that it would not be seeking a negotiated based solution to the civil justice and family law problems arising as a result of Brexit, which had been highlighted by the EU Justice Sub-Committee in its March 2017 report. Despite repeated assurances from the Government that work was being undertaken behind the scenes to address and solve the Committee's concerns, and despite the problems that will be caused for many UK citizens, the February 2020 announcement revealed that the Government had decided not to seek an agreement with the EU on civil and family law cooperation.**

February 2020 evidence on potential alternatives to a negotiated solution

147. As we have noted, the Government has sought membership of the Lugano Convention as an alternative to the BIR. This is described in Box 4.

Box 4: The Lugano Convention

The Lugano Convention was concluded on 16 September 1988 as an international agreement between the (then) 12 Member States of the European Community and the (then) six Member States of the European Free Trade Association (EFTA). Its effect is to create common rules regarding jurisdiction and the enforcement and recognition of judgments across a single legal space consisting of the EU Member States and, since 2007, three of the four EFTA states (Iceland, Norway and Switzerland). The Lugano Convention was given effect in the United Kingdom in 1991.

The Convention covers the same subject matter as the original Brussels I Regulation of 2002, which was superseded within the EU by the BIR in 2012. The Convention, therefore, retains some inherent shortcomings, such as the problems caused by the rigid application of the *lis pendens* rules;[229] the enforcement in the UK of judgments delivered by the courts of Iceland, Norway and Switzerland are also subject to an additional registration requirement. But while the mechanisms for the recognition and enforcement of judgments are not entirely straightforward, the Convention does cover maintenance-related claims (Article 5(2)), so it could be a replacement for the MR.

Protocol 2 of the Lugano Convention deals with the uniform interpretation of the Convention. Under the Protocol, the national courts of Iceland, Norway and Switzerland are not subject to the CJEU's jurisdiction. Instead, "any court applying and interpreting this Convention shall pay due account to … any relevant decision … rendered by the courts of the States bound by this Convention and by the Court of Justice".

The unanimous agreement of all the Parties to the Lugano Convention—the EU, Denmark, Iceland, Norway and Switzerland—would be needed before the UK could join and participate in the Lugano Convention. On 28 January 2020, the Government announced that it had received messages of support from Norway, Iceland and Switzerland.

The Minister told us on 15 September 2020 that the UK applied to join the Lugano Convention in its own right on 20 April 2020.

229 The *lis pendens* rule provides that where proceedings involving the same cause of action between the same parties are brought in the courts of different participating states, any court other than the court first seised must stay its proceedings until such time as the jurisdiction of the court first seised is established. The (ab)use of these jurisdictional rules to frustrate or undermine proceedings by issuing them first in Italy's notoriously slow legal system is a tactic that has been labelled the 'Italian Torpedo'.

148. Dr Helena Raulus, of the Law Society of England and Wales, giving evidence in February 2020, acknowledged that for civil and commercial matters at least "Lugano can achieve the continuing recognition and enforcement of judgments in the EU-EFTA area". This was "important because, without it, civil and commercial law would fall fully under national law".[230] She added, however, that Lugano "has gaps, and we worry about those gaps in family law, in divorces in particular".[231]

149. With regard to family law, Christopher Hames QC also anticipated "difficulty in divorce and in children work" and, in particular, jurisdictional disputes. For example, where the "husband in a couple may be French and the wife English, and they can both get divorced, one in France and one in England".[232] Mr Hames warned that once the transition period was over the UK would have to return to the "old common-law rules that we apply with non-European Union countries that provide for discretionary stays [and] there is a real difficulty there".[233] He praised the EU Maintenance Regulation, but warned that "there is nothing like it in Lugano, even if it were to come into force in all the relevant countries".[234]

Box 5: Brussels IIa Regulation and the Maintenance Regulation

The Brussels IIa Regulation sets out the system for establishing jurisdiction in relation to divorce, legal separation and the annulment of marriage. It provides that an individual may take a matrimonial action in the courts of the Member State where one or both parties to the marriage are or were habitually resident or the Member State of the parties' common nationality or domicile. Legal action may therefore be possible in any one of a number of Member States.

Once proceedings have started in the first Member State, subsequent courts in the other Member States must refuse jurisdiction (sometimes referred to as the first-in-time-rule). This can give rise to the problem of parallel proceedings with proceedings pending in different courts in two or more Member States and the risk of litigants using the system to frustrate proceedings issued in competing jurisdictions, particularly as it can encourage parties to race to be the first to issue proceedings in the most advantageous jurisdiction (the 'Italian torpedo') (see footnote 213).

The Regulation provides a framework for the automatic recognition of divorces concluded in other EU Member States, without the need for any special procedure or for parties to go to court. A party may ask a court not to recognise a decision made in another jurisdiction, and the court may do so if the decision is clearly contrary to public policy, contradicts another decision, or if there were procedural defects (for example, one party was not served with the relevant papers and so did not attend court). What the court is not entitled to do, however, is to hear an appeal against the original decision.

230 Oral evidence taken before the EU Justice Sub-Committee, inquiry on Civil Justice Co-operation after Brexit, 25 February 2020, (Session 2019–21), Q 3 (Dr Helena Raulus)
231 *Ibid.*, Q 4
232 *Ibid.*, Q 3 (Mr Christopher Hames QC)
233 *Ibid.*
234 *Ibid.*, Q 4 (Mr Christopher Hames QC)

The Regulation also deals with matters of parental responsibility, including rights of custody, access, guardianship, and placement in a foster family or institutional care. It applies to all such decisions, not just those arising in relation to matrimonial proceedings. Parents do not need to be married to each other or be the child's biological parents. As well as court judgments, the Regulation can apply to agreements between parents that are enforceable in the country where they are made. It covers jurisdiction, recognition and enforcement, cooperation between central authorities, and specific rules on child abduction and access rights.

The Regulation provides that the most appropriate forum for matters of parental responsibility is the relevant court of the Member State where the child is habitually resident.

Articles 40 and 41 provide that a judgment on access rights, or on the return of a child following abduction, is recognised and enforceable in Member States. The Regulation also supports cooperation between central authorities to facilitate communications and help fulfil agreements between parties. Judgments given in one Member State must be recognised and enforced in any other, save in limited, specified circumstances.

The Regulation also deals with child abduction: where a child is abducted to another Member State, the person having custody of the child may apply to the State to which the child has been abducted for their return. The request can only be refused in limited circumstances. In general, there must be an order for the immediate return of the child.

Access rights are directly enforceable in other Member States: a judgment by a court in one Member State is enforceable in any other Member State.

A 'recast' version of the Brussels IIa Regulation was adopted by the Council on 25 June 2019, and will come into force in June 2022. The United Kingdom opted into the adoption of the new Regulation in 2019.

The Maintenance Regulation[235]

The EU Maintenance Regulation establishes similar rules on jurisdiction, recognition and enforcement of decisions in matters relating to maintenance obligations. It is designed to support a maintenance creditor (an individual to whom maintenance is owed or alleged to be owed) in obtaining in one Member State a decision that will be automatically enforceable in another, without further formalities. It also establishes jurisdiction for the making of maintenance decisions. The Regulation enables parties to a dispute to agree jurisdiction if they wish, on the basis of habitual residence or nationality. This freedom to agree on jurisdiction does not apply in cases involving maintenance for a child.

235 Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations, OJ L 7/1 10 January 2009

The Regulation also includes a first-in-time rule,[236] potentially giving rise to the 'Italian Torpedo', whereby litigants rush to issue proceedings in a favourable jurisdiction. Unlike the BIR and BIIa, the Maintenance Regulation includes rules on which Member State's law should be applied to a particular dispute: the applicable law for maintenance obligations should be determined in accordance with the Hague Protocol of November 2007.[237]

150. Giving evidence in February 2020, witnesses were particularly concerned about child abduction, with Christopher Hames QC arguing that "any child abducted from a European Union State will be in a more difficult position after Brexit than before". He also noted that any child abducted from the UK would be "in the same position as a child from a non-European Union country that is still a signatory" to the Hague Convention (see Box 6).[238]

151. The problem with the Hague Convention, as Dr Helena Raulus explained is "speed".[239] Specifically, in relation to child abduction cases, she said that Hague-based disputes entail "longer procedures", giving rise to a risk that "the procedure takes so long that the child has essentially already been established or has become resident in another country".[240]

Box 6: Hague Conventions

The 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children

This Convention sets out uniform rules determining which country's authorities are competent to take measures of child protection. It seeks to avoid legal and administrative conflicts and builds a structure for effective international cooperation in child protection matters between the different systems.

The Convention places primary responsibility on the authorities of the country where the child has his or her habitual residence, but the Convention also allows any country where the child is present to take necessary emergency or provisional measures of protection. The Convention includes rules determining which country's laws are to be applied, and it provides for the recognition and enforcement of measures taken in one Contracting State in all other Contracting States. It addresses custody and contact disputes, the treatment of unaccompanied minors, care of children across frontiers, and the exchange of information and collaboration between national administrative child protection authorities in the different Contracting States.

236 This rule provides that where proceedings involving the same cause of action between the same parties are brought in the courts of different EU Member States, any court other than the court first seised must stay its proceedings until such time as the jurisdiction of the court first seised was established.

237 This aspect of the Maintenance Regulation did not apply to the UK, which applied English law to maintenance cases. There was a cost to the enforceability of English decisions because they were not automatically recognised in another State if they were manifestly contrary to public policy in that State, or where a decision was given in default of appearance, or the decision was irreconcilable with an earlier decision given in another jurisdiction.

238 Oral evidence taken before the EU Justice Sub-Committee, inquiry on Civil Justice Co-operation after Brexit, 25 February 2020 (Session 2019–21), Q 7 (Mr Christopher Hames QC)

239 *Ibid.*, Q 2 (Dr Helena Raulus)

240 *Ibid.*, Q 7 (Prof Nigel Lowe). Professor Nigel Lowe also told us that "about two-thirds" of all the UK's international child abduction cases involve "EU Member States", oral evidence taken before the EU Justice Sub Committee, 25 February 2020 (Session 2019–21), Q 6.

1980 Hague Convention on the Civil Aspects of International Child Abduction

This Convention is designed to protect children from the harmful effects of wrongful removal or retention. It establishes procedures to ensure the prompt return of abducted children to the State of their habitual residence, as well as to secure protection for rights of access. The removal or retention of a child across an international border is considered "wrongful" if the removal or retention took place without the consent of the left behind parent and has interfered with the exercise of that parent's rights regarding the child.

152. Expert witnesses warned us in 2020 that falling back on the Hague Conventions would have an impact on an already stretched UK family law system. Jacqueline Renton predicted "more delay", as falling back on the 1996 Hague Convention would be "very new" and it would "take judges and litigants some time to get a handle" on it. She added that such delay "in a children's case is totally inimical to a child's welfare", and called for "more legal training at all levels … so that at least the judiciary is as familiar as possible with the 1996 Hague Convention".[241]

The Government's view

153. On 15 September 2020, we heard from Lord Keen of Elie QC, the then Advocate General for Scotland. He argued that "there is a respectable body of opinion from practitioners that many aspects of the Hague Convention regime are preferable to that of Brussels". For example, "the Brussels rule on *lis pendens*, which means that the first person to start, say, divorce proceedings secures jurisdiction, which prompts an unnecessary rush to court. That feature is not in the Hague Convention regime."

154. He suggested that the "Hague regime has worked perfectly well as between the EU and third country parties as well". He therefore took the view that falling back on the Hague Conventions would be "entirely satisfactory". He concluded that they will be "workable to ensure that families and children do have the rights and protections that they require in this area".[242]

155. **Since early 2017, a series of expert witnesses and legal practitioners have warned us that if and when the three Brussels Regulations fell away, the UK would fall back on a more complex and less effective web of international conventions and instruments. We have heard particularly grave concerns over the implications in the family law areas of child maintenance, international child abduction and divorce. The only dissenting voice we heard was that of the then Minister, Lord Keen of Elie, speaking in September 2020, who described falling back on the Hague Conventions as "entirely satisfactory".**

156. As for the Lugano Convention, Lord Keen told us in September 2020 that he hoped that the ratification process would conclude before the end of the transition period, as he found "it very difficult to conceive of any reason why the EU would not want to see us as members of Lugano. These are reciprocal arrangements that benefit all parties, but I cannot second-guess

241 Oral evidence taken before the EU Justice Sub-Committee, inquiry on Civil Justice Co-operation after Brexit, 25 February 2020 (Session 2019–21), Q 6 (Jacqueline Renton)

242 Q 3

their position". Pressed on when the relevant legislation would be placed before Parliament, he said "shortly, when time allows".[243]

157. Lord Keen acknowledged that there would be problems across the full range of civil cases if the UK did not succeed in joining the Lugano Convention before the end of the transition period:

> "I quite acknowledge that issues of jurisdiction, recognition and enforcement may become more complex if we are not members of Lugano after the end of the transition period. We will then rely upon our domestic law, but without any reciprocal enforcement, because each country will in turn rely upon its domestic law in dealing with us".[244]

158. On 11 December 2020, the International Agreements Sub-Committee reported on the international agreement dealing with the UK's accession to the Lugano Convention, which had been laid before Parliament on 10 November 2020.[245] The Committee noted that "the Agreement will not be in place before the end of the Brexit transition period".[246] It highlighted the Government's confirmation, in its Explanatory Memorandum accompanying the Agreement, that "in the absence of the Lugano Convention, there would be 'a lack of legal certainty and higher costs for those involved in cross-border civil and commercial disputes, and an increased complexity and cost of proceedings to both litigants and the courts'".[247]

159. **As we said in 2017, membership of the Lugano Convention offers a simple solution in relation to civil law matters, and we have consistently welcomed the Government's intention to seek membership.**

160. **Unfortunately, the Government waited until April 2020 to make its application to join the Lugano Convention. We note also that the EU and Denmark have failed to signify their support for the UK's application to join Lugano. There has accordingly been an avoidable hiatus between the end of the transition period and the safety net provided by membership of the Lugano Convention. We call on the Government to explain the reasons for this delay, and to outline the steps it is taking to engage with the EU to reach a resolution.**

243 Q 5
244 *Ibid.*
245 European Union Committee, *Scrutiny of international agreements: Partnership agreements with Ukraine and Côte d'Ivoire, Lugano Convention accession, and civil judgments agreement with Norway* (18th Report, Session 2019–21, HL Paper 192)
246 *Ibid.*, paras 25 and 32
247 *Ibid.*, para 33

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Overview of the agreement on law enforcement and criminal justice cooperation

1. We regret the Government's decision to defer establishing the Partnership Council and other bodies and urge it to review this position. We urge the Government to work with the European Commission to set up the Committee swiftly, and for it to operate inclusively and with transparency. (Paragraph 13)

2. The Government has succeeded in securing an Agreement on Law Enforcement and Criminal Cooperation with the EU that will enable the UK law enforcement community to continue to collaborate and exchange sensitive information with European counterparts. We welcome this, since failure to reach an agreement would have brought to an abrupt end to years of effective collaboration, which has played a vital role in helping to protect the citizens of the UK and EU Member States. But the institutions that will oversee the operation and development of the Agreement: the Partnership Council, and (of particular relevance to Part Three), the Specialised Committee on Law Enforcement and Judicial Cooperation, have yet to be constituted, let alone meet. (Paragraph 29)

3. It is clear that the Specialised Committee will have an important role to play in overseeing the operation of the law enforcement Agreement and, significantly, its data protection rules. (Paragraph 30)

4. We welcome the provisions that establish the rule of law and human rights as "essential elements" of the entire Trade and Cooperation Agreement, and those that tie termination and/or suspension of aspects of the Agreement to either denunciation of the ECHR or deficiencies within either Party in the protection of fundamental rights. It is essential that cooperation between the UK and the EU of the kind facilitated by this Agreement is tied to respect for the rights embodied in the European Convention on Human Rights, and to respect for data protection rules. (Paragraph 31)

5. Alongside the TCA's wider review clause, Part Three has its own five-year review clause and a complex array of provisions covering its termination and suspension based on the Parties' conduct linked either to the fulfilment of specific obligations and/or compliance with human rights and data protection standards. We anticipate that Parliament and our successor Committee will wish to be fully consulted as part of the review process, and we look to the Government to facilitate this nearer the time. (Paragraph 32)

Future UK-EU sharing of law enforcement and criminal justice data

6. We welcome the fact that Part Three of the Trade and Cooperation Agreement provides for the continued sharing of law enforcement and policing data, which is vital for the protection of UK citizens. (Paragraph 79)

7. The ability of UK agencies to exchange data with the EU under Part Three of the Agreement has been made subject to many important caveats. First, the UK's handling of DNA, fingerprint, and vehicle registration data on the basis of the Prüm system will be subject to an evaluation by the EU later this year. (Paragraph 80)

8. Second, the obligation to delete PNR data the moment the subject leaves the UK's jurisdiction is subject to a complex derogation, which itself is subject to additional safeguards set down by the Court of Justice of the European Union in its Opinion on the Canadian PNR Agreement. We also note that on 22 February 2021 the European Data Protection Supervisor questioned the use of the TCA as a legal basis for sharing PNR data with the UK and the length of three-year period to which the derogation may apply. (Paragraph 81)

9. Third, by their nature, the data sharing arrangements are reciprocal. The Prüm system, for example, is supported by an Annex to the TCA containing 91 pages of EU legislation. The Government told us that it will be a matter of 'choice' whether or not it remains aligned to EU legislation as it evolves. If it does not, the UK could lose access to vital policing and law enforcement data, or find itself facing a formal dispute with the EU. Therefore, it will be necessary for Parliament to constantly monitor the development of EU legislation in this field. (Paragraph 82)

10. The Government is confident that the UK's former EU membership will enable it to satisfy all these requirements. Given their complexity and seriousness, we do not share that confidence. (Paragraph 83)

11. The Government should be congratulated for securing an agreement whereby criminal records data will be shared with the EU on a very similar basis to that which applied when the UK had access to the European Criminal Records information Service (ECRIS), including within comparable time frames. It will be important for parliamentary committees to continue to monitor the future effectiveness of the replacement system now being built, to assess whether it provides capability comparable to ECRIS, in terms of the data that can be accessed and the speed with which it is made available to UK law enforcement agencies. (Paragraph 84)

12. The UK's loss of access to the Schengen Information System leaves the most significant gap in terms of lost capability. It means that, for the time being, law enforcement officers can no longer immediately have access to real-time data about persons and objects of interest, including wanted and missing persons. The fallback system, the Interpol I-24/7 database, currently provides data in a matter of hours, not seconds. However, we note that work is underway to increase the speed at which Interpol Notices are available to UK frontline law enforcement officers. (Paragraph 85)

13. At the same time, we note that the effectiveness of the Interpol I-24/7 database as a substitute for the Schengen Information System depends heavily on EU Member States accepting the additional workload of 'double-keying' data into both systems, on a continuing basis. We did not receive any clear evidence from the Government on how it planned to secure such commitments from EU Member States to do so. (Paragraph 86)

14. We therefore remain concerned about the effect of the loss of access to SIS II on the operational effectiveness of UK police and law enforcement agencies. We recommend that the Government report on a regular basis to relevant committees of both Houses on progress in improving current processes for uploading Interpol alerts onto the Police National Computer, and on its progress in encouraging EU Member States to 'double-key' data into Interpol databases. (Paragraph 87)

15. As we anticipated in 2017 in our Report on Brexit and Data Protection, now that the UK is a third country it will be held to higher standards by the EU in respect of data protection. For example, it will no longer be able to benefit from the national security exemption in the EU Treaties that is available to EU Member States when their individual data retention and surveillance regimes are tested before the CJEU. In the Privacy International case the CJEU has already questioned the former UK law on the acquisition and use of bulk communications data. (Paragraph 101)

16. Similarly, it is clear to us that to maintain the necessary confidence among the UK's EU partners about its policing and criminal justice data sharing processes, the Home Office should always ensure the highest standards of data handling. (Paragraph 102)

17. Despite the Government's claims that the UK has left the CJEU's jurisdiction, there is therefore abundant scope for legal challenge on data protection grounds that could have implications for the UK. The Schrems and Schrems II cases demonstrate the real possibility of a successful challenge to the award of a data adequacy decision to the UK by the Commission. Moreover, Part Three can be suspended in the event of "serious and systemic" deficiencies in respect of the protection of personal data, including where these have led to a relevant adequacy decision ceasing to apply. (Paragraph 103)

18. In summary, a positive adequacy decision will support the operation of the TCA, but CJEU judgments in respect of UK data protection standards may yet have an indirect but far-reaching impact. The provisions designed to insulate the TCA from any negative decision on data adequacy are yet to be tested. (Paragraph 104)

Future UK involvement in EU law enforcement and criminal justice agencies

19. The UK has secured an agreement to continue its involvement with Europol and Eurojust that reflects its status as a country outside the EU, but with a continuing close relationship on law enforcement and criminal justice. It is similar to arrangements agreed with countries such as the USA and Canada. As a result, the UK will continue to share data and expertise, but no longer have a role in the overall management of those agencies, or a say in their strategic direction. (Paragraph 118)

20. The UK still has much to offer both agencies, in terms of experience and operational intelligence. We hope that the UK's engagement and influence will be maintained to the greatest possible extent permitted under the arrangements in Title V, for the benefit of both Parties. But we note that as with many of the provisions in Part Three, continued UK cooperation with Europol and Eurojust may be dependent upon the UK's data protection regime continuing to meet EU standards. (Paragraph 119)

21. The detailed working arrangements of the UK's involvement are yet to be concluded. There is also potential, over time, for the UK's relationship with both agencies to develop, under the auspices of the Specialised Committee on Law Enforcement and Judicial Cooperation. We call on the Government to report to relevant select committees of both Houses, at least annually, on the development of UK's important relationships with Europol and Eurojust. (Paragraph 120)

The extradition provisions

22. On extradition, the Government has succeeded in achieving in under a year what it took Norway and Iceland a decade to agree with the EU. The surrender provisions in Title VII are ambitious and unprecedented, for a non-EU, non-Schengen country, in establishing a streamlined process for the extradition of criminals and criminal suspects between the UK and the EU States. But these new untested arrangements which concern the liberty of the individual merit continued parliamentary scrutiny. (Paragraph 139)

23. The new extradition process retains the key features of the European Arrest Warrant, remaining principally a judicial rather than a political process, with additional aspects reflecting the UK's news status as a third country. We note that, as during the transition period, EU states will be able to invoke constitutional rules as a reason not to extradite their own nationals. In correspondence, after we concluded taking evidence, the Government confirmed that 10 EU States (Croatia, Finland, France, Germany, Greece, Latvia, Poland, Slovakia, Slovenia and Sweden), will be invoking constitutional rules as reason not to extradite their own nationals to the UK. Austria and the Czech Republic will only extradite their own nationals to the UK with their consent. (Paragraph 140)

24. The Government has welcomed the inclusion of a principle of proportionality and the provision addressing a range of individual rights. We note, however, that these rights are all made subject to national law and that the Trade and Cooperation Agreement explicitly states that it does not confer any rights on individuals to be directly invoked in domestic courts, but the EU is exempt in this regard by virtue of Article COMPROV.16. We call on the Government, therefore, to explain the extent to which UK citizens subject to extradition requests under the terms of the TCA will be able to rely upon the rights set out in the Agreement in UK courts. We also ask the Government to provide the rationale for the apparent imbalance embodied in Article COMPROV.16 between the rights enjoyed and enforceable by citizens in the EU before their national courts in comparison to those who are resident in the UK. (Paragraph 141)

25. The European Arrest Warrant operates between the Member States on the basis that they respect the rights and freedoms set out in the Charter of Fundamental Rights, the ECHR and their common constitutional traditions (Article 6 TEU). The decision by a Dutch court in February to refuse to extradite an individual to Poland, citing concerns about judicial independence in that country, could have significant implications for the operation of the EAW and the UK-EU arrest warrant agreement, particularly because Part Three of the TCA does not appear to include a means for a UK court to refuse a surrender warrant on similar grounds. We ask the Government to explain, therefore, what impact this decision will have on those surrender arrangements. (Paragraph 142)

26. We call on the Government also to maintain the existing practice of regularly publishing statistics on the issuing and execution of extradition warrants between the Parties under the new arrangements. This information should include data on the extent to which EU Member States are fulfilling the timing requirements for the execution of warrants under the new system and on the numbers of surrenders made and refused. (Paragraph 143)

UK-EU Family law post-Brexit

27. On 27 February 2020 the Government confirmed that it would not be seeking a negotiated based solution to the civil justice and family law problems arising as a result of Brexit, which had been highlighted by the EU Justice Sub-Committee in its March 2017 report. Despite repeated assurances from the Government that work was being undertaken behind the scenes to address and solve the Committee's concerns, and despite the problems that will be caused for many UK citizens, the February 2020 announcement revealed that the Government had decided not to seek an agreement with the EU on civil and family law cooperation. (Paragraph 146)

28. Since early 2017, a series of expert witnesses and legal practitioners have warned us that if and when the three Brussels Regulations fell away, the UK would fall back on a more complex and less effective web of international conventions and instruments. We have heard particularly grave concerns over the implications in the family law areas of child maintenance, international child abduction and divorce. The only dissenting voice we heard was that of the then Minister, Lord Keen of Elie, speaking in September 2020, who described falling back on the Hague Conventions as "entirely satisfactory". (Paragraph 155)

29. As we said in 2017, membership of the Lugano Convention offers a simple solution in relation to civil law matters, and we have consistently welcomed the Government's intention to seek membership. (Paragraph 159)

30. Unfortunately, the Government waited until April 2020 to make its application to join the Lugano Convention. We note also that the EU and Denmark have failed to signify their support for the UK's application to join Lugano. There has accordingly been an avoidable hiatus between the end of the transition period and the safety net provided by membership of the Lugano Convention. We call on the Government to explain the reasons for this delay, and to outline the steps it is taking to engage with the EU to reach a resolution. (Paragraph 160)

APPENDIX 1: LIST OF MEMBERS AND DECLARATIONS OF INTEREST

Members

Lord Anderson of Ipswich
Lord Anderson of Swansea
Lord Arbuthnot of Edrom
Lord Dholakia
Baroness Finn (member until 9 March 2021)
Baroness Goudie
Baroness Hamwee
Lord Kirkhope of Harrogate
Lord Lexden
Lord Polak
Baroness Primarolo
Lord Ricketts (Chair)
Lord Rowlands

Declarations of Interest

Lord Anderson of Ipswich

Member of the Bar of England and Wales

Lord Anderson of Swansea

No relevant interests declared

Lord Arbuthnot of Edrom

Wife was the former Chief Magistrate for England and Wales and is now a sitting High Court Judge in the Family Division.

Lord Dholakia

No relevant interests declared

Baroness Finn

Deputy Chief of Staff to the Prime Minister

Francis Maude Associates LLP

FMAP Ltd

Member of Advisory Board, Centre for Politics, Philosophy & Law, King's College, London

Baroness Goudie

Gender Action for Peace and Security (GAPS) Advisory Board Member

Baroness Hamwee

No relevant interests declared

Lord Kirkhope of Harrogate

Practising Solicitor in England & Wales; recipient of a pension from service as a Member of the European Parliament and a further Pension from the UK Ministry of Justice relating to service as a Member of the UK Parliament and a Home Office Minister

Lord Lexden

No relevant interests declared

Lord Polak

No relevant interests declared

Baroness Primarolo

Non-Executive Director and Chair, Thompson's Solicitors, London WC1

Lord Ricketts
Non-Executive Director, Group Engie, France
Strategic Adviser, Lockheed Martin UK
Charitable activities as set out in the Register of Interests
Lord Rowlands
No relevant interests declared

The following Members of the European Union Select Committee attended the meeting at which the report was approved:

The Earl of Kinnoull
Baroness Couttie
Baroness Donaghy
Lord Faulkner of Worcester
Lord Goldsmith
Baroness Hamwee
Lord Lamont of Lerwick
Baroness Neville-Rolfe
Lord Oates
Baroness Primarolo
Lord Ricketts
Lord Sharkey
Lord Teverson
Lord Thomas of Cwmgiedd
Baroness Verma
Lord Wood of Anfield

During consideration of the report the following Member declared an interest:

The Earl of Kinnoull (Chair)
Farming interests as principal and as charitable trustee, in receipt of agricultural subsidy
Chairman, Culture Perth and Kinross, in receipt of governmental subsidy
Chairman, United Kingdom Squirrel Accord, in receipt of governmental monies
Shareholdings as set out in the register
Baroness Brown of Cambridge
Chair of the Adaptation Sub-Committee of the Committee on Climate Change
Chair of the Henry Royce Institute for Advanced Materials
Chair of STEM Learning Ltd
Non-Executive Director of the Offshore Renewable Energy Catapult
Chair of The Carbon Trust
Council member of Innovate UK
Non-Executive Director of Ørsted
Baroness Couttie
Non-Executive Director, Mitie
Commissioner, Guernsey Financial Services Commission
Special Advisor, Heyman AI Ltd
Baroness Donaghy
Former President of the Trades Union Congress
Former member European Trades Union Congress

in receipt of USS Pension

Lord Faulkner of Worcester

Chairman, Great Western Railway Advisory Board

Chairman, Alderney Gambling Control Commission

Her Majesty's Government's Trade Envoy to Taiwan

Lord Goldsmith

Partner of Debevoise & Plimpton LLP international law firm with offices in the UK and various EU cities amongst others

Lord Kerr of Kinlochard

Chairman, Centre for European Reform

Deputy Chairman, Scottish Power PLC

Member, Scottish Government's Advisory Standing Council on Europe

Lord Lamont of Lerwick

Director, Devon European Opportunities Trust

Director, Compagnie Internationale de Participations Bancaires et Financieres (CIPAF)

Director, Chelverton UK Dividend Trust

Adviser, Halkin Investments

Adviser, Official Monetary and Financial Institutions Forum (OMFIF)

Adviser, Meinhardt Engineering Group, Singapore

Baroness Neville-Rolfe

Former Commercial Secretary, HM Treasury

Chair, Assured Food Standards Ltd

Chair, UK ASEAN Business Council

Non-Executive Director, Capita Plc

Non-Executive Director, Secure Trust Bank Plc

Trustee (Non-Executive Director), Thomson Reuters Founders Share Company

Non-Executive Director, Health Data Research UK

Chartered Secretary

Fellow of ICSA, The Chartered Governance Institute

Lord Oates

Director, Centre for Countering Digital Hate

Chairman, Advisory Board, Weber Shandwick UK

Director, H&O Communications Ltd

Lord Sharkey

Chair of the Association of Medical Research Charities

Chair of the Specialised Healthcare Alliance

Member of Council at University College London

Lord Teverson

Trustee, Regen SW

In receipt of a pension from the European Parliament

Lord Thomas of Cwmgiedd

Chancellor, Aberystwyth University

Chairman, Financial Markets Law Committee

Arbitrator, Essex Court Chambers

First Vice President, European Law Institute

Member, First Minister of Wales' European Advisory Group

Baroness Verma

No relevant interests declared

Lord Wood of Anfield

Chair of the United Nations Association (UNA-UK)
Director, Good Law Project
Director of Janus Henderson Diversified Income Trust

A full list of Members' interests can be found in the Register of Lords Interests: https://members.parliament.uk/members/lords/interests/register-of-lords-interest

APPENDIX 2: LIST OF WITNESSES

Evidence is published online at https://committees.parliament.uk/work/901/postbrexit-ukeu-security-cooperation/ and available for inspection at the Parliamentary Archives (020 7219 3074).

Evidence received by the Committee is listed below in chronological order of oral evidence session and in alphabetical order. Those witnesses marked with ** gave both oral and written evidence. Those marked with * gave oral evidence and did not submit any written evidence. All other witnesses submitted written evidence only.

Oral evidence in chronological order

*	Sir Julian King, former UK Commissioner to the EU	QQ 1-10
*	Professor Valsamis Mitsilegas, Professor of European Criminal Law and Director of the Criminal Justice Centre, Queen Mary University of London	QQ 11-20
*	Dr Nóra Ni Loideáin, Lecturer in Law and Director of the Information Law and Policy Centre, Institute of Advanced Legal Studies, School of Advanced Study, University of London.	QQ 11-20
*	Vice-Admiral Sir Charles Montgomery KBE ADC, Former Director-General, UK Border Force	QQ 21-37
**	Steve Rodhouse, Director-General (Operations), National Crime Agency	QQ 21-37
*	Assistant Chief Constable Peter Ayling, National Police Chiefs' Council.	QQ 21-37
**	Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Future Borders and Immigration) in the Home Office	QQ 38-49
*	Chris Jones, Europe Director, Home Office	QQ 38-49

Alphabetical list of all witnesses

*	Assistant Chief Constable Peter Ayling, National Police Chiefs' Council.	
**	Kevin Foster MP, Parliamentary Under Secretary of State (Minister for Future Borders and Immigration) in the Home Office	PBS0002
*	Chris Jones, Europe Director, Home Office	
*	Sir Julian King, former UK Commissioner to the EU	
*	Dr Nóra Ni Loideáin, Lecturer in Law and Director of the Information Law and Policy Centre, Institute of Advanced Legal Studies, School of Advanced Study, University of London.	
*	Professor Valsamis Mitsilegas, Professor of European Criminal Law and Director of the Criminal Justice Centre, Queen Mary University of London	

*	Vice-Admiral Sir Charles Montgomery KBE ADC, Former Director-General, UK Border Force	
**	Steve Rodhouse, Director-General (Operations), National Crime Agency	PBS0001