



HM Government

The UK's cooperation with the EU on justice and home affairs, and on foreign policy and security issues

BACKGROUND NOTE

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Introduction

1.1 This note provides background information on the UK's cooperation with the EU on justice and home affairs, and on foreign policy and security issues.

The UK's special status in Justice and Home Affairs (JHA)

1.2 In 1997 the UK secured EU agreement to give the UK the right to choose whether to participate in any new EU legislation covering asylum and judicial cooperation in civil matters.¹ In 2007 this right to 'opt in' was extended to cooperation in policing and criminal justice.

1.3 This means the UK has the ability to opt into EU JHA measures where the UK determines it is in the national interest to do so.² The UK is not bound by EU JHA measures where it does not opt in. In every case, the UK Parliament has scrutiny over those decisions. This opt in is protected by EU law and cannot be changed without the UK's consent.³

1.4 The new settlement the Government negotiated at the February 2016 European Council reaffirmed that this right to opt in must be respected, and ensured that whenever the EU agrees new legislation which contains JHA provisions, the UK will continue to be able to choose whether we wish to take part or not in those JHA matters, and EU Member States and the EU institutions will have to respect that decision.⁴ The agreement also formally recognised for the first time that the UK will not take part in further political integration in the EU and specifically confirmed that the concept of "ever closer union" will not apply to the UK in future.⁵

Securing our borders

1.5 The UK does not participate in the border-free travel elements of EU law which build on the 1990 Schengen Convention, which consolidated a border-free travel area operating across much of continental Europe.⁶ This area now comprises 22 EU Member States and four non-EU European countries, which have abolished routine border checks at their common borders. The UK Government has been clear that

¹ Protocol on the position of the UK and Ireland adopted as part of the Amsterdam Treaty, which was signed on 2 October 1997.

² Protocol (No. 21) to the EU Treaties, Articles 3 and 4.

³ Changes to the Protocols to the EU Treaties would require Treaty change, which cannot be delivered if any Member State disagrees. See Article 48(4) and 48(6) of the Treaty on European Union.

⁴ Section C.4 of the decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

⁵ Section C.1 of the decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

⁶ Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders, 19 June 1990.

the UK will not join the Schengen border-free area and, under the terms of the European Union Act 2011, any decision to do so would require a referendum in the UK.⁷

- 1.6 The UK carries out its own border controls and enforces its immigration laws, conducting 100 per cent checks on all scheduled passengers, including EU nationals, arriving at the UK border from continental Europe. Under existing powers, the UK's Border Force has refused entry to over 6,500 individuals from the EU and wider European Economic Area at the UK border since 2010.⁸
- 1.7 At the February 2016 European Council the UK secured a strengthening of powers to refuse entry to, or remove, any EU national who poses a threat to the security of the UK, even if that threat is not imminent. The settlement makes clear that Member States can take into account the past conduct of an individual and that, even in the absence of a previous conviction, Member States may act on preventative grounds, provided they are specific to the individual concerned.⁹

EU security tools

- 1.8 The EU provides a range of tools for Member States to tackle terrorism, criminality and illegal migration and to build stability outside our borders. These include tools to exchange information on previous convictions, wanted or missing persons (including children), wanted objects such as firearms, vehicles and identity documents, as well as to support criminal investigations. There is also EU legislation that enables joint investigations to take place and more streamlined extradition arrangements. The UK would not have the same access to these tools outside the EU as we do now.
- 1.9 The **European Arrest Warrant** (EAW) is a legal framework that facilitates the extradition of individuals between EU Member States to face prosecution for a crime they are accused of, or to serve a prison sentence for an existing conviction.¹⁰ The EAW is based on the principle of 'mutual recognition' of judicial decisions between Member States.
- 1.10 When a UK police force has obtained a domestic warrant for the arrest of an individual in relation to a serious crime, but that person is in another EU Member State, the EAW can be used to bring that individual to the UK quickly. The same applies when our courts have passed a prison sentence but the relevant individual is in another EU Member State – we can use the EAW to bring them to the UK to serve their sentence.

⁷ Section 6(5)(k) of the European Union Act 2011, which provides that "a decision under Article 4 of the Schengen Protocol that removes any border control of the United Kingdom" would require an act of Parliament and a referendum.

⁸ Admissions statistics, Home Office, March 2016.

⁹ Section D.1(c) of the decision of the Heads of State or Government, meeting within the European Council, concerning a New Settlement for the United Kingdom within the European Union.

¹⁰ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States.

1.11 Prior to 2004 fewer than 60 individuals a year were extradited from the UK (this figure includes all countries, not just EU Member States).¹¹ Since 2004 the EAW has enabled the UK to extradite over 7,000 individuals accused or convicted of a criminal offence to other Member States. Over 95% of these were extraditions of foreign nationals. Over the same period the EAW has been used to extradite over 1,000 individuals to the UK to face justice in the UK.¹²

Case Study: European Arrest Warrant

Hussain Osman, one of the 21/7 bombers, was extradited from Italy to the UK after just 56 days under an EAW issued by UK authorities. This compares to the case of Rachid Ramda, who was convicted of terrorist bombings in Paris in 1995. It took ten years to extradite him successfully from the UK to France under previous arrangements.

1.12 The EU also cooperates with non-EU countries in relation to extradition. Norway and Iceland began negotiating an extradition agreement with the EU in 2001 – it has now been agreed, but has still not come into force.¹³ The terms of that agreement are similar to the EAW, but include the option for countries to refuse to extradite their own nationals. And Norway and Iceland's Schengen membership was key to securing even this level of agreement: the Council of EU Member States remarked, on signing the agreement, that "the Council agreed that it would be useful to apply the surrender procedure model to the Schengen countries, given their privileged partnership with the EU Member States". There is no guarantee that the UK could secure a similar agreement outside the EU given that we are not a member of the Schengen border-free area.

1.13 **Europol** is a European Union agency supporting law enforcement.¹⁴ Its main objective is to support and strengthen action by Member States' law enforcement authorities and facilitate cooperation between these authorities in preventing and combating organised crime, serious crime such as murder, and terrorism, where the crimes affect two or more Member States. The current Director of Europol, Rob Wainwright, is British.

1.14 Europol supports UK law enforcement agencies in a number of ways. Through its support for their investigations and its analytical capabilities, processing data and making links between crimes committed in different countries, and access to law enforcement intelligence from the 27 other EU countries, it brings added value in having officers from all EU Member States and certain third countries co-located at

¹¹ Annex D to the Review of the United Kingdom's Extradition Arrangements, presented to the Home Secretary on 30 September 2011.

¹² Historical European Arrest Warrant Statistics: Calendar and Financial Year Totals 2004-April 2015, National Crime Agency.

¹³ Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, as outlined in Council Decision 2014/835/EU.

¹⁴ Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol).

Europol quickly to resolve issues agencies are facing in dealing with their counterparts abroad.

1.15 The **Europol Information System** (EIS) pools information on criminals and terrorists from across the EU. As of January this year, the EIS contained data on 86,629 suspected or convicted criminals from across the EU, and on 295,374 objects (such as cars, guns and properties) associated with crime.¹⁵ As members of Europol, the UK can interrogate Europol's data to identify connections between criminals and investigation leads, thereby assisting UK law enforcement investigations.

Case Study: Europol

In January 2016 Europol cross-matched Belgian and Polish data to identify an organised crime link to the UK. This information was passed to the National Crime Agency (NCA), which identified and located a Ukrainian national living in London. The NCA worked with its Belgian counterparts and Europol on a joint Belgian/UK 'strike' day. On 29 January, simultaneous arrests took place in Belgium and the UK, including the head of the group, Marian Shkirko, in London. This disrupted the group, which was estimated to have smuggled up to 50 migrants into the UK each week. Marian Shkirko is in the process of being extradited to Belgium under an EAW.¹⁶

1.16 The UK uses Europol more than almost any other country. UK law enforcement's use of Europol has increased over time. The Secure Information Exchange Network Application (SIENA) is the main conduit for all operational information passing to and through Europol. The UK exchanged 26% more messages on SIENA in 2015 than in 2014; and initiated 22% more cases on it over the same period.¹⁷

1.17 Certain non-EU countries such as the US, Norway and Albania have agreements with Europol to allow them to work together, but are not entitled to be full members. The process to conclude such an agreement is lengthy: each case is different, but it is measured in years, not months. There are a number of important differences between what Europol provides to third country operational cooperation partners with which it has agreements, and EU members:

- EU Member States may directly submit data and conduct searches in EIS. Third countries must ask Europol to do so on their behalf;
- EU Member States are automatically connected to Europol's SIENA. To connect to SIENA, third countries need an additional bilateral agreement, following the conclusion of the cooperation agreement;
- EU Member States sit on Europol's Management Board, which sets the strategic and operational development of the organisation. Third countries do not sit on the Management Board; and

¹⁵ Europol statistics from January 2016.

¹⁶ NCA Press Release, 29 January 2016.

¹⁷ Europol statistics on cooperation with the United Kingdom, March 2016.

- EU Member States have a liaison bureau at the Europol Headquarters. Third countries may only establish a liaison bureau subject to the terms of their cooperation agreement and to the agreement of the Europol Management Board.

1.18 **Passenger Name Records (PNR)** comprise information collated by a carrier as part of the travel booking process and may include, amongst other things, details of how travel was booked and for whom, contact details, and travel itinerary. PNR analysis is vital to identifying serious criminal and terrorist movements. It plays a crucial role in intelligence-led operations, post-incident investigations and judicial proceedings.

1.19 In April 2016, after consistent calls from the UK, the EU adopted legislation on processing PNR on flights to, from and within the EU.¹⁸ When implemented, this will help all Member States to identify terrorist patterns of travel to and from conflict zones, such as Syria, assist in tackling serious crime and to identify the victims of such crime. These records provide details about how tickets were bought, onward travel details used, and other passengers with whom people are travelling, offering information to help Member States identify previously unknown individuals who may pose a threat, and also to identify in advance when people are travelling on high risk routes and to identify when terrorists seek to travel.

Case Study: PNR

A Togolese woman was trafficked to the UK as a sex worker. She escaped, but received threats of violence by phone and went to the police to seek safety. The phone number from which the threats were made was traced to the trafficker. This phone number had appeared in PNR for travel to the UK by some other Togolese women travelling alone. Without PNR, an investigation to trace and safeguard those women (who were not known to the first woman) would not have been possible.

1.20 In the absence of this EU agreement, it would have been possible for certain Member States to choose not to develop a capability to process PNR, meaning that international investigations would run into difficulties every time an individual assessed to pose a threat to public security travelled on from (or arrived from) that Member State. This could have made their true destination or origin untraceable.

1.21 Countries outside the EU will normally require either a direct agreement with the EU or bilateral agreements with individual Member States in order to acquire PNR.

1.22 **Prüm** is a mechanism that allows, with appropriate safeguards in place, for the searching of DNA profiles on a “hit/no hit” basis against other Member States’ DNA databases and for similar searches of fingerprints against other Member States’

¹⁸ Directive (EU) 2016/681 of the European Parliament and of the Council 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.

fingerprint databases.¹⁹ Automated searches can also be made against vehicle registration databases. The ability to check speedily other countries' databases helps EU law enforcement agencies to connect crimes committed in different countries, and provides them with crucial information, for example, on the identity of a person who left DNA at a crime scene.

Case Study: Prüm

Following the terrorist attacks in Paris in November, French authorities worked with a wide range of law enforcement agencies in other countries. One of the tools French authorities found most effective was the Prüm mechanism. French authorities exchanged DNA and fingerprint data with their Belgian counterparts, and it was thanks to Prüm – and other co-operation and data exchange tools available to European countries - that they were able to identify quickly one of the attackers, Salah Abdeslam.

1.23 In December last year, the UK Parliament voted to re-join the EU's Prüm legal framework relating to fingerprint, DNA exchange and vehicle registration data, in line with the Government's recommendation. The UK expects to be connected to Prüm from 2017 onwards. Before recommending that Parliament vote to re-join Prüm, the Government conducted a small-scale pilot in 2015, exchanging police DNA profiles with four other Member States. From this pilot alone, the UK obtained 118 matches (from around 2,500 DNA profiles), covering offences such as rape, sexual assault, arson and burglary.²⁰

1.24 Two non-EU countries have concluded agreements with the EU to access Prüm: Norway and Iceland. Both are part of the border-free Schengen area. The agreements were concluded in 2010, but neither agreement has yet entered into force.

1.25 The **Second Generation Schengen Information System (SIS II)** is a database of 'real time' alerts about individuals and objects of interest to EU law enforcement agencies. SIS II contains information on 35,000 people wanted under an EAW, as well as alerts on suspected foreign fighters, missing people, and alerts on people and objects of interest to EU law enforcement agencies.²¹ SIS II alerts are made available to the police through the Police National Computer (PNC) and to Border Force officers at the immigration controls at our ports of entry.

1.26 The UK connected to SIS II in April 2015. Between then and 31 March 2016 over 6,400 foreign alerts received hits in the UK, allowing UK enforcement agencies to take appropriate action, whilst over 6,600 UK-issued alerts received hits across Europe. In March this year alone, 809 people were flagged on SIS II to the UK. This

¹⁹ Council decisions 2008/615/JHA (Articles 3,4,9 and 12) and 2008/616/JHA, Framework Decision 2009/905/JHA.

²⁰ Prüm Implementation and Business Case, Home Office, November 2015.

²¹ Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II).

included 192 wanted people, 96 missing people and 358 people who are believed to be involved in serious organised crime.²² There are almost 70,000 alerts in SIS II for 'discreet or specific checks' on people across the EU – this includes alerts which support law enforcement tracking the movement around Europe of people convicted or suspected of serious and organised crime, including people convicted of sexual or violent offences.²³

1.27 SIS II also helps EU Member States tackle the terror threat from foreign fighters from across the EU returning from Syria and Iraq, tracking them as they travel around Europe. Last month the UK received 25 hits on foreign alerts in relation to individuals who could pose a risk to national security.²⁴

1.28 Stolen objects and vehicles that appear on the UK PNC are automatically shared with law enforcement across Europe via SIS II. That means if a vehicle listed as stolen in the UK is stopped in Europe, it will be flagged to the officer as stolen. Since the UK connected to SIS II in April 2015, the UK's National Vehicle Crime Intelligence Service (NaVCIS) has recovered, from other EU countries, numerous vehicles stolen from owners in the UK, and has gathered intelligence about disposal routes.

Case Study: SIS II

An individual was arrested in Portugal in August 2015 on suspicion of rape, only one month after an alert was circulated on SIS II. He was stopped at Gare do Oriente in Lisbon with no ticket or identification and questioned by police. He was matched to a SIS II alert having given his real name to the Portuguese Police and was extradited to the UK to face justice. Having pleaded guilty to sexual assault, he awaits sentencing.

1.29 All countries with access to SIS II are either full EU Member States or (like Norway, Iceland, Switzerland and Liechtenstein) are members of the Schengen border-free area.

1.30 The **European Criminal Records Information System (ECRIS)**, established in April 2012, provides a secure electronic system for the exchange of information on criminal convictions between Member States' authorities.²⁵ When a Member State convicts a national of another Member State, they are obliged to inform that country through ECRIS. Member States are also required to respond to requests for previous convictions for criminal proceedings. ECRIS may also be used for other purposes such as employment vetting and immigration matters. All Member States process this information as set out in their national law, reflecting their individual approach to criminal justice matters.

²² NCA pre-validation statistics for April 2015 to March 2016

²³ SIS II - 2015 Statistics, EU-LISA

²⁴ NCA statistics from March 2016

²⁵ Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States.

- 1.31 Criminal records information obtained through ECRIS means that when UK courts are making sentencing decisions they can take into account previous offending behaviour in other Member States. UK authorities routinely consider any EEA national or their family member for deportation: if they have received a custodial sentence in the UK; if there is evidence of serious overseas offending record; or if they are a persistent, low-level offender.
- 1.32 In the wake of the Paris attacks, the European Commission published proposals to extend ECRIS to third country nationals (TCNs). The proposal builds on the existing ECRIS system to impose a new obligation on Member States to exchange criminal conviction information on TCNs. It would also impose an obligation to collect and exchange fingerprint data on TCNs following conviction, to make it more difficult for criminals to hide their identities, and help prevent identity fraud. Alongside this cooperation, the UK is also pushing for the proactive sharing of criminal records data between EU Member States, particularly for serious offenders.
- 1.33 No non-EU country currently has access to ECRIS. This includes the four associated Schengen countries (Norway, Iceland, Switzerland and Liechtenstein), which instead use the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters, or informal Interpol channels for the purpose of international criminal convictions exchange. This is more time consuming, complex and expensive than the ECRIS procedure. Neither the UK's existing bilateral agreements nor the Interpol channels require countries (by law) to supply data within specified timeframes – as they are obliged to do under ECRIS.

The EU working beyond its borders

- 1.34 The UK's new settlement with the EU agreed at the February 2016 European Council reaffirmed that sole responsibility for the UK's national security rests with the UK Government. As the Government set out in the Strategic Defence and Security Review 2015, NATO is at the heart of the UK's defence policy.²⁶ But there are a number of ways in which the EU operates on foreign policy, defence and security, which can augment and help coordinate Member State activity.
- 1.35 The EU can agree common positions on foreign and security issues. The European Council and Council of Ministers drive decision making in this field, which is set out in the Common Foreign and Security Policy (CFSP).²⁷ The CFSP provides a mechanism to pursue joint policies and positions but only, in the vast majority of cases, when all 28 EU Member States agree. This means that the UK has an effective right of veto over every significant foreign and security decision taken by the EU.²⁸

²⁶ The Strategic Defence and Security Review 2015 sets out in full the Government's policy on National Security.

²⁷ Chapter 2 of Title V of the TEU.

²⁸ Articles 24(1) and 31 TEU.

Case study: Iran

Preventing Iran from obtaining a nuclear weapon has been a top UK foreign policy priority for many years. The recent deal with Iran made sure that for 10 years it will take Iran at least 12 months to produce enough fissile material for a weapon.

The EU played a central part in securing the deal, and the UK was one of the leaders of the EU's efforts. To begin with, the EU as a coordinated block imposed economic sanctions on Iran. Collectively, the EU Member States are the biggest customer of Iranian oil. Iran faced a ban on oil imports to the EU: World Bank estimates that the sanctions cut Iranian exports by nearly 14% during 2012-2014.²⁹ It was the economic pressure from sanctions that brought Iran to the negotiating table. And it was the UK that led the EU, by proposing these strong sanctions.

The deal itself was secured through negotiations between Iran and the E3+3 (UK, France and Germany, with the EU High Representative, plus the US, Russia and China). The EU played a central role as coordinator of the E3+3.

As a result of the deal, on 28 December 2015, over 13,000 centrifuges were removed and over 11 tonnes of low-enriched uranium shipped out, making it harder for Iran to produce a nuclear weapon.³⁰

1.36 The EU has no armed forces of its own and no defence budget. The EU has no command and control structures and does not have control over the UK's armed forces – we can and do act militarily independently of the EU. The same is true for our security and intelligence agencies.

1.37 However, Member States can choose to combine their military and civilian assets for peacekeeping, conflict prevention and strengthening international security under the EU's Common Security and Defence Policy (CSDP).³¹ Decisions to launch CSDP missions or operations, and over their mandate, are agreed by unanimity among the Member States, meaning that the UK has an effective right of veto. CSDP can play an important complementary role to the activities of Member States in addressing and managing international crises.

²⁹ World Bank, 2015: Shanta Devarajan, Lili Mottaghi, 2015, "Economic Implications of Lifting Sanctions on Iran", Middle East and North Africa Quarterly Economic Brief, World Bank, July 2015.

³⁰ US Government, Secretary of State John Kerry, 28 December 2015: An Update on Progress Toward Implementation Day of the JCPOA.

³¹ Article 42(4) TEU.

Case study: Counter-piracy

The seas off Somalia are a key trade route for the UK between Europe and Asia. Between 2008 and 2011 over 130 vessels were taken by pirates, and many more were attacked.³²

In 2008, the UK worked with other EU states to establish a military counter-piracy operation to protect aid shipments and other vulnerable vessels.³³ The UK has contributed the Operation Commander, Operation Headquarters facilities (OHQ) at Northwood near London, and on average 70 members of OHQ staff (approximately 60% of the total OHQ). In addition, the UK provided a frigate for five months in both 2009 and 2011 and two Royal fleet Auxiliary vessels for a month each in 2013.

Other EU Member States provide over 80% of the operation's cost, allowing for 24/7 patrols, meaning that the costs of a top UK security priority are shared amongst EU members. The mission – which is still going on - has been successful: since May 2012 there has not been a single successful pirate attack.

1.38 The EU provides a range of diplomatic, economic, social and other levers that gives the UK a range of coordinated options with which to approach security challenges. It also carries out peacekeeping and peace-building operations; maritime security operations; capacity-building for the armed forces, law enforcement and other security forces of countries at risk of instability; and coordinates work between Member States to improve their individual military capabilities. The EU can use all these tools to help address global challenges, including state and non-state threats and public health risks.

Case study: Ebola

The Ebola outbreak in West Africa posed a major global health challenge. The EU first activated its Civil Protection Mechanism in response to Ebola in August 2014, enabling rapid deployment of emergency supplies and personnel to the affected region.

As the epidemic grew, the UK used a European Council meeting in October 2014 to step up the international fight-back against the spread of the disease. European leaders responded with a combined pledge of close to €2bn. They also agreed that the EU would guarantee appropriate care for any international healthcare worker who became infected with Ebola in the course of the response. This included a medical evacuation capability, coordinated and delivered by the EU's Emergency Response Coordination Centre. The guarantee was vital in encouraging Member States and other countries to contribute doctors, nurses, lab technicians and other essential personnel to the fight against the

³² EU Naval Force Somalia - Operation Atalanta, Key Facts, May 2016.

³³ Council Joint Action 2008/851/CFSP on a European military operation to contribute to the deterrence, prevention and repression of piracy and armed robbery off the Somali coast.

disease.

The EU played an important role in broader international donor coordination. In March 2015, the EU worked with the UN, African Union, Economic Community of West African States (ECOWAS) and the governments of Sierra Leone, Liberia and Guinea to organise a major high-level conference on Ebola in Brussels. This included planning for the recovery and future resilience of the worst-affected countries.

The European Commission also supported efforts to speed up international research into potential treatments, vaccines and tests for Ebola. Almost €700m in funding from Horizon 2020, the EU's research and innovation funding programme, was allocated to an EU initiative with the pharmaceutical industry to boost research in these areas.³⁴

1.39 The EU can also coordinate non-military responses to security challenges, for instance by agreeing a single EU approach to sanctions policy and enforcement.³⁵

Case study: Russia

In 2014, Russia illegally annexed Crimea and intervened in and destabilised eastern Ukraine. The UK played a key role in ensuring that EU responded with strong economic sanctions.

These were not easy discussions, given some Member States' concerns about the economic impact of sanctions on their economies. But the EU was able to agree and sustain a robust and united response, which was made more effective by being coordinated with the other G7 partners.

EU sanctions are having an impact on the Russian economy and have also proven effective in sending a strong and united signal of the EU's rejection of Russia's illegal actions.³⁶

These measures and the threat of further sanctions are essential to deter Russia from further action and to keep them engaged in the Minsk peace process.³⁷

³⁴ 'EU response to Ebola', EU Newsroom, May 2016.

³⁵ Article 29 TEU and Article 215 TFEU.

³⁶ Council Decisions 2014/145/CFSP and 2014/512/CFSP and Council Regulations 269/2014 and 833/2014.

³⁷ Russia is a signatory to the Minsk Agreements and so, like Ukraine, is bound by its terms.