

16 January 2020

UKTF (2020) 7 – Commission to EU 27

---

**Subject:** Internal EU27 preparatory discussions on the future relationship: "Law enforcement and judicial cooperation in criminal matters"

**Origin:** European Commission, Task Force for Relations with the United Kingdom

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 16 January 2020. The contents are without prejudice to discussions on the future relationship.

**Published on the UKTF website on 16 January 2020**

---

Internal preparatory discussions on  
future relationship

**Law enforcement & judicial  
cooperation  
in criminal matters**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)

**16/01/2020**

# General introduction

*If UK withdraws with agreement on 31 January 2020:*

*Transition period of 11 months for:*

- 1. adoption of negotiating directives;**
- 2. conduct of negotiations;**
- 3. signature/conclusion and entry into force of future partnership by 1 January 2021**

**=> *Complex and politically sensitive negotiations***

**=> *Possibility of a "cliff edge" as of 1 January 2021***

# Purpose of the seminar series

## ***- Respect established EU principles and objectives:***

- 1. European Council (Art. 50) guidelines on the framework for the future EU-UK relationship, 23 March 2018;**
- 2. Revised Political Declaration agreed with the UK government on 17 October 2019, setting out the framework for the future relationship between the EU and the UK.**

## ***- Preparing the negotiating directives***

## ***- Take into account Member States' views***

## ***- Commission will present the recommendation after UK withdrawal***

***→ no surprises***

***→ allow for swift adoption***

# I. General approach

## Starting points UK future status:

### European Council (Art. 50) Guidelines (23 March 2018)

3. *The European Council restates the Union's determination to have as **close as possible a partnership** with the UK in the future. Such a partnership should cover [...] other areas, in particular **the fight against terrorism and international crime, [...]**.*

13. [...] *the European Council considers that: i) **law enforcement and judicial cooperation in criminal matters** should constitute an **important element of the future EU-UK relationship** in the light of the **geographic proximity** and **shared threats** faced by the Union and the UK, taking into account that the UK will be a **third country outside Schengen**.*

*The future partnership should cover **effective exchanges of information**, support for **operational cooperation between law enforcement authorities** and **judicial cooperation in criminal matters**.*

## Starting points UK future status:

### European Council (Art. 50) Guidelines (23 March 2018)

7. [...] any agreement with the United Kingdom will have to be based on **a balance of rights and obligations**, and **ensure a level playing field**.

A **non-member of the Union**, that does not live up to the same obligations as a member, **cannot have the same rights and enjoy the same benefits as a member**.

[...] the Union will **preserve its autonomy as regards its decision-making**, which **excludes** participation of the United Kingdom as a third-country in the Union Institutions and **participation in the decision-making of the Union bodies, offices and agencies**. The **role of the Court of Justice** of the European Union will also be fully respected.

13. [...] **Strong safeguards** will need to be established that ensure **full respect of fundamental rights** and **effective enforcement** and **dispute settlement mechanisms**.

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

## Starting points UK future status:

### European Council (Art. 50) Guidelines (23 March 2018)

15. The **governance** of our future relationship with the UK will have to address management and supervision, **dispute settlement and enforcement**, including sanctions and cross-retaliation mechanisms.

Designing the overall governance of the future relationship will require to take into account:

- i) the **content and depth of the future relationship**;
- ii) the necessity to ensure **effectiveness** and **legal certainty**;
- iii) the requirements of the **autonomy of the EU legal order**, including the **role of the Court of Justice of the European Union**, notably as developed in the jurisprudence.

## Starting points UK future status: Political Declaration

80. *The future relationship will provide for*

- ***comprehensive, close, balanced and reciprocal law enforcement and judicial cooperation in criminal matters,***

*with the view to*

- *delivering **strong operational capabilities** for the purposes of the prevention, investigation, detection and prosecution of criminal offences,*

*taking into account*

- *the geographic **proximity**, shared and evolving **threats** the Parties face, the mutual benefits to the safety and **security** of their citizens,*
- *and the fact that the United Kingdom will be a **non-Schengen third country that does not provide for the free movement of persons.***



### Starting points UK future status: Political Declaration

81. *The Parties agree that the scale and scope of future arrangements should achieve an **appropriate balance between rights and obligations** – the closer and deeper the partnership the stronger the accompanying obligations.*

- *It should reflect the commitments the United Kingdom is willing to make that respect the **integrity of the Union's legal order**, such as with regard to alignment of rules and the mechanisms for disputes and enforcement provided for in paragraphs 129 to 132.*
- *It should also be underpinned by long-standing commitments*
  - *to the **fundamental rights of individuals**, including continued adherence and giving effect to the **ECHR**, and **adequate protection of personal data**, which are both essential prerequisites for enabling the cooperation envisaged by the Parties,*
  - *and to the **transnational ne bis in idem principle** and **procedural rights**.*
- *It should also reflect the Union's and its Member States' commitment to the **Charter of Fundamental Rights** of the European Union.*

# Principles of the EU Approach

- The Union's security interest
- Balance of rights and obligations
  - Difference between
    - third countries vs. EU Member States (including Denmark)
    - Schengen (+ free movement of persons) vs. non-Schengen third countries
  - Take into account existing relations with other third countries
- Autonomy of the Union's decision making process
- Necessary safeguards, including data protection

# Necessary safeguards: future cooperation

- Continued adherence and giving effect to the European Convention on Human Rights
- Essentially equivalent data protection standards as confirmed by a Commission adequacy decision
- Effective enforcement and dispute settlement, including the role of the European Court of Justice in the interpretation of Union law
- *Ne bis in idem* as a ground for non-execution of a request for cooperation
- Fair trial rights, including procedural rights in cross-border judicial cooperation cases

## II. Topical discussion

### Outline of today's seminar:

Political Declaration (PD):

82. The future relationship should cover arrangements across three areas of cooperation:

**A. data exchange;**

**B. operational cooperation** between law enforcement authorities and judicial cooperation in criminal matters;

**C. anti-money laundering and counter terrorism financing;**  
and

+

**D. Illegal migration (114)**

## **A. Data exchange**

1. Passenger Name Record (PNR) data transfer and exchange
2. DNA, fingerprints and vehicle registration data (Prüm)
3. Exchange of information on criminal records
4. Effective and swift data exchange and analysis, including on wanted or missing persons and objects

# 1. Passenger Name Record (PNR) data

EU Member States	Third countries
<p><b>EU PNR Directive:</b></p> <ul style="list-style-type: none"> <li>• Air carriers provide PNR to Member States' Passenger Information Units (PIUs)</li> <li>• Close authority-to-authority cooperation between Member States' PIUs</li> </ul>	<p><b>Agreements:</b></p> <ul style="list-style-type: none"> <li>• Carriers provide PNR data to third country authorities</li> <li>• Authority-to-authority cooperation</li> </ul> <p>E.g.: Agreement with USA, Australia, draft negotiated text with Canada, negotiating mandate with Japan</p>

# 1. Passenger Name Record (PNR) data – future relationship with the UK

*PD 84. The Parties should establish **reciprocal** arrangements for **timely, effective and efficient exchanges** of Passenger Name Record (PNR) data and the results of processing such data stored in **respective national PNR processing systems** [...]*



## a) Exchanges between UK and EU Member States' Passenger Information Units (PIUs)

- Reciprocal
- Timely, effective and efficient
- Conditional upon compliance with the data protection standards essentially equivalent to the EU's standards

# 1. Passenger Name Record (PNR) data – future relationship with the UK

## b) PNR transfers by air carriers

- Legal basis for transfers by air carriers to UK authorities
- Flights between United Kingdom <-> a Member State
- Taking into account:
  - Air carriers' compliance with EU data protection standards (GDPR)
  - UK safeguards in line with Opinion 1/15 of the European Court of Justice (EU-Canada PNR agreement)



## 2. DNA, fingerprints and vehicle registration data (Prüm)

EU Member States	Schengen Associated countries	Non-Schengen third countries
Interconnection of databases	Interconnection of databases (IS, NO, CH & LI)	No cooperation/ agreement at EU level

*PD 84. The Parties should establish **reciprocal** arrangements for **timely, effective and efficient exchanges** [...] of DNA, fingerprints and vehicle registration data (Prüm).*



- Reciprocal exchanges:
  - access to all available data at national level
  - DNA and fingerprints: suspected and convicted individuals
- Timely, effective and efficient
- Between UK and EU Member States' authorities

### 3. Exchange of info on criminal records

EU Member States	Schengen third countries	Non-Schengen third countries
ECRIS (European Criminal Records Information System)	No access to ECRIS	No access to ECRIS

*PD 85. The Parties should **consider** further arrangements **appropriate to the United Kingdom's future status** for data exchange, such as exchange [...] of criminal records, with the view to delivering capabilities that, **in so far as is technically and legally possible**, and **considered necessary and in both Parties' interests, approximate** those enabled by relevant Union mechanisms.*

*PD 80. [...] the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons*



- 1959 CoE Mutual Legal Assistance Convention (ratified by all EU-27 and the UK)
- Elements supplementing the CoE Convention (e.g. time limits, more frequent exchange of information on convicted nationals)
- Secure and effective data exchange channel

## 4. Exchange of information, incl. on wanted or missing persons and objects

EU Member States	Schengen Associated Countries	Non-Schengen third countries
Full access to SIS	Full access to SIS (as Schengen members)	No access, Schengen-related instrument

PD 83. [...] effective and swift data sharing and analysis is **vital for modern law enforcement** [...] arrangements between the parties in order to respond to evolving threats, disrupt terrorism and serious criminality, facilitate investigations and prosecutions, and ensure the security of the public.

PD 85. The Parties should **consider** further arrangements **appropriate to the United Kingdom's future status** for data exchange, such as exchange of information on wanted or missing persons and objects [...], with the view to delivering capabilities that, **in so far as is technically and legally possible**, and **considered necessary and in both Parties' interests**, approximate those enabled by relevant Union mechanisms.

PD 80. [...] the United Kingdom will be a non-Schengen third country that does **not provide for the free movement of persons**

## 4. Exchange of information, incl. on wanted or missing persons and objects

- Build on existing ways of exchanging law enforcement information and intelligence
  - Europol (e.g. with US, Serbia, Canada, Ukraine, Colombia)
  - Interpol
  - Bilateral and international agreements
- Supplemented by framework on simplified exchange of information and intelligence between law enforcement authorities
  - Bilateral exchanges
  - Information upon request or spontaneous exchanges
  - Time limits for provision of information
  - Secure communications channel
  - Use of standardised forms

## **B. Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters**

- 1. Europol**
- 2. Eurojust**
- 3. Extradition/surrender** of suspected and convicted persons
- 4. Other** cooperation between law enforcement authorities, and between judicial authorities in criminal matters

# 1. Europol

*PD 86. The Parties recognise the value in **facilitating** operational cooperation between the United Kingdom's and Member States' law enforcement and judicial authorities, and will therefore work together to **identify the terms** for the United Kingdom's **cooperation via Europol** [...]*

*PD 80. [...] the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons*

## B. Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters

# 1. Europol

## Overview of international agreements with partners:

Type of cooperation	EU Member States (except Denmark)	Denmark	Third countries (Schengen & non-Schengen)
<b>Governance</b>			
Management Board	Member	Observer	/
Management Board working groups	Member	Observer	/
Heads of Europol National Units	Member	Invited to the meetings	Invited to the meetings
CJEU jurisdiction	Yes	Yes	No
<b>Exchange of data/ operational cooperation</b>			
Europol databases	Access	No access Data exchange (Special arrangement)	No access Data exchange
Analysis projects	Participation	Participation (if Member States agree)	Participation (if Member States agree)

# 1. Europol



- Exchange all sorts of **strategic and operational data**
- Participate in Europol's **operational analysis projects**, if Member States agree and relevant to the UK
- Post **Liaison Officers** to facilitate data exchange
- **No** direct or indirect **access** to the Europol Information System
- **Observer** in the Heads of Europol National Units' meetings
- Use Europol's **secure communication channel (SIENA)**



## B. Operational cooperation between law enforcement authorities and judicial cooperation in criminal matters

### 2. Eurojust

Type of cooperation	EU Member States	Denmark	Third countries with a cooperation agreement with Eurojust
<b>Governance</b>			
College	Member	Possible observer (when College exercises management functions)	No attendance
CJEU jurisdiction	Yes	Yes	No
<b>Exchange of data / operational cooperation</b>			
Exchange of case-related information	Yes (all Member States)	Yes, when the case concerns Denmark  Secondment of a Representative, Deputy, Assistant and Administrative Assistant	Yes, when the case concerns the third country  Possible secondment of a Liaison Prosecutor and one Assistant
Access to Eurojust's case management system	Yes	Limited information available	Limited information available (if a Liaison Prosecutor seconded)

## 2. Eurojust

*PD 86. The Parties recognise the value in **facilitating** operational cooperation between the United Kingdom's and Member States' law enforcement and judicial authorities, and will therefore work together to **identify the terms** for the United Kingdom's **cooperation via [...] Eurojust***

*PD 80. [...] the United Kingdom will be a non-Schengen third country that does not provide for the free movement of persons*



- Appropriate arrangements for a non-Schengen third country that does not provide for the free movement of persons:

## 2. Eurojust

An advanced cooperation model, providing for:

- **Liaison Prosecutor to Eurojust and Liaison Magistrate to the UK** to facilitate the exchange of data,
- Bilateral exchange of case-related information, when a case concerns the UK,
- **Limited** information available from Eurojust's case management system;

### 3. Extradition/surrender of suspected and convicted persons

EU Member States	Schengen third countries	Non-Schengen third countries
European Arrest Warrant	Agreement on the surrender procedure only with NO and IS (agreed in view of close relationship; not part of the Schengen acquis)	Extradition agreement with the US
		1957 CoE convention and other international agreements

### 3. Extradition/surrender of suspected and convicted persons

*PD 87. The Parties should establish **effective arrangements** based on **streamlined procedures** and **time limits** enabling the United Kingdom and Member States to surrender suspected and convicted persons efficiently and expeditiously, with the **possibilities to waive the requirement of double criminality**, and **to determine the applicability of these arrangements to own nationals and for political offences.***



Effective surrender:

- Streamlined procedures and time limits; subject to judicial control
- Could include provisions allowing each state:
  - to waive the requirement of double criminality for certain offences
  - to determine the applicability of the general arrangements to own nationals and for political offences

## 4. Other cooperation between judicial authorities

EU Member States	Schengen third countries	Non-Schengen third countries
Various judicial cooperation instruments based on mutual recognition principle	Agreement with NO and IS on the application of certain provisions of the 2000 EU Convention on legal assistance	Mutual legal assistance agreements (Japan, US)
	<i>International conventions (CoE, UN)</i>	<i>International conventions (CoE, UN)</i>
<i>International conventions (CoE, UN)</i>		

*PD 88. The Parties should **consider further arrangements** appropriate to the United Kingdom's future status for practical cooperation between law enforcement authorities, and between judicial authorities in criminal matters, such as joint investigation teams, with the view to delivering capabilities that, in so far as is **technically and legally possible**, and **considered necessary and in both Parties' interests**, approximate those enabled by relevant Union mechanisms.*



## 4. Other cooperation between judicial authorities

- 1959 CoE Mutual Legal Assistance convention (ratified by all EU-27 and the UK), its protocols, other CoE Conventions.
- Facilitating the use and supplementing the relevant CoE conventions, e.g.:
  - supplementary rules for mutual legal assistance:
    - Time limits for provision of information
    - Use of standardised forms
  - Other supplementary forms of cooperation, e.g. Joint Investigation Teams

## C. Anti-money laundering and counter terrorism financing *(Political Declaration: 89)*

*PD 89. The Parties agree to **support international efforts** to prevent and fight against money laundering and terrorist financing, particularly through compliance with Financial Action Task Force (FATF) standards and associated cooperation. The Parties agree to **go beyond the FATF standards** with regard to **beneficial ownership transparency** and **ending the anonymity associated with the use of virtual currencies**, including through obliging virtual currency exchanges and custodian wallet providers to apply customer due diligence controls.*



- Compliance with Financial Action Task Force (FATF) standards
- Beyond the FATF:
  - Ensure existence of public registers for beneficial ownership information for companies and semi-public registers of beneficial ownership information for trusts and other legal arrangements
  - *[Meanwhile FATF has covered the use of virtual currencies]*



## D. Irregular migration (*Political Declaration: 114*)

*PD 114. The Parties will cooperate to tackle illegal migration, including its drivers and its consequences, whilst recognising the need to protect the most vulnerable.*

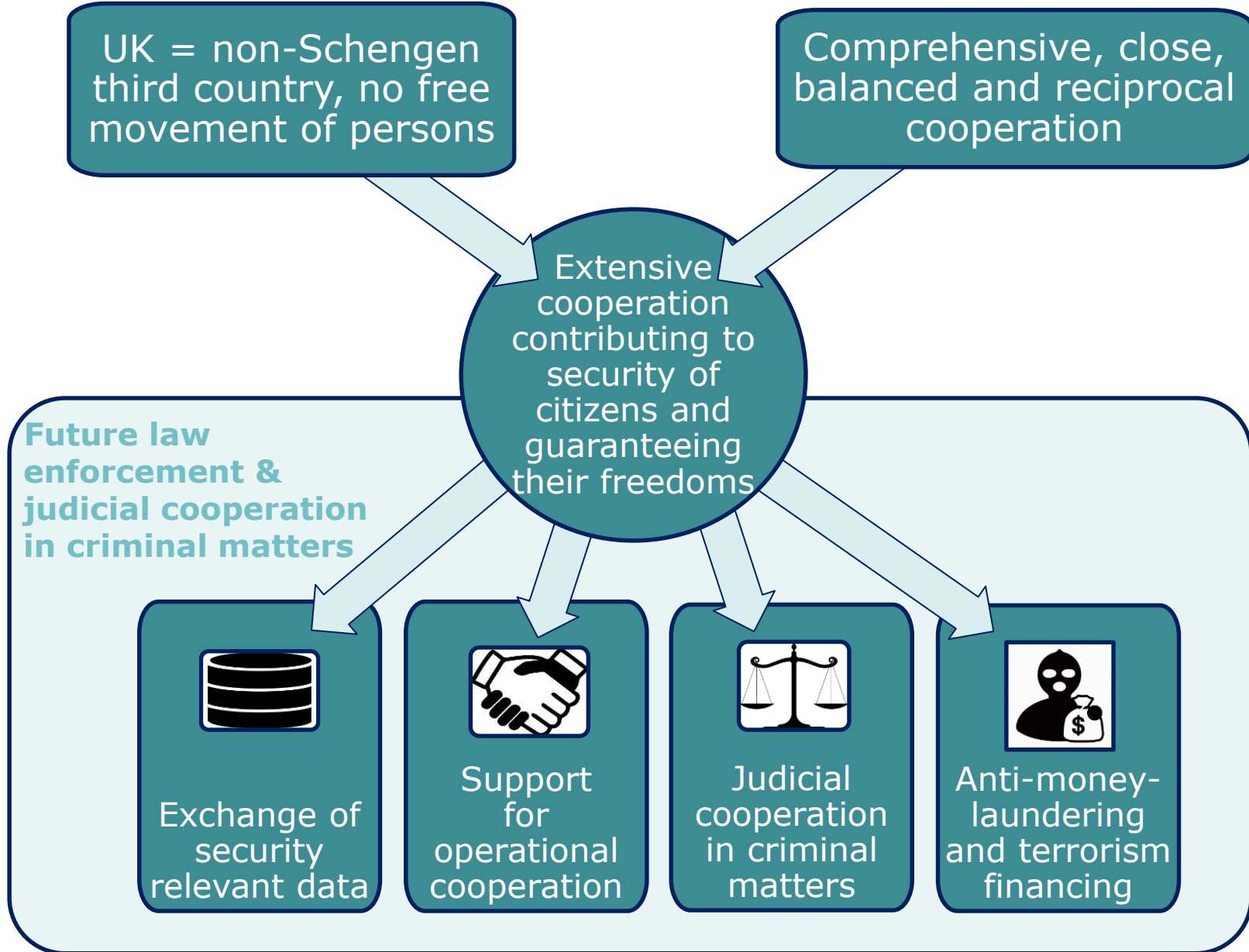
*This cooperation will cover:*

- a) operational cooperation with **Europol** to combat organised immigration crime;*
- b) working with the **European Border and Coastguard Agency [EBCGA]** to strengthen the Union's external border; and*
- c) **dialogue on shared objectives and cooperation**, including in third countries and international fora, to tackle illegal migration upstream.*



- a) Cooperation with Europol as discussed above
- b) EBCGA to conclude working arrangements (Regulation 2016/1624)
- c) Dialogue with UK to find synergies in relation to the EU's engagement with third countries on migration, as well as in multilateral or regional dialogues, processes and frameworks

# III. Wrap-up



# Conclusions

- ***Security of citizens = central objective of new security partnership***
- ***Comprehensive, close and reciprocal cooperation needed, in balance with:***
  - *the UK's future status as a non-Schengen third country without free movement of persons;*
  - *third country vs. EU Member State (incl. Denmark) models*
- ***Take into account existing relations with other third countries***
- ***Necessity of safeguards for the future cooperation, including ECHR, data protection, effective enforcement and dispute settlement***