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**Subject:** Internal EU27 preparatory discussions on the framework for the future relationship: "Police & judicial cooperation in criminal matters"

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

**Remarks:** These slides are for presentational and information purposes only and were presented to the Council Working Party (Article 50) on 23 January 2018. The contents are without prejudice to discussions on the framework of the future relationship.

In December 2017, the European Council invited the Council (Art. 50) together with the Union negotiator to continue internal preparatory discussions on the scope of the future EU-UK relationship. The slides support those discussions. They are based on the April European Council guidelines which continue to apply in their entirety.

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Internal preparatory discussions on  
framework for future relationship

## **Police & judicial cooperation in criminal matters**

**AD HOC WORKING PARTY ON ARTICLE 50** (*Seminar mode*)  
**23/01/2018**



# Consequences of UK withdrawal: default position

EU-27 cooperation with the UK:

- **international conventions** (CoE or UN) allowing e.g. for joint investigative teams, extradition, the fight against cybercrime
- **Interpol,**
- **bilateral relations,**
- **"soft" measures** (e.g. exchanges of non-personal data, global initiatives)

# Transition period in the JHA area: Scope

The existing UK status in the JHA area taken into account:

**UK remains bound by acts applicable to it upon its withdrawal**

+

the UK may:

choose if to participate in measures  
**amending/replacing/building upon such acts**

**BUT**

**No opt-ins to completely new measures**

# Transition period in the JHA area: Institutional aspects

UK:

- no longer participates in the **EU institutions** or in the **decision-making, governance** of Union agencies;

*whilst*

- **full competences of the Union institutions, agencies and bodies** in relation to the UK and UK natural and legal persons

# Future relationship

# Visions of the future partnership

## EU

**Partnership** on the fight against terrorism and international crime

**Union's interest**

**Non-member cannot have the same rights as a member**

**Balance of rights and obligations**

**Autonomy of the Union decision-making process**

## UK position

**Aim: "Deep and special partnership" that maintains/deepens/strengthens operational and practical cooperation**

**AT THE SAME TIME:**

- **Future third country that does not participate in the Schengen area**
- **Arrangements for the free flow of data → mutual recognition (respect for UK sovereignty)**
- **Dispute settlement → No direct ECJ jurisdiction,**
- **No free movement of persons**

# Factors determining the degree of the EU cooperation with third countries

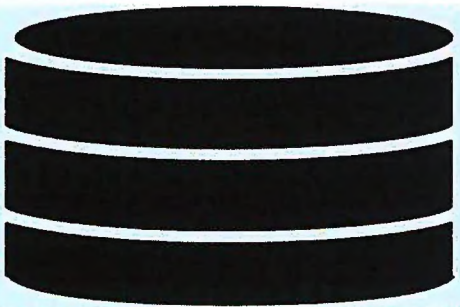
- EU- 27 security interest
- Shared threats and geographic proximity
- Existence of a common framework of obligations with third countries (e.g. Schengen, free movement)
- Risk of upsetting relations with other countries
- Respect for fundamental rights, essentially equivalent data protection standards
- Strength of enforcement & dispute settlement mechanisms



## Police & judicial cooperation with third countries overview of international agreements

Areas	EU MS	Schengen third countries	Non-Schengen third countries
<b>Europol</b>	Access to database (not DK*) Participation in analyses projects	Data exchange; Participation in analyses projects (if MS agree)	Data exchange; Participation in analyses projects (if MS agree)
<b>Eurojust</b>	Access to database Participation in Eurojust cases	Data exchange; Participation in Eurojust cases (if MS agree)	Data exchange; Participation in Eurojust cases (if MS agree)
<b>Passenger Name Record</b>	Carriers provide PNR, Authority-to-authority cooperation (not DK*)	No specific cooperation so far	EU carriers provide PNR, Authority-to-authority cooperation
<b>Prüm</b>	Interconnection of databases	Interconnection of databases (NOR&ISL)	No interconnection of databases
<b>ECRIS</b>	Interconnection of databases; data exchange	No access	No access
<b>SIS II</b>	Full access*	Full access (as Schengen members)	No access, Schengen-related instrument
<b>Eurodac</b>	Full access	Full access (as "Dublin" members)	No access as not participating in "Dublin" system
<b>Extradition</b>	European Arrest Warrant	Agreement on the surrender procedure with NOR & ISL	Extradition agreements with the US
<b>Mutual legal assistance &amp; cooperation</b>	Various instruments based on mutual recognition principle	Agreement with NOR & ISL on the application of certain provisions of the 2000 EU Convention on legal assistance as well as its 2001 Protocol	Mutual legal assistance agreements (JPN, US)
		<i>International conventions (CoE, UN)</i>	<i>International conventions (CoE, UN)</i>

# Building blocks of the future relationship



Exchange of  
security  
relevant  
data



Support for  
operational  
cooperation



Judicial  
cooperation in  
criminal  
matters

# Exchange of data

## Europol

(e.g. US, Serbia, Canada,  
Ukraine, Norway)

## Eurojust

(e.g. US, Montenegro,  
Norway)

## PNR

(US, Australia, Canada)

# Europol: current cooperation

Type of cooperation	EU-MS (apart from Denmark)	Denmark	3 <sup>rd</sup> countries
<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
<b>Exchange of data/ operational cooperation</b>			
Europol databases	Access	No access* Data exchange	No access Data exchange
Analysis projects	Participation	Participation (if MS agree)	Participation (if MS agree)

# Europol : exchange of data comparison

EU-MS (apart from Denmark)	Denmark	Third countries (Schengen or non-Schengen)
Access to databases	Data exchange; no access to databases (*)	Data exchange; no access to databases

## Consequences of applying the third country model to the UK:

- effective ways of **data exchanges** with Europol, MS and other partners (via SIENA),
- **liaison officers** to facilitate the data exchange
- **no access to Europol databases**

# Eurojust: exchange of data comparison

EU MS	Third countries (Schengen or non-Schengen)
Access to Eurojust database	Data exchange; no access to databases

## Consequences of applying the third country model to the UK:

- effective ways of **data exchanges** with partners,
- **possibility to appoint contact points and liaison magistrates** to facilitate data exchange
- **no direct access to Eurojust Case Management System or case-files**

# Passenger Name Record: comparison

EU MS	Third countries
EU PNR Directive: EU and third country carriers provide PNR, Close authority-to-authority cooperation between MS	EU carriers provide PNR to US, AUS, CAN, Authority-to-authority cooperation

## Consequences of applying the third country model to the UK:

- The UK requires EU air carriers to provide PNR
  - **exchange of PNR and results of processing of PNR** between the UK and MS 27 Passenger Information Units (PIUs),
  - **No access for the UK to PNR on intra-EU flights**
  - Requirements set out in the **ECJ Opinion 1/15** to be met
- +
- EU PNR Directive will apply *erga omnes*

# Support for operational cooperation

## **Europol**

(e.g. US, Norway, Serbia, Canada, Ukraine...)

## **Eurojust**

(e.g. US, Norway, Montenegro)



# Europol: support for operational cooperation comparison

EU-MS	Denmark	3rd countries
Participation in analysis projects (if they <u>want</u> )	Participation in analysis projects ( <u>where MS agree</u> )	Participation in analysis projects ( <u>where MS agree</u> )

## Consequences of applying the third country model to the UK:

- Ways to cooperate on "live" investigations,
  - The UK can be **associated to an operational analysis project** if:
    - the purpose of the project is relevant to the UK or if the data processed in the project concerns it,
    - **if agreed by all participating Member States**
- +
- Observer in the Heads of Europol National Units' meetings
  - may participate in the EU Policy Cycle supported by Europol
  - Liaison officers

# Eurojust: support for operational cooperation comparison

EU MS	Third countries
Participation in Eurojust cases ( <u>if they want</u> )	Participation in Eurojust cases ( <u>if MS agree</u> ) Possible secondment of liaison prosecutors

## Consequences of applying the third country model to the UK:

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- **Cooperation** in real time and multilaterally on judicial cases
- **Liaison magistrates** in UK/Eurojust
- **Exchange** of operational data **via liaison magistrates** in UK/Eurojust
- **Coordination of judicial cooperation** (extradition, mutual legal assistance)
- Use of **Eurojust's On-Call Coordination**

# Judicial Cooperation in criminal matters

Need for the EU-27 to ensure:

- ways of **extradition**
- **mutual legal assistance**

# Judicial cooperation in criminal matters: comparison

Area	EU MS	Schengen third country	Non-Schengen third country
Extradition	European Arrest Warrant	Agreement on the surrender procedure with NO & IS (not yet in force)	Extradition agreement with US
			<i>International framework (i.e. CoE)</i>
Mutual legal assistance & cooperation	Various tools based on mutual recognition principle, e.g. Investigation Order, financial penalties, freezing & confiscation, etc.	Agreement with NO & IS on the application of certain provisions of the 2000 EU Convention on mutual legal assistance and its 2001 Protocol	Mutual legal assistance agreements (JPN, US)
		<i>International framework (CoE, UN, etc.)</i>	<i>International framework (CoE, UN, etc.)</i>

# Extradition

- Fall-back: CoE Convention 1957 on extradition and additional Protocols:
  - N° 1-1975,
  - N°2-1978,
  - N°3-2010,
  - N°4-2012.
- Could other cooperation models with third countries be a basis for the future relations?

## Models for extradition cooperation with third countries

	EU- Norway/Iceland (Schengen members; free movement) <u>not yet in force</u>	CoE Convention	EU-US agreement
Model	<p>Based on the <b>surrender between judicial authorities (mutual recognition principle)</b>:</p> <ul style="list-style-type: none"> <li>• exception of double criminality (for certain offences)</li> <li>• deadlines for execution,</li> <li>• limited grounds for refusal;</li> </ul> <p><b>BUT:</b> possibilities for Parties to unilaterally:</p> <ul style="list-style-type: none"> <li>• renounce their obligation to surrender their own nationals</li> <li>• restrict the obligation to surrender for political offences</li> </ul> <p>(in both cases subject to reciprocity)</p>	<ul style="list-style-type: none"> <li>• international cooperation through <b>diplomatic</b> channels</li> <li>• double criminality,</li> <li>• no extradition of own nationals,</li> <li>• no time-limits for extradition (ca 1 year)</li> </ul>	<ul style="list-style-type: none"> <li>• international cooperation through diplomatic channels,</li> <li>• largely relies on existing and future bilateral agreements with particular MSs</li> </ul>

# Mutual Legal Assistance (MLA)

- Aim: to collect and exchange evidence in cross-border criminal proceedings; other forms of assistance
- Fall-backs: CoE Conventions, e.g. 1959 on mutual legal assistance and additional Protocols:
  - N°1- 1978
  - N°2-2001
- Other models of cooperation with third countries on mutual legal assistance:
  - EU - Norway/Iceland agreements
  - EU-US and EU-Japan agreements

## Models for MLA cooperation with third countries

	EU- Norway/Iceland (=Schengen members; free movement)	CoE	EU-US
Model	<ul style="list-style-type: none"> <li>• MLA regime based on application of 2000 EU MLA Convention to NOR/ISL, i.e. association with Schengen acquis</li> <li>• Role of Eurojust</li> <li>• Deadlines for execution</li> </ul>	<ul style="list-style-type: none"> <li>• "Classic" international cooperation (diplomatic channels, letters rogatory based on principle of request)</li> <li>• improvements since 2<sup>nd</sup> protocol (similar to 2000 MLA Convention, incl. JITs)</li> </ul>	<ul style="list-style-type: none"> <li>• General framework based on internal cooperation through diplomatic channels,</li> <li>• largely relies on existing and future bilateral agreements with particular MSs EU-US</li> </ul>



## **Necessary safeguards for the future cooperation**

- **Fundamental rights** as set out in the European Convention on Human Rights
- **Essentially equivalent data protection standards**
- **Effective enforcement & dispute settlement**

# Preparedness

## Preparedness to end UK's EU membership

- The EU and Member States need to raise **awareness** of need to anticipate and **adjust**
- Issues related to the EU databases

## Additional preparedness to risk of no deal

- The EU and Member States need to raise **awareness** of need to anticipate and **adjust**

### Transition:

Application of the acquis,  
Opt- ins to measures amending/replacing/building upon the acquis  
No opt ins to new measures  
No participation in institutions and decision making



### Future

Framework allowing for:  
Exchange of security relevant data, i.e. Europol, Eurojust, PNR  
Operational cooperation, i.e. Europol, Eurojust  
Judicial Cooperation on Criminal matters



### Preparedness

MS & stakeholders awareness  
+ if **no deal**, contingency measures to safeguard EU interest