

Exiting the EU - Insights on the UK Government's White Paper

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SECURING THE FUTURE: FIGHTING ORGANISED CRIME AND TERRORISM AFTER BREXIT

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Key points:

- ❑ Potential loss of influence and reduced engagement with Europol and other EU security agencies.
- ❑ A number of agencies and cooperation agreements are currently in place to which the UK is a member. Leaving the EU creates the need for new arrangements and protocols for information exchange; as well as discontinuities in exchange and cooperation.
- ❑ Reduced access to EU intelligence and loss of influence over EU security agencies will diminish significance of UK agencies in international fora.

The security implications of Brexit rarely receive much attention compared to the effect on the economy or migration, in large part because the [Treaty of the European Union](#) (TEU) states clearly that national security remains the sole responsibility of the member-states (Article 4 para 2). International security cooperation is in any case, taken care of by the North Atlantic Treaty Organisation that binds many EU member-states as well as the US and Canada, and enjoys a separate existence and operational structure entirely independent from the EU even though headquartered in Brussels.

With the fading of existential military challenges in Central and Western Europe, NATO's role has become less immediate. The primary threat recognised in the UK Government's [National Security and Strategic Defence and Security Review](#) 2015 emerges from terrorism, extremism and instability, a function of the UK's high degree of exposure to global currents, in the flow of people, goods and ideas. Here the EU does enjoy competence in coordinating police and judicial authorities (TEU, Art. 4 para 3), with a growing web of institutions, platforms and mechanisms that regulate law enforcement and judicial cooperation amongst member-states and between the EU and third countries. In leaving the European Union, the UK is looking for a bespoke arrangement that does not compromise UK security directly or indirectly.

THE UK AS AN INTELLIGENCE SUPER POWER

The confidence of government and leave advocates that Brexit would not adversely affect UK security is based on three separate assumptions:

- The UK continues to be critical to Europe's defence. The Secretary of State for Leaving the European Union is on record saying "Britain is the intelligence superpower in Europe; we are critical to the defence of Europe from terrorist threat, and we are critical to the military support of Europe and to dealing with migration, with our Navy at work." ([HC Debate, 17 Jan 2017, col 801](#)).
- EU agencies are operationally irrelevant and their benefit should not be overplayed ([Richard Walton in The Telegraph, 26 Feb 2016](#)).
- EU regulations and European Court of Justice rulings have been holding back the flow of information and pose an operational impediment, by, for instance declaring the use of GCHQ intercepts of electronic communications unlawful.

Britain's position of strength rests on a unique mix of assets like the independent nuclear deterrent, a permanent seat on the UN Security Council and full spectrum military capabilities. In addition to unrivalled signal intelligence capacities at Government Communications Headquarters (GCHQ), the UK can draw on the UK-US intelligence-sharing and -cooperation arrangement (UKUSA) and the 'Five Eyes' alliance of Anglo-Saxon nations that provide her security services with a global reach. While many European countries have difficulties integrating the work of security agencies, the UK's counter-terrorism model combines those functions, and has intelligence agencies and police working to a shared agenda and using the same databases.

The UK's lead in shaping European security structures was recognised by Julian King becoming EU 'Security Commissioner' in September 2016, following the 2009 appointment of former National Crime Agency director Robert Wrainwright to lead Europol and introduce "really British intelligence management systems." (David Armond during the [HC Exiting the European Union Committee Session, Third Report](#), p. 73). There has also been a sharp uptake in information exchange with the UK the fourth largest user of the European Criminal Records Information System (ECRIS), that channels the bulk of the 155,000 requests for overseas criminal convictions information made to EU countries in 2015/16. In the same year, 6,400 UK foreign alerts received hits in the UK, while 6,600 UK-issued alerts received hits across Europe on the Schengen Information System.

The benefit of these EU arrangements is that they are underwritten by international human rights standards, which provide a strong legal counterbalance that is absent from the less structured arrangements such as the Kilowatt network, Mega-tonne network and the Berne Club, that have been set up as European intelligence sharing networks for counter terrorism. There are constraints, however owing to data protection rules enforced by the European Court of Justice. Post-Brexit, the UK government is not bound to any ruling that GCHQ's bulk-intercept operations are disproportionate and hence unlawful.

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Future collaboration in the different security structures has to be negotiated on a case by case basis in the absence of precedence. There are partnership agreements between EU agencies and third countries, but each is subject to different regulative frameworks.

Structures and operations

Europol: An EU agency since 2010 Europol supports information exchange, provides operational analysis, lends technical expertise and generates strategic reports. It employs 1,065 staff working alongside 201 liaison officers on secondment from member-states and has a series of agreements with third countries. The UK is involved and often leading [in all 9 priority areas](#) identified by the European multidisciplinary platform against criminal threats ([EMPACT](#)).

This cooperation will cease following Brexit, as well as access to the secure messaging system (SIENA) or the databases. The UK will in all likelihood remain a Europol member, joining the other 41 non EU states hosted by the agency, but with a reduced liaison bureau.¹ Past contributions may help the UK negotiate an imaginative arrangement for rights and privileges, but significant technical obstacles are yet to be overcome. Still, in the fight against terrorism, organised crime, trafficking in human beings and cybercrime, it is of mutual benefit for cooperation to continue.

Intelligence Analysis Centre (INTCEN): Provides intelligence and awareness to the High Representative of the European Union for Foreign Affairs and the External Action Service. The focus is on sensitive geographical areas, terrorism and the proliferation of weapons of mass destruction and other global threats. No UK participation is envisaged after Brexit.

Operations in Mediterranean: The Royal Navy provides vessels to counter people-smuggling operation in the Mediterranean under Operation Sophia. The UK may still contribute to EU missions if an arrangement can be found, or shift its contributions to similar efforts led by NATO.

Information - sharing

The EU has developed a number of data systems, with little precedent for participation of states outside of the EU or Schengen area. If Brexit were to result in loss of access to these datasets, the UK would have to resort to a bilateral data sharing agreement with the EU or a series of agreements with individual member-states. However, this is not always possible, as in some cases the EU has exclusive competence for negotiating participation.

Second Schengen Information System: A real time alert about individuals and objects of interest to EU law enforcement. It is unclear how the UK will be able to negotiate access post Brexit.

European Criminal Records Information System: No non-EU member-state has access to this system for exchanging information on criminal convictions created in 2012. Countries like Norway and Switzerland use the 1959 Council of Europe Convention on Mutual Assistance in Criminal Matters.

¹ Letter from Brandon Lewis MP, to the chair of the European Scrutiny Committee, 14 Nov 2016.

Passenger Name Record Data: A system for collecting and processing information from carriers' control systems on passenger flight details, with sharing agreements in place with Australia, Canada and the US. In September 2016, the [ECJ issued a preliminary opinion](#) stating that provisions of the agreement with Canada are incompatible with the Charter of Fundamental Rights, such as the processing of sensitive data (religious and philosophical beliefs, trade union membership or sex life). The ruling will have important implications for the agreement the UK will negotiate with the EU on sharing PNR data. Since the EU will have exclusive competence to negotiate PNR agreements, the UK will not be able to make bilateral arrangements with individual member-states.

Prüm Convention: Enables signatories to check DNA profiles or fingerprints found at a crime scene automatically with profiles held in the databases of other EU States. Norway and Switzerland have agreed to apply certain provisions of the decisions setting a precedent for the UK.

European Arrest Warrant: Between 2004-2015 the UK has extradited over 8,000 individuals to other EU countries using the European Arrest Warrant according to the [White Paper](#). For the Crown Prosecution Service, the National Crime Agency and the Metropolitan Police Counter Terrorism Coordinator it is a top priority. While the Framework Decision establishing the EAW makes no provision for third countries, there are arrangements with Norway and Iceland which the UK could build on.

Maritime Analysis and Operations Centre (MAOC): A Lisbon based agency set up by several EU member-states to coordinate anti trafficking activities with a British director. Third countries have observer status, and the UK could develop this and increase its financial contribution as it would no longer be eligible for EU funding. The details will have to be negotiated.

CONCLUSION

- ❑ A deterioration in the intelligence sharing partnerships creates risks and hazards for all parties given the mobility of transnational criminal and terrorist groups. Much will depend on the maturity and goodwill of negotiators to refrain from using security as a 'hard Brexit' bargaining chip.
- ❑ The UK will likely lose its influence in shaping European security policy, leading activities and setting priorities even if new cooperation agreements can be negotiated rapidly.
- ❑ The withdrawal of UK will also remove the biggest obstacle to further EU security integration since it was British insistence that ensured national security to remain the preserve of nation-states in the negotiations of the Lisbon Treaty.
- ❑ While intelligence cooperation will not cease and the UK security may not suffer drastically in the immediate aftermath of Brexit, specific discontinuities may impact adversely on security capabilities. Reduced access to EU datasets, expertise and presence in parts of the Islamic world, notably North Africa and the Sahel, will diminish the [UK's perceived value as a partner to the US](#). A prospect confirming the observation that there are two kinds of member-states in Europe, smaller ones, and those who don't know yet they are small.

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