CENTRE FOR BRITAIN AND EUROPE

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▶▶ **BORDER TROUBLE?** ◀◀

Cooperation between UK and European Police, Judicial, Port and Border Authorities in the Post-Brexit Age

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PREFACE

Over the past few years, there have been substantial changes to the methods and approaches of international policing between the United Kingdom and its European partners. Following the 2016 vote to leave the European Union, and during the many negotiations that followed, senior law enforcement officers from across the United Kingdom stated both routinely and clearly that they wanted to retain as many cross-border policing arrangements shared between Britain and Europe as possible. While some of these arrangements were rolled into the ensuing 2020 EU-UK Withdrawal Agreement, many were not, leaving a number of vital issues unresolved. Getting a clear sense of the material impact of these post-Brexit changes was dealt a blow by the impact of the Covid-19 pandemic, which brought with it a number of unanticipated changes and challenges.

As of 2022, it remains difficult to judge the long-term impact of Brexit on a range of cross border law enforcement, until the movement of people, goods and vehicles - among other things - returns to pre-pandemic levels. The landscape at this point is rather uneen. On the one hand, informal policing arrangements have existed for many years and are likely to continue to bring about effective law enforcement solutions; on the other, the ongoing and rapid development of cutting-edge information management technology can now capture an enormous volume of data yielding new opportunities to analyse and share insights and findings with law enforcement, intelligence and border officers to improve overall effectiveness at scale. Although technology continues to develop at pace, with the advent of artificial intelligence and automation already impacting criminal justice structures, Brexit has seen the United Kingdom move away from some of these vital cross-border information-sharing arrangements, requiring both new arrangements to be put in place, as well as an honest appraisal of the various gaps that remain. In analysing the most germane aspects of Brexit's impact on law enforcement from the perspective of 2022, this report has over many months collected the views, insights and suggestions of police officers working in both British and European areas of law enforcement, in order to get an authentic sense of Brexit's overall impact.

To tackle this challenge, a uniquely collaborative and interdisciplinary team drawing together researchers from politics, criminology, and policing studies based at the University of Surrey, Canterbury Christ Church University, and Kingston University was established in Spring 2021 in order to explore the fullest possibe range of post-Brexit changes on British and European law enforcement and police collaboration. With unique access to leading practitioners, stakeholders, decision-makers and serving professionals in these and related areas, our research team collected a host of rich insights regarding the material, institutional and structural experiences of post-Brexit policing, identifying both challenges and opportunities alike. This report thoroughly examines the empirical evidence collected, contextualises it against both the pre-Brexit and post-Brexit environments, presents its analysis and provides policy suggestions which we hope render the report both highly relevant and uniquely practical. The research team wishes to thank all our participants for the generous use of their time and the wisdom of their respective insights, all of which have directly assist the quality of this research.

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Border Trouble? Cooperation between UK and European Police, Judicial, Port andBorder Authorities in the Post-Brexit Age

1. EXECUTIVE SUMMARY

Context Setting

As the transnational policing environment has become more complex over the last decade, there has been a drive for greater coordination between the United Kingdom (UK) and European Union (EU) policing organisations. The withdrawal of the UK from the EU – 'EU-Exit' or 'Brexit' – on 31 January 2020 has implications for transnational policing and has necessitated a reworking of the relationship between the UK and EU policing structures. In the run up to Brexit, senior police officers and stakeholders working in the law enforcement sector raised a number of concerns in various hearings to the Select Committee on the European Union, warning that Brexit would implicate access to important functions such as the Schengen Information System (SIS-II) (Armond 2016); that the proposed fall-back mechanisms would fall a long-way short of the benefits of previous systems and arrangements (Ayling 2021); and that the UK would no longer be in a position to use Europol to advance its strategic priorities (Wainwright 2017).

On 24 December 2020, the UK and EU agreed the Trade and Cooperation Agreement (TCA). Part Three of the TCA on Law Enforcement and Judicial Cooperation in Criminal Matters provides a basis for UK-EU policing cooperation in the post-Brexit landscape. The TCA sets out the arrangements to enable cooperation in information sharing, processes for extradition, and access to EU law enforcement institutions. The TCA avoided a so-called 'cliff-edge' departure from the EU on 1 January 2021 which was widely understood to have had serious consequences for security in the UK and the EU. Anticipating challenges, the UK government also established the International Crime Coordination Centre (ICCC) which is dedicated to supporting UK Law Enforcement tackling international criminality and providing continuity post-Brexit. However, the operation of these new processes and the implications are yet to be understood.

This report draws on research from interviews with stakeholders working in the field of law enforcement, this research has mapped and tracked how legislation, policies and agreements between the UK and EU have been, and will continue to be, formulated in the post-Brexit landscape. The research considered the ways that the EU-Exit has altered the organisation, structures, and processes of UK-EU transnational law enforcement; how law enforcement personnel understand the changes brought about by the EU-Exit; and how law enforcement agencies work together in the post-Brexit environment.

This research has generated a range of critical understandings and recommendations regarding the impact of Brexit on both the current efficiency and future effectiveness of UK law enforcement. As well as responding to a crucial evidence-gap regarding the evolution of UK law enforcement post-Brexit, the research makes a more general contribution to our understanding of the operation of transnational policing. This research has generated evidence to contribute the policymaking process; public administration and public services; broader internal and external security and conflict issues; and the UK's evolving relationship with the EU.

Key Findings

Participants agreed that the UK's exit from the EU has led to an inevitable fracturing of traditional security structures and information sharing processes.

However, many drew attention to how the impact of Brexit was less impactful than they might have anticipated in the run-up to 31 December 2020.

- Participants drew attention to the mitigating impact of aspects of the TCA. Especially important being continued access to specific databases, such as Prüm framework and the Passenger Name Records, and continued formal relationships with Europol and Eurojust.

- In addition, the contingency planning that the UK government conducted was seen to have mitigated the impact.

- Participants also described how law enforcement officers have continued to work collaboratively to achieve common security goals.

- Participants suggested that the effects on informal interactions between law enforcement personnel and day-to-day working practices have hitherto been minimal. This, too, has mitigated the impact that Brexit might otherwise have had.

- The travel restrictions introduced as part of government responses to the Covid-19 pandemic may have masked the impact of Brexit. As such, the full impact of Brexit will be revealed over time.

Nevertheless, the findings reveal that the EU-Exit has impacted on the formal processes of European Law Enforcement in several key areas.

- From the perspective of participants, the most changing changes related to information sharing and especially the loss of access to the Schengen Information System II (SIS II). This has had impacts for both the volume of information available and how quickly it was made available. The consequence is extra work and concerns that information may be missed or partial. This was seen to undermine confidence in the system's operation and its efficiency with implications for security.

- Many of the fallback mechanisms put in place by the government were viewed to be unsatisfactory in comparison to the arrangements that existed pre-Brexit. In addition, many contingency measures were not seen to be as streamlined or efficient as pre-Brexit processes.

- Processes of extradition, a consequence of the loss of the European Arrest Warrant (EAW), was also a concern as this process has become more complex. Participants also suggested that the process of identifying and extraditing wanted people might become less efficient. The new system was seen as being more fragmented and more challenging to deliver, which might have implications for willingness to engage with the processes.

- Participants also drew attention to the forfeiture of institutional memberships, such as Europol and Eurojust. The major issue being linked to a reduction in strategic and operational influence in these organisations.

In moving forward, participants drew attention to enthusiasm amongst EU law enforcement personnel to maintain relationships between UK and the EU. Recognising the mutual benefits of doing so, aspects of this willingness were pragmatic. Interest in, and establishment of, continued cooperation between UK and EU law enforcement agencies remains a crucial facilitator of successful enforcement of the law in the future.

Law enforcement personnel recognise that countries are entwinned in a global world and need to work together to prevent threats.

Taken together, participants revealed that contingency planning and fallback mechanisms have not entirely replaced the pre-Brexit processes, affected the efficacy and effectiveness of policing in the UK and Europe. Stemming from these impacts of Brexit, the UK now has a reduced ability to identify and mitigate threats, causing concern for the UK security landscape and public safety.

2. INTRODUCTION

Background

Transnational policing refers to the mechanisms of police work that are conducted across national boundaries in international or in novel supranational arrangements. Viewed as indispensable to domestic and international security and order maintenance, European policing cooperation has evolved and developed over time. Whilst forms of cooperation can be traced back to the 19th century, the 1992 Maastricht Treaty provided the 'first formal basis for police cooperation in the EU' (den Boer, 2014 :12). Since 1992 cooperation between member states and EU bodies has become increasingly deep and more intricate. Given the close cooperation between the UK, other member states and EU institutions in matters to do with policing and criminal justice, something which has been achieved over many years, leaving the EU will substantially impact on the operation of UK law enforcement agencies by altering the mechanisms through which transnational policing operates.

Reflecting the mutual benefits of transnational policing, the UK government had indicated a desire to maintain a close relationship with the EU in matters of law enforcement. Equally, representatives of UK law enforcement agencies, academics and members of the legal profession all raised concerns about the implications of losing access to the EU policing infrastructure in the run up to Brexit (O'Carroll 2020). Emerging research had made clear that Brexit could have wide-reaching implications for UK policing (e.g. CEFEUS, 2018; NAO, 2018; NPCC, 2018).

Part Three of the Trade and Cooperation Agreement (TCA) provides a basis for UK-EU cooperation in the post-Brexit landscape, setting out the arrangements that are aimed at enabling information sharing, processes for extradition, and access to EU law enforcement institutions. The TCA avoided a so-called 'cliff-edge' departure from the EU on 1 January 2021 – a departure which was widely understood to have had serious consequences for security in the UK and across the EU. Likewise, the International Crime Coordination Centre (ICCC), which is dedicated to supporting UK Law Enforcement in tackling international criminality and providing continuity post-Brexit, was established to alleviate the impact of Brexit. However, as the TCA makes clear, an alteration in the formal processes of cross-border cooperation as they relate to information sharing, criminal justice processes, and institutional memberships was inevitable.

First, Brexit has altered UK membership of key agencies which coordinate police and judicial enforcement across the EU, such as the European Police Office (Europol) and Eurojust. Ratified at the Europol convention in 1995, Europol supports law enforcement agencies throughout the EU, has the authority to establish Joint Investigation Teams (JITS), has powers to ask member states to conduct and coordinate investigations, and organises information sharing through the Secure Information Exchange Network Application (SIENA) and the Europol Information System (EIS). Eurojust, established in 2002, assists with the investigation and prosecution of cross-border crimes involving two or more countries, can establish JITs and offers operational support throughout the different stages of cross-border criminal investigations. The TCA permits cooperation with Europol and Eurojust, but this is limited and the UK's position within the organisations more marginal than it has been hitherto.

Second, Brexit has altered arrangements for 'mutual recognition': a process by which a decision taken by a judicial authority in one EU member state is recognised, and enforced where necessary, by the authorities in another member state as if it were a decision of the judicial authorities in that state. The 1999 Tampere decision of the European Council established mutual recognition as the cornerstone of policing and judicial cooperation (den Boer, 2014). Examples include the European Arrest Warrant (EAW), Prisoner Transfers and the European Investigation

Order (EIO). The agreement has altered these arrangements. Whilst a process to replace the EAW, which mirrors arrangements that have been made between EU and Iceland / Norway, has been agreed upon, other aspects of the system are not replicated, and the implications are unclear.

Third, membership of the EU expediates information and data sharing through providing access to systems such as the European Criminal Records System (ECRS), the European Criminal Records System (ECRS), the Passenger Name Record (PNR) and the Schengen Information System II (SISII). Indeed, information sharing has been an increasingly important aspect of European policing. To illustrate, the EU agreed to extended sharing of DNA and fingerprint data through Prüm Decisions in 2008 (UK opted in 2016), established the ECRS in 2012, launched SISII in 2013 (the UK opted in in 2015), and adopted the PNR directive in 2016. Again, these are arrangements have been changed by the TCA. For example, the agreement allows for automatic exchange of DNA, fingerprints and vehicle registration and access to PNR in cases of terrorism and serious crime (subject to certain safeguards). However, the UK has not retained real-time access to crucial databases (e.g. SIS II).

In the run-up to Brexit, the UK had been preparing to lose the EU tools and powers. Accordingly, it has set up the International Crime Coordination Centre (ICC) to provide continuity following withdrawal from the EU and to provide advice, support and guidance on the policing measures and tools available to tackle international criminality. Indeed, alternatives may be utilised to facilitate law enforcement following these adjustments. For instance, treaties from the 1950s cover extradition (1957 European Convention on Extradition) and criminal investigation (1959 European Convention of Mutual Assistance in Criminal Matters) and may be used, JITs can be established by the Council of Europe, and Interpol enables worldwide police cooperation and will facilitate cooperation between police services. Nonetheless, these replacements have been viewed as slower and more bureaucratic and ultimately less effective than the arrangements and relationships that preceded Brexit.

While there remains a degree of continued cooperation in a number of areas between the UK and its counterparts, what's also apparent is a sense of post-Brexit fallout. This is most evident in the rising tensions between London and Brussels in relation to the Northern Ireland Protocol, an agreement put in place to avoid the return of a north-south trade border in Ireland (Foster 2021). Yet implementing a border designed to simultaneously maintain two very different markets (UK and EU) has proved difficult: the UK government is now calling for the Protocol to be rewritten due to all goods travelling from Great Britain into Northern Ireland having to conform to EU rules. Indeed, it is not able to trade freely within its own union (Centre for Britain and Europe, 2021). The EU will continue to resist this since it requires requisite checks on goods entering its single market (Ibid). Experts note that if the two sides cannot agree on reforms to make the protocol functional, there could be a serious rupture of economic and political ties, as well as serious implications for tackling cross-border crime.

The post-Brexit environment has seen "some early evidence of organised crime gangs adapting their criminal routes following changes in the status of borders within the Common Travel Area" (McEwan 2021). The inability to overcome border disputes may only exacerbate these alterations and have implications for disputes elsewhere. Indeed, an aide close to French President Emmanuel Macron revealed that the UK's rigidity regarding the Northern Ireland Protocol has diminished its reputation as a reliable partner (Abboud 2021). So while the TCA has ensured cooperation remains possible in some areas, there remains a void in others, with implications for bilateral relationships in transnational policing.

Aims and Contribution of this Research

As a consequence of the alterations set out above, there are likely to be implications for the operation of law enforcement in ways that are not yet well understood. In response to this crucial evidence gap regarding the evolution of UK law enforcement post-Brexit, this research comprises a systematic consultation – in collaboration with UK and EU stakeholders – of how Brexit has altered the organisation, structures, and processes of UK-EU transnational law enforcement. It considered how law enforcement personnel have understood the impact of the changes brought about by Brexit and how law enforcement agencies work

together in a post-Brexit environment. Specifically, it has assessed the development and operation of post-Brexit policing architectures that aim to facilitate cooperation between UK and EU law enforcement organisations, the operation of mutual recognition and surrender processes, and information exchange and access to databases.

Methodology

During the project, we consulted a series of strategic reports published by the UK government, in particular the House of Lords and various select committees to establish the precise ways in which the UK's exit from the European Union implicated the future of UK-EU law enforcement. This analysis was complimented by a series of targeted, in-depth interviews with UK and European law enforcement personnel. Through a process of purposeful sampling, key contacts from relevant law enforcement and security organisations and individuals known to the research team were invited to interview by email and LinkedIn. Purposeful sampling may be criticised for selection bias which limits the potential to generalise findings of the sample to the wider population, however, it does prove to be sufficient when the aim of the study is not to make generalisations, but rather to obtain information about highly specific events and processes (Tansey, 2007: 768). We considered this method suitable and well-aligned to this project's research aims and objectives because highly knowledgeable stakeholders were consulted.

The approach also afforded the benefits of rapid recruitment and was feasible in the timeframe. Our recruitment strategy also resulted in an organic snowballing effect through which individuals who participated in interviews provided contact details for other potentially interested participants, while others shared posts on the LinkedIn platform regarding expressions of interest for involvement in the study. This strategy generated twenty participants, all of whom received full information about the purposes and nature of the research and the methods to be employed. The information sheet included an explanation of why they had been invited to take part, that taking part in the study was entirely voluntary, the role of participants, the advantages and disadvantages of taking part, and how the information would be used and shared across the law enforcement community. Interviews were conducted either by phone or on Microsoft Teams and lasted up to one hour. Participants were asked a series of pre-determined open-ended questions to meet the study's aims. With consent, all interviews were recorded and transcribed, while analysis involved familiarisation with the data through reading transcriptions and generating themes and codes.

While the project employed a number of appropriate methods, there were some notable limitations. Although interviews provide unique and invaluable data, the most visible challenge was the issue of access to key participants, particularly when time frames were limited. As such, there were a number of organisations relevant to the study that we were unable to access in the given time period. Although we reached out to individuals who worked for these organisations via LinkedIn, we were repeatedly referred to press offices and communications teams and instructed to gain access permissions via the institution largely due to security and confidentiality issues. Another limitation was that replies to requests via social media and email were not always guaranteed, and whilst we followed up with individuals one week after sending the initial invitation, participation may have been influenced by the tight timeframe.

Key Findings

Participants agreed that the UK's exit from the EU has led to an inevitable fracturing of traditional security structures and information sharing processes. Participants drew attention to the mitigating impact of aspects of the TCA and the contingency planning that the UK government has been conducting. However, many of the fallback mechanisms put in place by the government were viewed to be unsatisfactory in comparison to the arrangements that existed pre-Brexit. That said, many drew attention to how the impact of Brexit was less impactful than they might

have anticipated in the run up to 31 December 2020. However, it was generally agreed that the implications of Brexit are long term and have yet to be revealed. This is largely due to the Covid-19 pandemic, which has masked the impact in the short term. This masking is the result of associated restrictions to international travel.

Participants also described how law enforcement officers have continued to work collaboratively to achieve common security goals. This, too has mitigated against the impact that Brexit might otherwise have had. Despite this sense that the impact of Brexit has been muted, our findings draw attention to how Brexit has had implications for law enforcement in several vital ways. From participants' perspective, the most changing issues related to information sharing and especially the loss of access to SIS II. This has had an impact on the amount of information that is available to law enforcement and how quickly it is made available.

A further outcome was the generation of greater bureaucracy as a consequence of reliance on contingency measures, which were not seen to be as streamlined or efficient as pre-Brexit processes. Participants also drew attention to the forfeiture of institutional memberships, such as Europol and Eurojust. The major issue is linked to a reduction in strategic and operational influence in these organisations. Extradition and loss of the EAW was also a concern for stakeholders. From their perspective, this process has become more complex. Problems aside, participants also revealed that the effects on informal interactions between law enforcement personnel and day-to-day working practices have been evident but are minimal. Finally, the interest in, and establishment of, continued cooperation between UK and EU law enforcement agencies remains a key facilitator of successful enforcement of the law going forward.

Structure of the Report

The report proceeds as follows. After briefly surveying the development of the UK's entry into, and relationship with, the European Union in security and policing terms

over the course of the last four decades, we critically appraise the institutions and structures that make up the UK-EU security ecosystem. The aim is to highlight the close relationship of UK-EU law enforcement agencies in one respect, whilst also clarifying the potential limitations of operational powers and structures in European collaboration before Brexit. We address the UK's exit from the EU, detailing the central pillars of the resulting TCA related to criminal and judicial matters. Here, we underscore the precise ways in which Brexit has impacted the formal processes of the enforcement of the law in the UK and account for contingency planning implemented by the UK government in the policing and judicial sectors.

Finally, we provide key insights from stakeholders involved in transnational policing into how Brexit has altered the organisations, structures and processes of transnational law enforcement in practice. In so doing, we draw together empirical evidence regarding how law enforcement personnel have understood the changes brought about by Brexit and consider how law enforcement agencies have worked together in the post-Brexit environment. The report concludes with recommendations and strategic aims that may help promote efficient and effective cross-border cooperation in the realm of UK-EU law enforcement post-Brexit. While they represent the thematic areas of our research, they also include cross-cutting strategic recommendations that highlight the shortcomings of post-Brexit arrangements and emphasise areas for improvement.

3. A BRIEF HISTORY OF UK-EU POLICING COOPERATION: FROM 'BRENTRY' TO BREXIT

The Development of Formal UK-EU Cooperation

Cooperation between EU states formally began in 1976 through the establishment of the Trevi Group, an intergovernmental network of representatives of justice and home affairs ministries. The Schengen Agreement was established in 1985. The primary purpose of the Schengen Agreement was to provide for greater freedom for border controls on movements of goods, persons and services and to enhance customs and police cooperation. The agreement was designed to create a Europe without borders and was signed by five out of the then 10 EEC Member States, with the UK and Ireland both opting out. In 1990 the Schengen Information System (SIS) was launched. The SIS is a computer database that allows for sharing information between agencies involved in law enforcement. The introduction of the SIS led to further integration of police forces across the EU.

Policing and judicial cooperation was further formalised with the ratification of the Maastricht Treaty in 1993, this was the first-time police cooperation was solidified into the EU's agenda. As stated in the Treaty on European Union (TEU) the aim was to enhance police cooperation through 'developing common action among the Member States in the field of police and judicial cooperation in criminal matters' (Article 29 TEU). Cooperation 'on Justice and Home Affairs (JHA) matters under the Treaty was subject to decision-making by unanimity in the Council of Ministers, with a limited role for the supranational institutions' (House of Lords, 2016:7). This allowed for the EU member states to 'set out matters of common interest which gave legitimate grounds for policing cooperation' on matters such as 'terrorism, drugs and other forms of international crime' (Davoli, 2021).

The European Union Agency for Law Enforcement Cooperation (Europol) was also created during this time, initially as the Europol Drugs Unit. The signing of the Europol Convention took place on 29 July 1995, with official work beginning on 1 July 1999, based on the enhanced powers granted by the Treaty of Amsterdam. Coming into force in 1999, the Amsterdam Treaty was

the first Treaty to introduce the concept of an Area of Freedom Security and Justice (AFSJ). The UK and Ireland managed to negotiate a series of opt outs through a Protocol to the Amsterdam Treaty, this gave them a higher level of control over their participation in AFSJ measures and allowed decisions to be made on a case-by-case basis as to whether to adopt certain measures proposed by the Commission, covering areas such as immigration and asylum, border controls, and civil and family law. Criminal matters, however remained in the remit of the Council of Ministers and was subject to decision-making by unanimity.

The introduction of the Amsterdam Treaty also oversaw the incorporation of the Schengen Aquis into EU law, 'including its police cooperation aspects', falling under the 'third pillar' of 'intergovernmental cooperation' (Davoli, 2021). The Prüm Treaty was treated with the same intergovernmental approach, policing cooperation under the Prum Treaty was only adopted by a small number of member states but it 'contained the provisions on the exchange of DNA, fingerprints, and vehicle registration details... and fully introduced at Union level by Council Decision 2008/615/JHA of 23 June 2008' (Davoli, 2021). In line with the negotiated Protocol the UK and Ireland were not required to join the Schengen Acquis, but they were however 'given the right to request to take part in some or all of the provisions of the acquis, as well as the right to apply to join measures deemed 'Schengen-building' (House of Lords, 2016:7)'. As a result, the UK opted into the 'policing and criminal justice aspects...but not immigration aspects' (House of Lords, 2016:8).

Eurojust came into force in 2002, this organisaion aims to facilitate judicial cooperation between member states in criminal cases involving two or more countries. Eurojust also provides assistance and coordination mechanisms to states to support major operations. This is often in the form of Joint Investigation Teams (JITs), whereby different member states police forces work collaboratively to investigate cross-border crime.

The European Arrest Warrant (EAW) has been in operation since 1 January 2004. It was introduced with the aim of simplifying extradition processes that existed between EU Member States. The EAW is highly useful tool in the fight against international terrorism and has been applied in a number of high-profile cases, such as the 2015 terror attack in Paris. The coordinator of the attacks in Paris was later arrested in Belgium and handed over to the French authorities. The EAW much used by members of the EU, with 20,226 being issued in 2019 alone (European Commission, n.d.). The most common offences that EAW were issued for were theft and criminal damage, drug offences and fraud and corruption. To offer context to clarify how valuable the EAW has been as a policing cooperation tool; prior to its introduction, the UK used to extradite fewer than 60 people a year to any country. Once the EAW was introduced, the UK extradited 1,100 people on average, since 2009 10,000 have been extradited from the UK due to warrants from other Member States (Institute for Government, 2018:12). In addition, member state involvement in the EAW resulted in extradition times being reduced from over one year to just 48 days (Ibid.).

The Treaty of Lisbon (TFEU), effective in 2009, brought in a simplification of the framework established in the area of Justice and Home Affairs and the Area of Freedom Security and Justice (JHA/ AFSJ). The Treaty, in a broad sense, aimed to change the way the Union exercised the existing powers it possessed as well as some new shared powers. This was achieved through creating a new institutional set-up and changing the decision-making process to afford itself more transparency and efficiency with the overarching aim of achieving increased parliamentary scrutiny and democratic accountability.

The Lisbon Treaty, which came into force in late 2009, saw the area of freedom, security, and justice (FSJ) absorbed into the first pillar, resulting in intergovernmental decision-making ceasing to exist. This resulted in FSJ being subject to the qualified majority voting and codecision, therefore subject to the ordinary legislative procedure. Prior to this, it was felt that decision making was limited due to the Commission having little authority in forcing the Member States to implement legislation (Pavy, 2021). Under the new structure, laws passed had more of an impact, having

been approved by Parliament. As with the previous Treaties, the Lisbon Treaty included a Protocol on the position of the UK and Ireland, allowing for a series of opt-outs and opt-ins on a case-by-case basis.

The European Criminal Records Information System (ECRIS) was established in 2012 to enhance the exchange of criminal record information throughout the EU. It was created to ensure that information could be exchanged in a uniform, fast and compatible way and to provide easy access to information on a person's criminal history for judges and prosecutors to work as effectively as possible. Ultimately, ECRIS ensures that offenders cannot evade the consequences of a conviction that may have occurred in a different member state.

The Second Generation Schengen Information System (SIS-II) was launched in 2013 to provide instant and frictionless sharing of information between law enforcement officials and agencies. The overarching aim of the SIS II is to give authorities in Europe the ability to ensure that internal security is not reduced in the absence of internal borders, therefore underpinning the free movement of people within the Schengen area. The SIS II is operational in 30 European Countries, 26 of which are Member States and four Schengen Associated Countries (Switzerland, Norway, Liechtenstein and Iceland). The database is the most widely used in Europe.

The SIS II comprises three areas of competence; the first is border and migration management, allowing for border guards and migration authorities to check and enter alerts onto the system to verify a person's right to stay or enter Schengen Area. The second is vehicle control, allowing authorities to check for stolen vehicles or access alerts on number plates and vehicle registration documents to check their legal status. The third is security cooperation allowing authorities to create as well as consult alerts on missing persons, as well as persons or objects that may be related to criminal offences. While some countries may work closely together, no other region in the world has such close multilateral co-operation in these areas, particularly not with such a formal legal underpinning and member states continue to develop this to respond to the changing nature of crime, including evolving terrorist and cyber threats (institute for Government, 2018:7).

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Enter Brexit

In the run up to Brexit, representatives of National Police Chief's Council (NPCC) and National Crime Agency (NCA) voiced a clear imperative to retain EU policing tools as proposed alternative measures were viewed as less automated and more unwieldy to use (Select Committee on the European Union 2021). As a House of Lords Select Committee stated:

'One of the challenges for the future, therefore, is whether, and if so how, the UK can retain that sort of influence among its European neighbours and allies when it is no longer a full member of the EU structures in which the strategic direction of travel is set. The National Crime Agency observed that "there are a number of countries within the EU that show real leadership in this area and the UK is one of them. We may lose some of that influence". Bill Hughes, former Director-General of the Serious Organised Crime Agency (2006–2010), also warned us that "the UK is seen as a major and leading partner. That will change"'. (House of Lords, 2016:10)

Policing organisations argued that European law enforcement tools help to rapidly and efficiently share data, inform prompt and effective action and assist with the coordination of joint action including shaping strategic priorities (Select Committee on the European Union 2021). Without access, policy experts argued that policing, intelligence, and law enforcement operations would be less effective (Mellor 2021). Indeed, immediately following the UK's vote to exit the EU experts at the Institute for Government effectively assessed the quality and productivity of negotiation positions of the EU and UK, arguing that the failure to agree on a comprehensive security agreement in the realm of policing and criminal justice could have serious and imminent consequences for transnational security operations across the continent (Durrant, Lloyd and Thimont Jack 2018).

In particular, the authors warned that a failure to advance productively in negotiation processes could result in operational arrangements becoming much more bureaucratic and developing into slower processes; that there would naturally be a significant reduction in the number of people extradited to the UK to face justice; that there would be a notable loss of access to important European information databases; and collaboration with key EU partners in investigations and prosecutions would be limited (Ibid). Other commentators pointed out more explicitly that the loss of access to EU policing tools could see increased levels of risk for members of the public in the United Kingdom (Pearson 2021, BBC 2021). Concerns around the potentially damaging consequences of Brexit on existing transnational policing architecture remained paramount in public discourse. Of equal concern was the agreement that would result from Brexit between the UK and EU member states related to policing and judicial matters.

The UK government and police organisations were mindful of the implications for policing of Brexit and put in place contingencies to mitigate the potential impact. These were facilitated by the establishment of the International Crime Coordination Centre (ICCC). The ICCC was established to support and advise law enforcement agencies in making use of alternative international instruments in the context of the UK's withdrawal from the EU.

The final agreement, formally known as the Trade and Cooperation Agreement (TCA), was signed on 30 December 2020, applied provisionally as of 1 January 2021 and entered into force on 1 May 2021. The agreement covered a range of intensely negotiated preferential arrangements across many areas (Centre for Britain and Europe 2021). However, alongside a plethora of joint declarations, the TCA core text contained three central pillars:

- The free trade agreement (representing the central socio-economic partnership, including transport, mobility and energy)

- A cooperation framework between EU and UK police and judicial authorities (covering civil and criminal issues)

- A governance structure enabling the TCA to operate in practice (Partnership Council structure, dispute settlement and retaliation elements) (TCA, 2020).

The agreement provided some, albeit limited, insight into how Brexit would formally alter the nature of European transnational policing in several thematic areas. Most notably, the TCA allowed the continuation of the UK's access to some information sharing databases. Title III Part Three revealed that Britain would continue to participate in the PRÜM convention used to exchange data on fingerprints, DNA and vehicle

registration data to combat cross border crime and terrorism. Title III also gave the UK permissions to access Passenger Name Records (PNR) to only be used for border and security checks, a necessary concession for the UK security sector given its ability to prevent the travel of people who would-be terrorists, in spotting people who might be returning and might be a threat, as well as protecting vulnerable people (Brokenshire 2020). Indeed, the National Crime Agency (NCA) listed PNR as one of the highest priority tools for the UK to maintain access to. As David Armond, Deputy Director-General, revealed, "PNR data is extremely useful in the pursuit of protecting our borders as it provides not just the details of the subjects, but addresses, bank details and telephone numbers as well as a whole host of other information that is crucial when checking against criminal records and profiling people who might be a threat to the UK" (2016). Thus, in this regard, the UK has done rather well (Select Committee on the European Union 2021).

However, for the most part, a substantial cross-border cooperation framework on police and judicial matters remained incomplete (Centre for Britain and Europe, 2021: 3). Despite general provisions on primary areas ,which are discussed in more detail below, it has been argued that the overall deficit resulting from Brexit in the area of transnational policing renders the current outcome zero-sum at best (Ibid: 3). As news pundits and policy analysts predicted, the UK has suffered operationally some areas (Sabbagh et al. 2020). The most notable concern among them was how Brexit would impact access to key European policing tools and other information sharing systems that were central to the UK security ecosystem. Indeed, the TCA retracted Britain's membership from, and use of, SIS II, a system that is heavily relied on by the UK to tackle and prevent crime.

The Minister of State for Security James Brokenshire reassured law enforcement personnel, in addition to members of the EU Security and Justice Sub-Committee, that "the UK has well-developed and well-rehearsed plans in place for alternative, non-EU arrangements" (Brokenshire, 2020). However, the loss of access to SIS II, even with contingencies in place, it is argued, has resulted in slower operational processes, less visibility and access to vital information (Pearson, 2021). Others warned collaborations with EU partners may become more cumbersome (Durrant, Lloyd and Thimont Jack 2018). In addition to the loss of access to SIS II, the TCA

revealed that the UK would no longer have the ability to access the European Criminal Records System (ECRIS) – on which the UK was the most active member state – and Eurodac, a migration fingerprint system used to track multiple asylum claims by the same individual (King, 2021). Losing this access was seen as a significant challenge: while the TCA provides a legal basis for the exchanging of security alerts on a purely bilateral basis, there is no longer scope for front line officers to consult EU databases in real-time (Ibid).

Title V, Part Three further established that the UK would forfeit its memberships at Europol and Eurojust. This resulting in collaboration between law enforcement officers being stripped to the secondment of liaison officers only, with rigid limitations on the exchange of information (Davies 2020). In the post-Brexit landscape, the network of liaison officers will continue to "communicate over a SIENA system...enabling swift, secure and user-friendly communication and the exchange of operational and strategic crime-related information and intelligence between Europol, Member States and third parties" (Europol 2021). Clearly, in this sense, the TCA has built new operational capabilities and seeks to include the UK despite its Third Country status.

However, a significant blow for UK law enforcement pertains to its omission from Europol's management board, now taking on observer status, excluding it from assuming voting rights and diminishing its strategic direction of the agency (Hoxhaj, 2020). Similarly, Title VI Part Three sees the UK's presence at Eurojust reduced to the secondment of liaison officers "who are able to participate in meetings relating to strategic matters" (Eurojust, 2021: 2). Reports have also established that the UK no longer has access to the Eurojust case management system, which allows the Crown Prosecution Service to cross-investigate cases to establish the need for engagement with other member states (Eurojust, 2021). Stephen Rodhouse, Director General (Operations) at the National Crime Agency, warned that future bilateral or ad hoc arrangements would probably be suboptimal compared to the arrangement the UK previously enjoyed (Select Committee on the European Union 2016). Clearly, post-Brexit arrangements with EU policing and judicial bodies fails to provide as much surface area and access as EU membership manages to secure.

Title VII Part Three addresses the European Arrest Warrant (EAW) and details the regulations under

which future extraditions must be upheld. The new arrangement under the TCA is far less robust for it requires a dual criminality requirement, that is, "the offence must exist in both states for an extradition to be compelled" (Hargreaves 2021, 2). EU states also have the power to "deny extradition in cases involving their own citizens or suspected political offences" (Ibid, 3).

Moreover, prior to the TCA, the UK benefited from a number of Mutual Legal Assistance frameworks, one of which was the European Investigation Order (EIO). Corker reveals that the EIO was particularly important because it merged a number of existing investigative powers and processes into a single instrument, thus representing an expedited process (Corker, 2020). It also meant that the UK and EU member states were legally bound to gathering evidence within a specific time frame, but with the UK no longer able to employ EIOs, this power has been lost. The UK must now submit a "Letter Rogatory', an internationally recognised diplomatic request for assistance that allows EU member states 45 days to respond, while the time frame under the EIO is 30 days, resulting in a longer, more bureaucratic process (Dalling, 2021). Indeed, experts note that the loss of MLA tools, in particular the EIO, is a considerable cost to the UK security landscape: timeliness is critical to investigatory processes if crucial information is received too late as

a result of the new 45-day rule, it is essentially worthless (Morgan, 2021).

Overall, while there remains continued, albeit more limited, formal cooperation between the UK and Europol and Eurojust, and while mechanisms for swift data exchanges under PNR and PRÜM remain, there have been fundamental changes as a result of exiting the European Union for UK-EU policing structures. While some experts are keen to point out that we are in a privileged position given the UK's new status as a third country compared to 'what could have been', and while they highlight that not much has changed in some significant areas such as Eurojust and the EAW, it is apparent that losses elsewhere may well have fundamental implications for the security and defence of the UK.

Broadly, while the TCA provides extensive guidance on trade in goods, digital trade, intellectual property and public procurement, as well as the logistics of aviation and road transport, energy, fisheries and social security coordination, the lack of parsimonious treatment in the area of law enforcement and judicial cooperation in criminal matters remains a central concern. It provides scope to address how Brexit has thus far impacted transnational partnerships in the realm of law enforcement.

4. FINDINGS AND POLICY RECOMMENDATIONS: TRANSNATIONAL LAW ENFORCEMENT COOPERATION IN THE POST-BREXIT ERA

Impact on Formal Processes of European Law Enforcement

Our findings suggest that Brexit has materially impacted the formal processes of European law enforcement in several significant ways. Whilst the provisions put in place by the TCA and aspects of contingency planning were seen by participants as important in mitigating the impact of Brexit, they were not necessarily seen as directly effective, permanent, all encompassing, or sustainable. As one participant put it: "the TCA helped to keep the show on the road in operational terms, but certainly in a diminished way" (INT-01). Areas of concern that dominated in the accounts of participants were the implications of Brexit on the information sharing

processes, increased levels (and complexity) of bureauracy, the impact on the UK's forfeiture or alterations to its pre-Brexit institutional memberships, various legal issues including appropriate vehicles (e.g. legal settlements, frameworks, treaties, protocols, etc.), the use of extradition structures, including the European Arrest Warrant, and the reworking and maintenance of official and unofficial bilateral police and judicial relationships between UK and European counterparts. As expected, each of these concerns varied as to how participants perceived them relative to how soluble they were in the short (1-2 years), medium (2-5 years) and long-term (5 years and beyond), as well their overall urgency. The analysis in this section captures the former via its thematic groupings, while the latter is captured in the RAG Risk Analysis table in the final section.

Information Sharing Processes

From the perspective of participants, the most challenging issue has been in respect of information sharing processes – largely related to the loss of access to SIS II. For one participant: "the loss of access to information sharing databases is massive" (INT-02). As noted above, post-Brexit fallback mechanisms were put in place; one specific aspect of contingency planning for the loss of SIS II being the use of the Interpol I-24/7 database. However, from the perspective of participants, this mechanism was not nearly the same in its effectiveness as the arrangements that preceded Brexit. One participant stated that the "loss of the Schengen protocols makes the processes of European law enforcement much less effective" (INT-03). From the perspective of participants therefore, not having access to SIS II means no longer having "information at your fingertips and being fleet of foot" (INT-04). Participants also drew attention to a number of particular ways that this was impacting on European law enforcement.

Not all of Interpol's members have the same approach to sharing data. As one participant stated: "There have been a couple of hiccups along the way where some countries have not wanted to play ball when sharing criminal intelligence" (INT-09). In their assessments of Interpol as a fallback mechanism to replace SIS II, one participant argued that there remain "big questions marks about whether Interpol would, over time, continue to give us the amount of detail as we had under SIS" (INT-07). Another agreed, suggesting "there is information on SIS that is not on Interpol, leading to risk management not being correct" (INT-10). The real barrier, one individual suggests, is that the new structures and processes simply do not allow for seamless or timely transition of data (INT-11). Indeed, "there is no remedy" (INT-11) for the UK's departure from information sharing databases.

An outcome of losing access to SIS II then, from the perspective of participants, was a loss of confidence in new operating systems. Notably, participants drew attention to a tendency to question whether law enforcement personnel were gaining access to all the information that they would have had access to pre-Brexit. Indeed, participants suggested that they would know more if they still had access to SIS II. One officer noted that "we're no longer confident that we're necessarily seeing everything we would have done previously" (INT-05) and that "there is a huge absence of information that we previously relied

upon" (INT-05). Thus, a direct implication of Brexit is that some day-to-day working practices have been fundamentally altered in very precise ways.

Participants drew attention to how the everyday working practices and informal interactions between law enforcement personnel have been affected by heightened bureaucracy. This links to aspects of the contingency mechanisms that have been put in place. These were considered by participants not to be as streamlined as the procedures that have been in place before. For example, the wait times between requesting access to specific databases or information and gaining access can be too slow, from the perspective of participants. A situation roundly believed to be unsatisfactory: "Brexit has slowed down information sharing processes. However good your relationships are with your partners; you don't have that instantaneous access in the way that you did before" (INT-04).

One participant discussed having to now fill out paperwork and forms then having to send them off as a way of requesting permission to certain information, whereas previously, "it was just a phone call away" (INT-06). Stakeholders noted that UK police forces may not be in a position to bring people to justice because "we no longer have the power and we do not have the information quickly enough" (INT-08). From their perspective, it is imperative that "if there is a time critical public safety issue, then there is no time delay in accessing information" (INT-03). Participants anticipated that, as a result of Brexit, there will be "a durable increase in workload and resource requirements in time spent on bureaucracy, which was previously eliminated by the automatic processes that had been put in place in EU instruments" (INT-07). Broadly, participants were unanimous in their view that there is scope to make processes more streamlined.

Another concern regarding fallback mechanisms, participants revealed, linked to what was referred to by some participants as 'double keying'. That suggests that practitioners will have to input information into multiple data bases. For example, material inputted onto SIS II would have to be reproduced on Interpol I-24/7. This requires extra effort and, from the perspective of stakeholders, it may not be considered worth the effort. As one participant noted: "there have been agreements across the EU and the UK to implement double keying but if this doesn't happen then that's where the loophole is" (INT-08).

Policy Recommendations
The consensus produced from the host of interviews conducted illustrates that post-Brexit fallback mechanisms regarding the information sharing processes of law enforcement are a "fairly significant departure from what we had before" (INT-11). Policy suggestions here therefore include clarifying the gap between SIS II and Interpol databases, assessing its impact on day-to-day working practice (including formal and informal interactions between UK and European law enforcement personnel), defining tighter risk management protocols that account for that gap, assessing how current 'contingency measures' will be need to transform to become permanent and sustainable (including time-critical public safety risks), and working to streamline newly domesticated structures (which may involve either centralising or foregoing double keying). Aligned with the responses of participants, policy recommendations for the future of European law enforcement put a premium on the swift, practical and reciprocal overhaul of data sharing agreements (INT-08), on the basis of looking afresh at ways in which to permit third-party access to various Schengen protocols, including returning to SIS II, making better use of Interpol, (INT-10) and reintegrating into key European systems (INT-11).

The Forfeiture of Institutional Memberships

Participants concurred that a significant and challenging implication of Brexit is the forfeiture of the UK's institutional memberships at key law enforcement, judicial cooperation and intelligence organisations, especially Europol and Eurojust. Having expended much of its time and resources shaping the agency, a significant impact for UK law enforcement pertains to its omission from Europol's management board, now taking on observer status, excluding it from assuming voting rights and diminishing its strategic direction of the agency (Hoxhaj 2020). The TCA has enabled a degree of redress here, providing the UK with permissions to deploy liaison officers to both Europol and Eurojust, meaning that access to the most vital of systems remains in place. From the perspective of participants, the problem however is that the UK can no longer lead or facilitate both strategic thinking and operational planning as it formerly could, as a direct result of forfeiting its place on the management boards of these key institutions. As one participant pointed out, "no longer being an EU member state means the UK no longer has the same opportunities to initiate new operations and projects at Europol and no longer sits

on the Europol management board, the main governance instrument" (INT-01). Just as important, EU member states who do sit on various xecutive boards themselves require unanimity in deciding the UK's presence in a given operation or issue is necessary, reducing the scope of overall UK influence.

Policy Recommendations
The UK's exit from the European Union now requires it to be "invited to the table" in terms of key law enforcement, judicial cooperation and intelligence organisations. However, as invites are no longer guaranteed. Key policy recommendations emerging from interviewees were therefore to put in place strategies to rapidly improve the scope, impact and influence of the UK's post-Brexit third party status. This means shifting in a determined fashion away from "the UK now [being] outside the room, waiting to be invited in for a coffee afterwards" (INT-07). Changes should commence with the Joint Investigations Teams, which "make the legal process of prosecutions much easier" (INT-09), and move on from there, working to reshape both bilateral relations with key EU Member States within these institutions as well a far more enhanced UK-Europol, UK-Eurojust relationship. Some interviewes suggested there exists a strong sense within these institutions that the UK can more routinely be invited, but thus far has not. Greater UK efforts need to deployed to transform this in the short term, and ensure the change remains sustainable.

Legal Issues

Participant insights indicated strongly that UK-EU frictions will remain a key feature in relation to specific legal issues as a consequence of Brexit. For the UK, "everything is negotiable, and everything is pragmatic" (INT-13) one participant suggested, while the EU "is a treaty-based organisation and can itself be sanctioned by the European Court for violations of rules, treaties and so on" (INT-13). As a result of these differing approaches, friction over negotiations on legal settlements impacting law enforcement as well as border management, intelligence gathering and data sharing were all anticipated by participants.

Policy Recommendations
Reviewing the particular way in which both the overall TCA and specific provisions that could negatively imacpt on effective law enforcement be reviewed as a matter of urgency. Anxieties on both sides need to be identified swifly. The European Parliament for example remains

anxious about the UK's use of EU data by law enforcement agencies, due to what was described by interviewees as its poor reputation on methods of protection. The result in this case was that "if the UK was found to be in serious infraction of the EU arrangements, then the whole boundary or parts could be suspended" (INT-07), representing another significant lost capability and the potential to be on the receiving end of "quite draconian penalties" (INT-07). Oter interviewees were critical of the UK government's lack of willingness to develop a legal framework related to jurisdictional issues, arguing "it is hard enough to understand jurisdictional issues, but without a framework, it is even harder" (INT-14). A reciprocal and progressive framework that sets out jurisdictional issues more clearly than in the current TCA is an important next step, as is urgent clarity on data protection issues.

Extradition and the European Arrest Warrant (EWA)

The subject of the EWA has been the subject of much debate in public discourse. While media commentary signalled that users of the EAW would witness minimal change post-Brexit due to the fallback mechanism being relatively similar to what came before, a number of participants revealed that "the most concerning loss of instrument is the European Arrest Warrant given that the UK relied on it so heavily previously" (INT-01). They further disclosed that "because the UK no longer has access to the instrument that would have otherwise taken foreign national crime suspects away from harm in society, it has a direct knock-on effect" (INT-01). As Professor Valsamis Mitsilegas points out, while the new arrest warrant system maintains momentum on speedy and judicialized cooperation, in practice, cooperation is still severely hampered by the lack of access to SIS II, which provides the essential backbone of the European Arrest Warrant system intra-EU (2021).

Policy Recommendations
Working to replicate, rebuild or facilitate enhanced access to the EAW structure and its related instruments, is a policy priority. Participants routinely made clear that post-Brext lack of access to the EAW has both materially and negatively impacted the UK's ability to manage the threat posed by wanted people who would have previously been arrestable. An accompanying step is to work with border force officers, who are at the frontline in this issue, highly aware of an increasing number of wanted people,

but who are no longer arrestable without the EAW, to which the UK no longer has access (INT-15).

Maintenance of Bilateral Relationships

Immediate concerns aside, practitioners outlined that broader, operational, day-to-day working practices and information interactions between law enforcement personnel – particularly on the front line - have witnessed relatively minimal post-Brexit impact. One participant for example noted that "important informal relationships are continuing in much the same way as before'' (INT-07). It was also routinely recognised by participants that the UK still has much to offer both agencies, as well as specific forces, and indeed the EU as a howle, particularly in the area of operational intelligence: "the UK comes from a position in which it was in the top three intelligence providers over the last ten years to the common databases and was among the most active and influential in formulating and executing cross-border operations" (INT-01). Participants suggested that a "shared passion, and the endeavour of people that have been invested in this [area of] work for a long time who know that the consequence of their work is very real" (INT-11) is a huge facilitator in continued UK-EU security cooperation. Possibly because of this level of commitment and mutual recognition, these relationships have not been too badly affected: "We don't yet seem to be coming up against any real barriers with our partners in Europe because, at an operational level, we've all got the same goal, to prevent attacks from anything" (INT-09).

Policy Recommendations
Many participants continue to believe that it is still possible, and indeed imperative to sustain important working relationships with EU member states. Work needs to be undertaken to demonstrate to and with EU member states that 'value-added' nature of the UK in key areas, in order to maintain current relationship, and attempt to fashion new ones. In the longer term however, participants were very clear that a coherent strategy should be implemented to maintain these relationships. Policy suggestions here include highlighting, and then building upon the deep interdependencies existing between states, regardless of the UK's post-Brexit status. As one individual noted: "the fact that we're not in the European Union does not mean we are any less in Europe: criminality is international, we are a global community" (INT-03).

However, this may require something of a reset with individual member states; participants pointed out not only how sustained the damage of Brexit is likely to be in terms of inter-instituitonal sensitivies, but that many EU member states will remain wary of bilateral agreements in key areas, including law enforcement. In this respect, participants pointed out that when starting from scratch, bilateral negotiations take time and have the potential to be more difficult – "especially with EU member states that we have never historically had much interaction with on an individual basis" (INT-13; INT-12). Some questioned the feasibility of formulating 27 bilateral agreements after Brexit, asking where the time and resources for that are? (INT-13; INT-12).

The **medium-term policies** that connect current approaches with longer-term agreements are therefore crucial as policy requirements. A working strategy that sits between immediate third-party access and wholly refashioned bilaterals (both UK-Member State and UK-institutional) is the next step. A key recommendation is that cooperation in key areas must be sustained using productive and feasible mechanisms, to move past ad hoc status to a more sustainable, reliable form of system-based reciprocity : "UK representation is currently sporadic; we need people embedded and we need access to European systems" (INT-02). The rebuilding requirements themselves ought also to incorporate a high degree of innovation; with Brexit providing for some an opportunity for UK-EU law enforcement agencies to be newly inventive, a chance for "the foundation of a new house that can be built" (INT-01).

Summary of Findings: A Long Road Ahead?

In analysing the data, what becomes clear is that a degree of consensus has gradually emerged around the most urgent causes for concern relating to how Brexit has altered the organisation, structure and processes of UK-EU policing structures. The most apparent cause for concern among participants was Brexit's impact – now and in the future - on the formal processes of European law enforcement, including as the loss of access to vital information-sharing databases like SIS II.

A direct impact of losing such access is the now-slower bureaucratic processes involved in acquiring the necessary information and intelligence,

demonstrating how the day-to-day working practise of law enforcement personnel have changed as a consequence of Brexit. While informal interactions between personnel working in the law enforcement sector have seen minimal change, the UK's absence from the Europol and Eurojust management boards was routinely highlighted as a key material barrier to UK-EU law enforcement cooperation post-Brexit, presenting the UK with a significantly diminished ability to govern transnational policing practices at the leadership level.

Participants also revealed that, across the board, contingency planning and fallback mechanisms have not been as efficient as the mechanisms they replaced, with serious implications for the efficacy and effectiveness of policing in the UK and Europe. Stemming from these specific impacts attributed to Brexit, the general consensus is that the UK now has a reduced ability to identify and mitigate threats, causing concern for the UK security landscape and indeed public safety. For

the majority of participants, the full implications of Brexit will not become truly clear until the impacts of the pandemic begin to shift. Brexit's impacts on law enforcement were understood to have been masked by the Covid-19 pandemic, which itself has diverted police attention and shifted force priorities, and led to reduced movement of people around Europe. Police officers argued that although the UK appears to be moving into a new security structure, meaning that as of 2022, "we aren't at Day One" (INT-14), that the impacts of the UK's exit from the EU have been significantly cloaked by the pandemic. The majority of participants agreed that once COVID-19 restrictions are eased and normal travel returned, there will be less conflation of issues, but equally increased clarity on the nature of threats both old and new, and the UK's ability to tackle them effectively, both independently, and with its European partners.

5. RISK ANALYSIS

On the basis of our findings, we make recommendations for policy and practice. The following RAG analysis (Red, Amber, Green) provides a summary of the impacts of Brexit. Red indicates an area of concern, amber signals caution, while green outlines the processes are running effectively.

	Green	Amber	Red
Information Sharing Processes	Access to Prüm and PRN was viewed as an important positive outcome of the TCA.	Generally speaking, information sharing has become more time consuming and less efficient following Brexit.	Exclusion from SISII was seen as a significant loss resulting from Brexit. This has led to loss of capacity and increase in bureaucracy.
Extradition and the European Arrest Warrant	Contingencies have mitigated the impact of the loss of the European Arrest Warrant, although more insight into the operation of these fallback mechanisms may be required as international travel resumes.	The loss of the European Arrest Warrant has been a concern in the context that the contingencies are not seen to be as streamlined as the previous system.	Operational deficiency and disagreements with counterparts regarding the implementation of the European Arrest Warrant. European Arrest Warrant has potential to lead to unresolved threats and/or wanted people entering the UK.
Relationships between UK and EU Institutions	That officers physically remain at Europol and Eurojust is seen as a positive outcome of the TCA.	It is not always clear that UK officers are invited to participate in joint investigation teams when they could / should be.	Inability to take the lead in joint investigations and the management of Europol has been seen as a loss for operation and strategic decision making.
Relationships	That UK officers may be invited to join joint investigation teams was seen as a positive outcome of Brexit. Informal relationships between officers on a day-to-day basis have been positive.	It may be difficult to maintain informal relationships over the longer term.	Formal agreements are likely needed to maintain relationships over the long term Developing formal agreements require political will and may be time consuming.
Covid-19		The Covid pandemic has shifted attention and priorities from addressing the impact of Brexit.	The true impact of Brexit has been masked by Covid travel restrictions and will become more apparent as restrictions are relaxed.
ICCC	Work of the ICCC has mitigated the impact of Brexit to some extent.	Some of the contingencies were not felt to be as streamlined as pre-Brexit structures.	

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