

12 July 2017

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Subject: Position paper on **Ongoing Police and 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

Objective: **To be published on Thursday 13 July on TF50 website as EU position in view of the 2nd negotiation round with the UK**

Remarks: The attached position paper on **Ongoing Police and Judicial Cooperation in Criminal matters** contains the main principles of the EU position in this regard

Essential Principles on Ongoing Police and Judicial Cooperation in Criminal matters

The following general principles should apply in accordance with Union law, as interpreted by the Court of Justice of the European Union on the date of entry into force of the Withdrawal Agreement:

I. Procedures in the area of police and judicial cooperation in criminal matters

The Withdrawal Agreement should allow for the orderly completion of ongoing procedures¹ based on the following instruments² in the area of police and judicial cooperation in criminal matters:

- European investigation order (Directive 2014/41/EU);
- Execution of orders freezing property or evidence (Council Framework Decision 2003/577/JHA);
- European Arrest Warrant (Council Framework Decision 2002/584/JHA);
- Recognition of supervision measures (Council Framework Decision 2009/829/JHA);
- Recognition of confiscation orders (Council Framework Decision 2006/783);
- Mutual recognition of financial penalties (Council Framework Decision 2005/214/JHA);
- Recognition of custodial sentences ("transfer of prisoners") (Council Framework Decision 2008/909/JHA);
- Mutual assistance and cooperation between customs administrations (Council act of 18 December 1997 – Naples II);
- ECRIS (Council Framework Decisions 2009/315/JHA and 2009/316/JHA);
- European protection order (Directive 2011/99/EU);
- Request for information or data held by law enforcement authorities (Council Framework Decision 2006/960/JHA);
- Passenger name records (Directive (EU) 2016/681);
- Cooperation between asset recovery offices (Decision 2007/845/JHA);
- Mutual assistance based on the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union, and the Protocol of 26 October 2001 to that Convention, as well as, where applicable, on the Council Framework Decision 2002/465/JHA on joint investigation teams.³

¹ This includes the taking into account, in the course of criminal proceedings against a person, previous convictions handed down against the same person for different facts in other Member States, in respect of which information has been obtained under applicable instruments on mutual legal assistance or on the exchange of information extracted from criminal records, as provided for in the Council Framework Decision 2008/675/JHA.

² In particular in view of future possible opt-ins of the United Kingdom, this list should be updated as appropriate.

³ As regards possible joint investigations teams led by United Kingdom authorities, the withdrawal agreement should ensure that there is a transfer of the leadership to a member of the joint investigation team from an EU27 Member State.

For those procedures, the Withdrawal Agreement should establish the procedural stage that has to have been reached in order for the procedure to continue in accordance with the relevant provisions of Union law applicable on the withdrawal date.

All applicable procedural rights enshrined in Union law should continue to apply.

II. Information, including (personal) data, that has been obtained before the withdrawal date from other Member States or Union institutions and bodies on the basis of Union law on police and judicial cooperation in criminal matters

- (1) Subject to the rules set out under (2) to (4), including, where appropriate, the requirement to erase data, the Withdrawal Agreement should clarify that the United Kingdom is allowed to keep and to continue using information, including (personal) data, obtained before the withdrawal date from other Member States or Union institutions and bodies on the basis of Union law on police and judicial cooperation in criminal matters. The same applies to information obtained from the United Kingdom and held by EU27 Member States or Union institutions and bodies before the withdrawal date.
- (2) The provisions in Union law on personal data protection applicable on the withdrawal date should continue to apply to the processing by the United Kingdom of personal data obtained before the withdrawal date on the basis of Union law on police and judicial cooperation in criminal matters. These provisions are contained in the following Union legislative instruments:
 - General Data Protection Regulation (EU) 2016/679;
 - Directive (EU) 2016/680;
 - Sectorial Union legislation in the area of police and judicial cooperation in criminal matters.
- (3) Classified information (EU classified information and corresponding national classified information) obtained before the withdrawal date by the United Kingdom on the basis of Union law on police and judicial cooperation in criminal matters should continue to be protected in accordance with the relevant provision in Union law applicable on the withdrawal date, in particular the Agreement of 4 May 2011 between the Member States of the European Union, meeting within the Council, regarding the protection of classified information exchanged in the interests of the European Union. The same applies to information obtained from the United Kingdom by EU27 Member States or Union institutions and bodies before the withdrawal date.
- (4) All other restrictions in Union law applicable on the withdrawal date regarding the use and processing of information and data should continue to apply to information and data obtained before the withdrawal date by the United Kingdom on the basis of Union law on police and judicial cooperation in criminal matters. This includes rules on limitation of access, purpose restrictions, or limitations of retention periods. This also holds for the reverse situation, i.e. information and data obtained from the United Kingdom by EU27 Member States or Union institutions and bodies before the withdrawal date.

(5) Those principles should also apply, *mutatis mutandis*, to documents originating from a EU27 Member State/EU institution/agency/body which were drawn up after the withdrawal date in the framework of a procedure carried out pursuant to the Withdrawal Agreement and are in the possession of the United Kingdom and to classified information received by the United Kingdom within such a procedure.