



## TECHNICAL NOTE: SECURITY, LAW ENFORCEMENT AND CRIMINAL JUSTICE

### Introduction

1. The UK wants to ensure citizens across Europe benefit from the strongest possible relationship between the UK, the EU and its Member States on security, law enforcement and criminal justice after we exit the EU. And although we accept that, as a third country, our relationship with the EU must change, there are still decisions to be taken about what that means in terms of security cooperation. It is imperative that we avoid as far as possible the loss of security, law enforcement, and criminal justice capability and minimise operational disruption for UK and EU law enforcement agencies and judicial authorities.
2. We believe this to be a shared aim: the Juncker Commission has made security a top priority from day one<sup>1</sup>, and emphasised that “*the EU and its Member States face several new and complex security threats...[which are] becoming more varied and more international, as well as increasingly cross-border and cross-sectorial in nature...these threats require an effective and coordinated response at European level.*”<sup>2</sup> Consistent with this, the guidelines agreed by the EU27 at the March European Council made clear that “*law enforcement and judicial cooperation in criminal matters should constitute an important element of the future UK-EU relationship in the light of geographic proximity and shared threats.*”
3. The task ahead is to identify the best way to meet these objectives. Our approach should be guided by a single overriding aim: affording maximum protection to our citizens. We judge that it is possible to do so in a way that is consistent with both the result of the referendum and the UK’s future status as a third country outside the European Union.
4. This paper builds on slides 14 and 15 of the UK’s presentation<sup>3</sup> on the Framework for the UK-EU Security Partnership published on 9 May 2018.
5. The first section expands on slide 14 and reviews four categories of existing precedents for cooperation between the EU and third countries in the area of security, law enforcement and criminal justice, examining their implications. The enclosed Annex provides measure-by-measure analysis of those precedents for the measures that the UK currently participates in. Our analysis demonstrates that a piecemeal approach to future cooperation, drawing on precedents for EU agreements with third countries on individual measures (e.g. Europol) or functions (e.g. extradition) would result in a limited patchwork of cooperation falling well short of current capabilities and not deliver our shared objectives. The attendant drop in the quality and quantity of cooperation among UK and EU law enforcement and judicial authorities would present unnecessary risks to public safety and our ability to uphold justice in the UK and the EU.
6. The second section of the paper expands on slide 15 of the UK’s presentation, and reviews the precedents for strategic agreements that provide for cooperation between the EU and third countries on a particular area of the *acquis*. These models offer a more effective way to deliver the operational outcomes that are needed, as well as providing a more efficient way

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<sup>1</sup> [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180417\\_security-union-a-europe-that-protects\\_en.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-security/20180417_security-union-a-europe-that-protects_en.pdf)

<sup>2</sup> [https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-security\\_en](https://ec.europa.eu/home-affairs/what-we-do/policies/european-agenda-security_en)

<sup>3</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/705687/2018-05-0\\_security\\_partnership\\_slides\\_SI\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705687/2018-05-0_security_partnership_slides_SI_FINAL.pdf)

to address cross-cutting issues through a single set of horizontal provisions. We judge that a new internal security treaty structured in this way could provide the legal basis for sustaining cooperation between the UK and EU on the basis of existing EU measures. This would be the most efficient way to protect the capabilities that protect our citizens, avoid downgrading the quality and quantity of cooperation between us, and ensure our relationship can keep pace with technology and changing threats. This approach would better meet the objectives set out by the UK, the EU and the EU Member States.

### **Precedents for Third Country Agreements**

7. The UK currently participates in over 40 EU measures relating to police and judicial cooperation in criminal matters (Chapters 4 and 5 of Title V of Part Three TFEU). Where they exist, precedents for cooperation with third countries can take the form of agreements to cooperate through the EU measure itself, or through an alternative bilateral arrangement between the EU and the third country. Precedents for cooperation on individual measures or functions can be broken down broadly as follows (see Annex for further detail):
  - No precedent for an EU-Third Country agreement, significant capability gaps;
  - Precedent for EU-Third Country Agreements for Schengen Associated States only, significant capability gaps for non-Schengen third countries;
  - Precedent for EU-Third Country Agreements, significant capability gaps;
  - Precedent for EU-Third Country Agreements, smaller capability gaps.

### ***No precedent for EU-Third Country agreement***

8. As is clear from the Annex, there are a number of internal security capabilities that do not yet have precedents for an EU agreement with a third country.
9. For example, there is currently no precedent for EU Member States to conduct criminal records exchange with third countries under the European Criminal Records Information System (ECRIS) or another EU instrument. If we were to limit our ambition for our future relationship to existing EU precedents for cooperation with third countries, then, in the future, the UK would no longer participate in ECRIS. The loss of this capability would impact on the ability of the UK and EU Member States to quickly obtain criminal records information from each other. This would in turn result in a delay in previous conviction information for courts to take into account when deciding on guilt, sentence or bail, and for law enforcement agencies to put public protection measures in place when dangerous individuals transit between the UK and the EU. The current volume of cooperation between the UK and EU Member States in this area is significant: in 2016, ACRO (the UK criminal records central authority) responded to over 13,000 requests for conviction information from EU Member States via ECRIS. In the same period, the UK sent over 35,000 notifications to EU Member States regarding their nationals being convicted in the UK.

### **Case Study**

Law enforcement and judicial authorities use ECRIS to establish whether individuals have a previous record of offending elsewhere in the EU, which allows them to take appropriate steps to protect the public. For example, a Romanian national entered the UK in August 2012 and after fifteen days was arrested for shoplifting. He repeat offended a week later. A foreign conviction check using ECRIS revealed the subject had recently been released from a 10 year sentence in Romania for knife point abduction and rape. He was subsequently made a Registered Sex Offender in the UK as a result of that conviction. The subject breached his conditions in December 2012 by failing to report to the police that he had left the country. 'Open source' social media confirmed the subject had fled to Italy. The Italian authorities were notified and relevant action was taken. If police had not had rapid access to criminal records information, the subject would likely have evaded the minor shoplifting offence and he would not have been recorded and tracked as a sex offender.

### ***Precedent for EU-Third Country agreement for Schengen Associated States only***

10. There are precedents for EU agreements with the Schengen Associated States which cover a range of internal security measures. Through these agreements, cooperation takes place in a way that is based on the EU tools. Examples of such agreements include the Schengen Association Agreements which, among other measures, facilitate the use of SIS II, and the Agreement between the EU and Norway and Iceland on the application of Prüm. However, the EU has not thus far reached such agreements with non-Schengen third countries in the field of police and criminal justice.
11. The current volume of cooperation between the UK and EU Member States in this area is significant: in 2017, the UK sent over 9,700 hit reports to European partners regarding their SIS II alerts, including nearly 6,000 reports from discreet checks for serious organised crime and counter terrorism. Without access to the SIS II system, UK authorities would not in future be able to provide alerts via SIS II on wanted individuals. Authorities in other EU Member States would not be alerted when individuals of interest to them come to the attention of UK authorities. For example, if the UK were no longer to have access to SIS II, alerts from participating countries would not be checked against passengers entering the UK (estimated at 129.9m in 2016) which would represent a loss of operational capability for the law enforcement and security agencies of those countries. This would have serious implications for public safety and is not in the interests of either side.

### **Case Study**

Individual V was circulated as wanted by Portugal for drugs trafficking as an Article 26 SIS II alert. In June 2016, the UK received an inbound NBTC (National Border Targeting Centre) alert showing that a possible match to the subject was due to arrive at Luton Airport that day. Paperwork was sent to Luton Airport control room and the subject was arrested on a European Arrest Warrant. The subject appeared at Westminster Magistrates Court later that month for an initial hearing and extradition was ordered with consent (the subject was remanded in custody). The individual was successfully extradited to Portugal at the end of June, within two weeks of arriving in the UK.

### ***Precedent for EU-Third Country agreement, significant capability gap***

12. In respect of some functions, there are precedents for EU-Third Country agreements, but those agreements deliver a significantly reduced capability compared with the EU measure.
13. For example, existing EU agreements with third countries on extradition do not provide the same level of capability as the European Arrest Warrant (EAW). The Norway and Iceland extradition agreement with the EU – concluded in 2006 and not yet in force – will leave a significant capability gap relative to the EAW once implemented. That gap includes, for example, additional grounds for refusal to surrender including for own nationals.
14. If provisions of this nature were to be replicated in a future UK-EU third country agreement, then extradition processes between the UK and the EU could stall or face serious delays, in both directions. Given the high volume of extradition requests under the EAW between the UK and EU Member States, this outcome would not be in the interests of either party in bringing criminals and terrorists to justice. Since 2004, the EAW has allowed the UK to surrender more than 10,000 individuals to other EU Member States, and over 1400 individuals were surrendered to the UK from EU member States. For every person arrested on a UK-issued EAW, the UK arrests 8 individuals on EAWs issued by other Member States. Extradition of own nationals is a significant component of this UK traffic: for example, for Slovakia, Poland, Lithuania, Estonia, Romania and Latvia, over three quarters of surrenders to the UK (in the period 2009/10 to 2016/17) were own nationals, as were around half of surrenders from Ireland.

#### **Case Study**

In December 2015, an individual suspected of being the head of an Organised Crime Group (OCG) involved in human trafficking and illicit immigration was arrested in the UK on a Greek issued EAW. It was suspected that this individual had been involved in moving around 100 Syrian migrants a day into Europe with an estimated €10 million earned since 2013. This arrest was the trigger for 23 further arrests across Europe, including 7 in Austria, 2 in Sweden and 13 in Greece. Under the EAW, evidence has been seized including laptops and mobile phones that will assist the Greek authorities to identify further members of this OCG, their movements and modus operandi across Europe.

15. Use of Passenger Name Record (PNR) data is another area where existing precedents for EU agreements with third countries provide significantly reduced capability compared with the Passenger Name Record Directive. The EU – third country PNR agreements make provision about the transmission of PNR, by air carriers, to the relevant competent authorities of the third countries. They do not provide for the reciprocal exchange of PNR between the authorities of the relevant states and the EU for the purposes of police and judicial cooperation. So, for example, they do not enable relevant third countries to work with EU Member States' Passenger Information Units (PIUs) to jointly identify travel patterns in the same way as Member States are able to do under the Directive.
16. The UK was the first EU Member State to have a fully functioning Passenger Information Unit, and has been at the forefront of efforts to encourage the development of this capability at an EU level. The UK continues to support other Member States in their implementation of the PNR Directive, for example by delivering training to staff working in new PIUs. If the UK were unable to process PNR data in the same way as under the Directive, sharing information about suspicious travel related to terrorism offences or serious crime would become slower, more difficult and less effective, resulting in fewer opportunities for both the

UK and EU Member States to identify and intercept suspects, to identify and protect victims of trafficking, and to disrupt terrorist and organised criminal travel across Europe.

### **Case Study 1**

The PNR data of an individual who had committed an act of terrorism was analysed, and enabled identification of two previously unknown associates. Further analysis identified a number of journeys where they had travelled together, as well as establishing periods when all three appeared to be out of the UK at the same time engaging in the preparation of the act of terrorism. Without PNR data the identification of those associates would not have been guaranteed.

### **Case study 2**

Intelligence was received that an individual wanted by UK law enforcement in relation to serious crime offences was travelling frequently. Analysis of passenger data identified only one individual whose pattern of travel matched the intelligence relating to of the wanted person. The PNR data for that one individual identified a previously unknown false identity, a false travel document, contact details and an address. Within a short time the individual was located and arrested, ending a ten year manhunt.

17. This category also includes precedents for third country agreements with Europol, enabling those third countries to contribute to the work of the agency. Such agreements do not provide those third countries with direct access to Europol's databases (notably the Europol Information System), generally do not permit them to field Seconded National Experts, and do not enable them to initiate activity – especially bilateral activity – in the same way that Member States can (for example, establishing operational meetings or driving or co-driving EMPACT projects, which develop operational action plans to combat crime in priority areas). There is also a greater role for Europol in reviewing and quality-assuring data exchanged with third countries. For example, Analytical Projects cannot transmit intelligence directly to third countries, meaning every SIENA response to the UK would require clearing and dissemination by the Europol Operational Centre.
18. It would not be possible to maintain the UK's current contribution to the work of Europol on the basis of an agreement along these lines, in part due to the sheer volume of activity the UK participates in and the data that the UK shares. The UK is currently among the top three Member States contributing intelligence each day to the different databases at Europol. Seven times more information is exchanged between the UK and Europol than between Denmark and Europol, and the UK is involved in 10 times the number of operational cases. Five times as much information is exchanged between the UK and Europol as between the US and Europol. In 2017, the UK led 66 operational meetings (more than any other Member State) and participated in 129 meetings overall.

### ***Precedent for EU-Third Country Agreements, smaller capability gap***

19. In a handful of cases, there are precedents for EU-Third Country cooperation that result in a smaller capability gap compared with full participation in the EU measure.
20. For example, a number of third countries (e.g. Norway, Switzerland, USA, Montenegro) have agreements with Eurojust that allow them to contribute to the work of the agency. There are nonetheless some capability gaps as compared with EU Member States: for example, third countries are not able to initiate coordination meetings and Joint Investigation Teams (JITs), cannot nominate a member of the Eurojust College, and do not have full access to the Eurojust Case Management System. In 2017, UK support via Eurojust was

requested 290 times – the second-highest number of requests to any Member State. In the same year, the UK organised 34 coordination meetings, and was involved in 48 such meetings – the second-highest number of any Member State. It would not be possible to maintain the UK’s current contribution to the work of Eurojust – especially bilateral activity – on the basis of an agreement along these lines, in part due to the volume of requests that the UK receives.

21. Joint Investigation Teams – which facilitate the coordination of investigations and prosecutions across multiple jurisdictions – provide a further example in this category. Third countries can participate in JITs, although again there are some capability gaps, notably the ability to lead in establishing new JITs (which requires the involvement of two or more Member States when established pursuant to the EU measure) and access to funding. The UK currently participates in around 50 JITs, the majority of them bilateral (i.e. involving only one other Member State). In 2017, 87 new JITs were established overall at Eurojust, of which the UK is involved in 24. If the UK were no longer able to take the lead in establishing Joint Investigation Teams in this context, some JITs might take longer to set up, or fail to be set up altogether.

### ***Third Country Precedents: Conclusion***

22. Analysis of the above four categories demonstrates that current arrangements for cooperation between the EU and third countries on internal security – setting aside the Schengen Association Agreements – provide a limited patchwork of cooperation. A future UK-EU relationship along these lines would result in a serious shortfall in capability affecting not only the UK but also the EU and its Member States. That shortfall would be made up of gaps where there are no precedents for EU cooperation with third countries (or third countries outside Schengen), and downgrades in capability in the areas where precedents do exist. The resulting drop in the volume and quality of cooperation would have a direct impact on public safety and on our collective ability to deliver justice across Europe.
23. The UK therefore considers that while existing precedents for EU cooperation with third countries in relation to individual measures in this field provide context, they are not the right starting point for our future partnership. The security of our citizens must be our overriding priority and that will not be achieved by a marked – and avoidable – reduction in our ability to combat serious crime and terrorism.

### **Internal Security Treaty**

24. Upon withdrawing from the EU, the UK will be a third country. As a former Member State, it will be a third country in a unique position and with an unprecedented ability and willingness to contribute to European security. Our geographical proximity to our European neighbours, the volume of cross-border movements between us, the high degree of alignment in the scale and nature of the threats faced, as well as the fact we are starting from a point of complete legal and operational alignment, call for a new, ambitious model for cooperation in this field. The EU has a proven record of flexibility and innovation, reacting creatively to new threats and opportunities in the interests of protecting citizens’ safety and rights. It is against this backdrop that the UK is proposing a different approach that draws on existing legal precedents for EU-third country relationships outside the narrow field of police and judicial cooperation in criminal matters.
25. The UK has proposed a new UK-EU Internal Security Treaty to provide a legal basis for future cooperation relating to police and judicial cooperation in criminal matters on the basis of existing EU police and criminal justice measures. For the EU, such a treaty could be negotiated according to an Article 218 TFEU procedural legal base with citation of substantive legal bases (e.g. contained in Chapter 4 and 5 of Title V of Part Three, TFEU) in relevant Council Decisions. Following existing legal precedent (see below), the treaty would

be subject to appropriate provisions on governance and safeguards to ensure mutual trust and the effective functioning of the agreement.

26. There are a range of existing legal precedents for comprehensive, strategic agreements between the EU and third countries, including:

- Schengen Association Agreements (SAAs);
- European Economic Area Agreement (EEA);
- European Common Aviation Area Agreement (ECAA).

27. To be clear, the UK is not seeking to join the EEA or SAA agreements. But these precedents demonstrate that the UK's proposals are legally viable, and based on EU precedent in other fields.

28. Each of the above-mentioned models has the same basic structure – a treaty enabling cooperation on the basis of EU measures in a specific field, with the relevant EU measures (and, in the case of the SAAs, provisions from the Schengen acquis) then listed in annexes. There is also scope for such agreements to enable access to future EU measures in the relevant field.

29. The SAAs enable the Schengen Associated States to implement the relevant measures to the extent required in their domestic law and do not contain a separate procedure providing for technical adaptations (see below). In relation to dispute resolution, the SAAs provide for a system of exchange of case-law and reporting (see for example Articles 9 and 10 of the Norway/Iceland SAA) and then if a divergence were to emerge the dispute resolution mechanism (Article 11) would be engaged. There is no requirement for CJEU jurisdiction in those third countries.

30. The EEA Agreement model (to which the ECAA model is similar) sets out in significant detail how all aspects of the relationship between the EU and EEA states would operate. That treaty provides for a process for EU measures to be adapted solely for the purposes of application in the EEA states prior to being applied there. The treaty also contains homogeneity provisions (see Part VII and, in particular, Chapter 3) including provision for exchange of case-law. If a dispute arose, the dispute resolution mechanism (Article 111) would be engaged. Again, there is no requirement for CJEU jurisdiction in those third countries.

31. Building on these precedents an Internal Security Treaty should:

- a. Provide a legal base for cooperation between the parties on EU measures in a specific field;
- b. Specify a clear scope, with relevant EU measures falling within that scope on which the parties agree to continue cooperating listed in an annex;
- c. Contain provision that, where mutually beneficial, new EU measures falling within scope may be added to the annex by mutual agreement to ensure a dynamic relationship;
- d. Set out horizontal provisions to govern the relationship, which would cover governance and safeguards (e.g. in relation to human rights).

## Conclusion

32. Looking to the future, it is unlikely that the wide range of threats we face together will diminish; they will inevitably evolve and could well increase in intensity. Over the past year we have seen a series of deadly terrorist attacks in the UK and across Europe. Other plots have been foiled but more will be at the planning stage. The fact that the UK is leaving the EU is unlikely to significantly affect the scale of movements of people between us: 37.6 million EEA and Swiss nationals entered the UK in 2016. Over 3 million EU nationals live in the UK and over 1 million UK nationals live in other Member States.
33. The UK's analysis indicates that there will be a serious drop off in our ability to cooperate to tackle internal security threats if we do not seek to move beyond existing precedents for EU cooperation with third countries on individual measures. That shortfall would affect law enforcement agencies and judicial authorities in the UK and the EU27, and would have a direct impact on their ability to bring criminals to justice – and by extension, on public safety.
34. The UK believes there is a compelling case for developing a future relationship that protects critical operational capabilities and keeps our citizens safe. Our analysis suggests that this outcome would be delivered most effectively by a new, comprehensive Internal Security Treaty that draws on legal precedents for strategic relationships between the EU and third countries in other areas of the *acquis* and enables cooperation to be sustained on the basis of existing EU measures where this delivers mutual operational benefits. This would be the most efficient way to protect the capabilities that protect our citizens, avoid downgrading the quality and quantity of cooperation between us, and ensure our relationship can evolve over time as threats and technology change.



EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
European Criminal Records Information System (ECRIS) - Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA	No	No	<ul style="list-style-type: none"> <li>• Requests would no longer be automated;</li> <li>• No timelines for response to requests;</li> <li>• Lose ability for information received to be translated or 'mapped' to offences in the UK and the EU;</li> <li>• No standard format for responses.</li> </ul>
Prisoner Transfer – Framework Decision 2008/909/JHA	No	No	<ul style="list-style-type: none"> <li>• No obligation on a Member State to accept the prisoner;</li> <li>• No restriction on grounds for refusal.</li> </ul>
Asset Recovery Offices – Council Decision 2007/845/JHA	No	No	<ul style="list-style-type: none"> <li>• See Swedish Initiative below (Framework Decision 2006/960/JHA) – lose timelines;</li> <li>• Lose guaranteed, secure portal for information exchange with EU AROs (SIENA).</li> </ul>
Financial Intelligence Units (FIUs) – Council Decision 2000/642/EU	No <sup>4</sup>	No	<ul style="list-style-type: none"> <li>• Lose arrangements for cooperation between financial intelligence units in respect of exchanging information;</li> <li>• Loss of analytical functions to identify patterns and links in financial intelligence.</li> </ul>

No precedent for an EU-Third Country Agreement, significant capability gaps

<sup>4</sup> Norway is developing a bespoke agreement.

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
European Investigation Order (EIO) - Directive 2014/41/EU	No	No	<ul style="list-style-type: none"> <li>No spontaneous exchange of information;</li> <li>No set timelines for response.</li> </ul>
Child Protection - Article 10 of Directive 2011/92/EU (via ECRIS)	No	No	<ul style="list-style-type: none"> <li>Lose legal base to obtain/share criminal records for the purposes of vetting an individual for work with children (via ECRIS).</li> </ul>
Mutual Recognition of Financial Penalties – Framework Decision 2005/214/JHA	No	No	<ul style="list-style-type: none"> <li>Lose the legal framework which enables financial penalties, including compensation ordered for victims, imposed in one Member State to be recognised and enforced in another.</li> </ul>
Victims Compensation Directive - Directive 2004/80/EC	No	No	<ul style="list-style-type: none"> <li>Lose the legal framework that requires EU Member States to give compensation to EU victims of violent intentional crime and to set up a system of cooperation to facilitate access to compensation for victims in cross-border situations.</li> </ul>
Convictions in other Member States – Framework Decision 2008/675/JHA	No	No	<ul style="list-style-type: none"> <li>Lose legislation that requires EU Member States domestic courts to take account of a defendant's known previous convictions in the UK.</li> </ul>

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
European Protection Order – Directive 2011/99/EU	No	No	<ul style="list-style-type: none"> <li>• Lose the legal framework which enables orders made in criminal proceedings to protect a person in one Member State are recognised and enforced in any other Member State which the protected person travels to.</li> </ul>
European Supervision Order – Framework Decision 2009/829/JHA	No	No	<ul style="list-style-type: none"> <li>• Lose the legal framework that enables a court in the Member State where a crime is alleged to transfer the suspect back to their “home” Member State to await trial (including bail conditions) and for the “home” Member State to assume responsibility for supervising compliance with those conditions.</li> </ul>
Right to information in criminal proceedings - Directive 2012/13/EU	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets common minimum standards for information to be provided to people suspected or accused of having committed a criminal offence.</li> </ul>
Right to interpretation and translation in criminal proceedings - Directive 2010/64/EU	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets out common minimum standards on interpretation and translation in criminal proceedings throughout the EU.</li> </ul>
Rights, support and protection of victims of crime - Directive 2012/29/EU	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets common minimum standards on the rights, support and protection afforded to the victims of crime across all Member States.</li> </ul>

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
Trials in Absentia - Framework Decision 2009/299/JHA	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets the conditions under which the recognition and execution of a decision rendered following a trial at which the person concerned did not appear in person should not be refused.</li> </ul>
Minimum standards on human trafficking - Directive 2011/36/EU	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets common minimum standards rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings.</li> <li>• Lose common provisions on the prevention of human trafficking and the protection of victims of human trafficking.</li> </ul>
Minimum Standards on Cybercrime - Directive 2013/40/EU	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets common minimum standards rules concerning the definition of criminal offences and sanctions in the area of attacks against information systems.</li> <li>• Lose common means to facilitate the prevention of cybercrime and to improve cooperation between judicial and other competent authorities.</li> </ul>
Joint Action on Organised Crime - Joint Action 97/827/JHA	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that establishes a peer-evaluation mechanism that enables Member States to evaluate each other on the application and implementation of instruments</li> </ul>

	EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
				designed to combat international organised crime.
	Council Decision to combat child pornography on the internet – Council Decision 2000/375/JHA	No	No	<ul style="list-style-type: none"> <li>• Lose legislation that sets common rules requiring all Member States to set up 24 hour contact points to receive and act on intelligence related to child pornography or indecent images of children.</li> </ul>
	Data Protection Joint Supervisory Secretariat – Council Decision 2000/641/JHA	No	No	
Precedent for EU-Third Country Agreements for Schengen Associated States only, significant capability gaps for non-Schengen third countries	Prüm - Council Decisions 2008/615/JHA and 2008/616/JHA <sup>5</sup>	Yes - Schengen Associated States only – Norway and Iceland have a separate agreement with the EU – not part of their Schengen Associated Agreement. Switzerland and Liechtenstein are seeking access.		<u>Norway and Iceland:</u> <ul style="list-style-type: none"> <li>• Full access to all capabilities provided by Prüm legislation (DNA, fingerprint and vehicles)- but no voting rights in the working group.</li> </ul>
	Schengen Information System (SIS) II – Council Decision 2007/533/JHA	Yes - Schengen Associated States only		<ul style="list-style-type: none"> <li>• Full access to SIS II.</li> <li>• Council Decision 2007/533/JHA provides that where the EAW Framework Decision 2002/584/JHA does not apply in the case of an Article 26 alert relating to extradition, then that</li> </ul>

<sup>5</sup> The UK does not yet able to operate all aspects of Prüm.

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
			<p>alert shall have the same legal force as a request for provisional arrest under the 1957 European Convention on Extradition (ECE).</p> <ul style="list-style-type: none"> <li>The Associated States do not have a vote in the experts' committees that manage SIS II from day to day, at a central level.</li> </ul>
<p>European Agency for the operational management for large-scale IT systems (EU-LISA) - Regulation 1077/2011</p>	<p>Yes – Schengen Associated States only</p>		<ul style="list-style-type: none"> <li>Full access to the system.</li> </ul>
<p>European Image Archiving System (FADO) - Joint Action 98/700/JHA</p>	<p>Yes - Schengen Associated States only</p>		<ul style="list-style-type: none"> <li>Full access to the system.</li> </ul>
<p>Information exchange (Swedish Initiative) – Framework Decision 2006/960/JHA</p>	<p>Yes - Schengen Associated States only</p>		<ul style="list-style-type: none"> <li>Full access.</li> </ul>

	EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
	Schengen Law Enforcement Cooperation (Articles 39 and 40 of the Convention implementing the Schengen Agreement of 14 June 1985)	Yes - Schengen Associated States only		<ul style="list-style-type: none"> <li>Full access.</li> </ul>
Precedent for EU-Third Country Agreements, significant capability gaps	European Arrest Warrant (EAW) - Framework Decision 2002/584/JHA / Extradition	No	<p>Yes - Norway and Iceland - however this took 5 years to negotiate at government level and is still not in force.</p> <p>US.</p>	<p><u>Norway and Iceland</u> (both in Schengen):</p> <ul style="list-style-type: none"> <li>Parties can derogate from the provisions which impose time limits, require them to surrender their own nationals and allow extradition without verification of double criminality.</li> <li>Parties who wish to waive the dual criminality requirement are required to make an additional declaration that they will do so.</li> <li>Parties can also declare that extradition for political offences will only take place in relation to terrorism-related offences.</li> </ul> <p><u>US:</u></p> <ul style="list-style-type: none"> <li>This is not a multilateral extradition agreement. Instead this agreement provides a framework in which EU Member States can hold bilateral agreements.</li> </ul>
	Europol - Regulation 2016/794/EU	Yes - Denmark <sup>6</sup> , operational agreements (US, Canada etc.), strategic cooperation		<p><u>Denmark:</u></p> <ul style="list-style-type: none"> <li>Indirect access to relevant Europol</li> </ul>

<sup>6</sup> Denmark is a Member State. It recently concluded an agreement with Europol.

	EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
		agreements (Turkey, Russia etc.)		<p>data via a dedicated team of Danish-speaking Europol operatives, which queries, uploads and deletes data on behalf of Danish law enforcement agencies.</p> <ul style="list-style-type: none"> <li>Denmark has a lower status on the management board (including no voting rights).</li> </ul> <p><u>Other operational agreements (e.g. US)<sup>7</sup>:</u></p> <ul style="list-style-type: none"> <li>No direct access to Europol Information System (EIS)- data must be uploaded, queried and deleted via a pool of Europol operatives.</li> <li>Can be invited as observers to management board meetings.</li> <li>No seconded national experts (SNEs).</li> <li>Cannot contribute to the setting of EMPACT (European Multidisciplinary Platform Against Criminal Threats) priorities and cannot drive/co-drive the Operational Action Plans.</li> <li>Requests for support must include at least 2 Member States, including organising operational cooperation meetings.</li> </ul> <p><u>Strategic cooperation agreements (e.g. Turkey)<sup>8</sup>:</u></p> <ul style="list-style-type: none"> <li>Allow limited access to strategic and technical data.</li> <li>Used to facilitate engagement between the organisations - raising awareness of events and discussions on the</li> </ul>

<sup>7</sup> These comments relate to agreements concluded under the old Europol Council Decision (2009/371/JHA).

<sup>8</sup> These comments relate to agreements concluded under the old Europol Council Decision.



EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
			involvement of international organised crime.
	Mutual Legal Assistance (MLA) - Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between Member States of the European Union	No	Yes - Norway and Iceland; US; Japan.

	EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
				Member States to acknowledge agreement.
	Passenger Name Records (PNR) - Directive 2016/681/EU	No	Yes. Australia, Canada and the US.  An envisaged agreement with Canada is to be re-negotiated following CJEU Opinion 1/15.	<u>US and Australia:</u> <ul style="list-style-type: none"> <li>• These PNR Agreements provide for transmission of PNR by air carriers to the relevant competent authorities in third countries.</li> <li>• They do not provide for the reciprocal exchange of PNR.</li> <li>• Do not enable those third countries to work with EU Member States' Passenger Information Units (PIUs) to jointly identify travel patterns.</li> </ul> <u>Canada:</u> <ul style="list-style-type: none"> <li>• If the EU and Canada reach an agreement reflecting the CJEU Opinion there would be additional capability gaps to those in the current agreements.</li> </ul>
Precedent for EU-Third Country Agreements, smaller capability gaps	Eurojust – Council Decision 2002/187/JHA	Yes - Ukraine, Liechtenstein, USA etc.		<ul style="list-style-type: none"> <li>• Lose ability to initiate cooperation and to undertake bilateral work;</li> <li>• Less opportunities for the UK to feed in and contribute to Eurojust's work as no 3rd country is member of Eurojust college;</li> <li>• Only partial access to Eurojust Case Management System;</li> <li>• Current precedent allows a third country to post only one liaison</li> </ul>

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
			<p>magistrate/prosecutor and one deputy to Eurojust. If the UK could only have 2 staff at Eurojust it may reduce the UK's ability to meet requests from other Member States. The UK currently receives more requests from other Member States, than it makes itself.</p>
<p>Joint Investigation Teams (JITS) –Framework Decision 2002/465/JHA and Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between Member States of the European Union</p>	<p>Yes</p>		<ul style="list-style-type: none"> <li>As a third country, the UK would have to be invited into a JIT under the Framework Decision or Article 13 of the MLAC, with the agreement of the Member States participating in the JIT. The UK would be unable to initiate JITs itself under these legal bases.</li> <li>For bilateral JITs, the UK would be unable to make use of the Framework Decision or Article 13 of the MLAC and would need to use alternative legal bases.</li> </ul>
<p>Mutual Recognition of asset freezing orders and confiscation orders (link with MLA) - Framework Decisions 2003/577/JHA and 2006/783/JHA</p>	<p>No</p>	<p>Yes - reference to freezing and confiscation (not mutual recognition) can be found in the EU-Japan MLA agreement.</p>	<ul style="list-style-type: none"> <li>Does not include time limits for recognition or confiscation;</li> <li>Does not include provisions to limit grounds for refusal.</li> </ul>
<p>Cooperation on Football Disorder – Council Decision 2002/348/JHA</p>	<p>No</p>	<p>Yes - a number of countries (i.e. Norway, Switzerland)</p>	<ul style="list-style-type: none"> <li>Do not have access to the National Football Information Points (NFIPs) web portal.</li> </ul>

EU Measure	EU Third Country Agreement for Individual EU Measure	EU Third Country Agreement for Similar Function	Capability Gap
EU Agency for Law Enforcement Training (CEPOL) - Council Decision 2005/681/JHA <sup>9</sup>	Yes – CEPOL has cooperation agreements (e.g. Georgia, Norway and Turkey) and working agreements (e.g. Russia, Serbia and Albania).		
European Judicial Network - Council Decision 2008/976/JHA	Yes – Schengen Associated States, third countries and candidate countries (i.e. Norway, Turkey etc.)		<p>Schengen countries have full access to the network apart from access to list of EU legislation that has been implemented by EU Member States. Other third countries:</p> <ul style="list-style-type: none"> <li>• Lose access to list of EU legislation that has been implemented in different EU Member States;</li> <li>• Lose access to draft legal forms for judicial cooperation requests;</li> <li>• Lose access to legal and practical information on judicial cooperation measures available in EU Member States.</li> </ul>

<sup>9</sup> UK did not opt in to new Regulation 2015/221/EU.