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*Evolution*: Police Cooperation in the EU

**……. Positioning the UK: *devolution!***

**ABSTRACT**

Cooperation is key to policing and keeping mankind safe and secure; this includes protecting citizens from various crimes, including terrorist attacks. However, it is not an easy feat to always achieve – as is explained within this paper. The related research considers the complexities and challenges of sharing and coordinating across divides – or, in other words, cooperating across borders (be they open or closed). Specifically, it discusses the advancements made between one bloc of countries – the European Union; and, how the evolutionary process has aided to expand cooperative community practices via various means between the police and other LEA’s. As part of this, transport and movement are viewed as an essential element to be discussed and factored in. Finally, the paper considers the, arguably, devolutionary position of the UK and the implications – post 2020, in terms of marking a ‘potentially’ regressive position, one that stands to compromise safety and security.

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Keywords: UK/EU – Brexit; police-cooperation; border; boundaries; transport

**1. Introduction**

‘Cooperation’ is, by its very nature, an interesting concept to rationalise and explain. According to the Cambridge Dictionary, it is defined as:

“*the process of working with another (be it a company an organisation or country) in order to achieve something*…..”[[1]](#footnote-1)

A simple statement, but one that masks the complexity of ‘cooperating with others,’ and none more so, than, arguably, in the context of policing. Ideally, perhaps, ‘*cooperation*’ as applied to policing, should be defined as:

‘*a joint/combined undertaking of bodies, with an agreed aim, to achieve something positive and meaningful that if of benefit to citizens, in order to ensure their welfare, by keeping the majority safe and secure*.’[[2]](#footnote-2)

However, ‘*reality and experience’* have shown us that this is in fact difficult to achieve and ultimately is a challenge, on many occasions, thwarted due to barriers, boundaries and other obstacles – as invariably, ‘cooperation’ involves the concept and ability to share and coordinate. Ultimately, this necessitates also a ‘*willing(ness) to trust.’*[[3]](#footnote-3) Even when this purely involves police and security agencies, when only within one vicinity or country, there is a history of reluctance and willingness to share and to cooperate and/or a mechanism in place to facilitate this collaboration.[[4]](#footnote-4) A point recognised and explored by other scholars, in terms of trust and cooperation that extends beyond the public into the realms of police to police and country to country cooperation.[[5]](#footnote-5) In essence, some of this ‘cooperation’ can take years to develop and negotiate.

One regional bloc that has clearly advanced the concept of cooperating across borders is the European Union (EU).[[6]](#footnote-6) Up until 2020 – the UK was a Member of the EU.[[7]](#footnote-7) Currently the UK is still considering this ‘*new dynamic*’ – in what could be viewed as a critical period, in terms of current negotiations as to how the UK police and other security and Law Enforcement Agencies (LEA’s) will interact (cooperate) with its European neighbours and their law enforcement bodies moving forward. Ultimately, it remains in all citizens’ interests to do so – on both sides of the (English) Channel divide.[[8]](#footnote-8) Invariably, increasing safety and security to citizens, regardless of their nationality, should remain the first priority.

The scope of this paper is to primarily explore the evolution of cooperation within the EU, before latterly (and in conclusion) reflecting upon the consequences to police relations (UK – with the EU[[9]](#footnote-9)) and the possible security/safety implications – in the post-Brexit environment. The emphasis is therefore on analysing and exploring the current position in the EU in terms of cooperating from a policing/security perspective; and later providing comment as to the changing landscape (in the new non-EU climate) for the UK.

The theme of transport, travel and mobility is threaded throughout this paper – as this is viewed by the researcher as a key factor associated with movement and policing over borders and jurisdictions.

* 1. ***The driving force behind this paper – setting the scene***

In 2016, following a referendum, the UK decided to leave the EU. The biggest irony being the day after the referendum, when the results were made know – the most ‘Googled’ search was – *what is the EU?* If you do not know what the EU is, how can you know the successes - due to cooperation and agreements – such as in the field of policing and security.[[10]](#footnote-10)

June, 26 (2016) *referendum day*[[11]](#footnote-11) - is a day that is forever etched on many people’s minds – (for me) *like Lockerbie,*[[12]](#footnote-12) *9/11,*[[13]](#footnote-13) *the terrorist bombing attacks in Madrid (11-M*[[14]](#footnote-14)*) and London (7/7 & 21/7*[[15]](#footnote-15)*)*. Key to the investigations, of all of these attacks, was the need for the police to coordinate and liaise – many of these atrocities having cross border implications but all requiring the sharing of information and, hence, police (LEA) cooperation.

While the research reflects upon the implications of the UK’s decision to leave the EU – from a policing, law enforcement and legal/policy perspective, it also aims to highlight the invariable overlaps into the adjacent areas of movement and transportation (as per Figure 1).[[16]](#footnote-16) The obvious factor being that criminals, including terrorists, use transport to move around – to facilitate criminal activity, or, to even directly target and attack. In fact, rarely do criminals commit crimes without first utilising a transport mode. This also includes the use of mobile phones and the internet – to transmit, ‘*transport*’ and share information, data and plans from person to person; so, whilst the physical movement may not occur, there is the sending (movement) of essential plans related to the offences to be (or have been) committed.

![Diagram

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Figure1: Security (safety) synergy and overlap

There is little doubting that policing will be challenged in the future by new and evolving technologies[[17]](#footnote-17) and even new locations and horizons, such as space and space travel.[[18]](#footnote-18)

This will require a concerted effort in order to determine how society is best placed to ‘*police*’ these (identified and potential) risks. In other words, how ‘we’ work collaboratively and share – ‘*cooperate*’ across borders and jurisdictions. Fundamental to this is the need to build upon past and current successes and not to create barriers that invariably could compromise safety and security.

* 1. ***Research Design***

The research approach, for this paper, is from a legal-socio (policy[[19]](#footnote-19)) perspective and the journey of this paper (Figure 2: *figure of eight approach, i.e. with some cross-over and circling back*[[20]](#footnote-20)) is as follows[[21]](#footnote-21):

1). Firstly, the aspect of cooperation is considered in terms of defining what cooperation is and how it is applied (should be applied) in a policing context (with illustrative examples of UK and UK/EU interactions and the sharing of data/information);

2). The (evolving) position of the European Union is then reviewed and reflected upon in respect to strengthening police cooperation (and related/overlapping policy areas) – challenges are also identified; and,

3). Finally (and in conclusion) the UK’s position in respect to policing and cooperation in the EU is then contemplated (post Brexit). As part of this section, the EU legislation and instruments referred to previously will be revisited and discussed in term of implications.

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**Figure 2:** Structure of the paper

1. **Cooperating *in a policing context***

Policing ultimately became more complex when opportunities to travel became simpler through ease of transport and movement. Gone are the days when the local policeman walked a small geographical area and knew most of the local residents that rarely travelled out of their village or settlement. Invariably, our (early) ancestors were prevented from venturing to far due to the lack of transport modes and opportunities that, for most parts, until after the industrial revolution, were limited to non-motorised means.[[22]](#footnote-22)

Globalisation has been a key factor in shrinking the world, of introducing new and evolving technology – technology that assists mankind, that aids us, that provides opportunities but inexorably also creates challenges and other risks.[[23]](#footnote-23) Transport has witnessed its fair share of innovation and advancements – including the use of, and accessibility, to air travel (alongside other older-evolving means – rail (now high speed trains); the dawn of autonomous vehicles, both on the road and in the air (particularly - UAV’s). Whilst the majority of people travel with legitimate and honourable intentions, there remains a minority who will aim to abuse such freedoms by criminal activities that cross borders, boundaries, and hence policing jurisdictions. As Steinberg made reference to, theorists within the geopolitics environment increasingly recognise that boundaries are more than just a line to mark and demark territories.[[24]](#footnote-24) These ‘jurisdictions’ customarily relate back to a form of internal structure or control….. the highest order being sovereign (state) control – i.e. sovereignty. And with sovereignty inevitably comes politics ….. *and with politics comes political will/willingness*.[[25]](#footnote-25)

All of these aspects remain a challenge to effective policing, particularly across State (meaning – country) lines.

**2.1. *Signing up to cooperate - a snap-shot of the UK-EU (2020)***

From a policing perspective, we tend to refer to this ability to liaise and to tackle joint areas of concern as ‘cooperation’ (normally across borders and boundaries – be they internal or external to a national State[[26]](#footnote-26)). This by and large, mirrors the concept of international law which is also concerned with the political will of states as expressed through treaties or international custom and provides the means by which contracting states stipulate the rules of private law which is then agreed within their national law.[[27]](#footnote-27)

This unified system approach is ultimately viewed as a means to prevent and minimise conflicts, both from a physical and legislative perspective. From a legal stance, international law provides a mechanism to replace the disparity that exists regarding substantive law and jurisdiction, clarifying mutual rights and obligations whilst providing transparency.[[28]](#footnote-28) However, international law has noticeable limitations, as Arend reaffirms by acknowledging, “*sovereignty means that all states are juridically equal…they can be bound by law only through their consent. In the absence of a law… they are legally allowed to do as they choose*.”[[29]](#footnote-29) This means that States have to be *willing* to formulate, accept, and adhere to practices and international laws. Inevitably, this remains a clear challenge and a weakness of international law, as it also does in respect to ‘police cooperation’ across jurisdictions.

Whilst there may not be an absence of (criminal) laws in most cases within a country, there invariably remain differences between countries laws (and even in some instances, internally too – for example: across the 50 states that form the United States of America; or even within the UK in respect of some legislative offences and judicial systems/processes – e.g. England and Scotland most noticeably). And, hence, this remains another challenge of ‘*police to police*’ (or LEA’s) cooperation and consequently successful and effective policing that keeps citizens safe and secure. One solution to minimise such ‘risk’ is a form of cooperative agreements between countries or within regional blocs. Ultimately, however, State sovereignty will always take priority and precedence, as will any State decision to apply any agreement or cooperative approach. Hence, this is the situation that the UK currently finds itself in – in terms of withdrawing from a regional bloc and therefore, inevitably many of the agreements (or other legislative mechanism) in place and that it has been a party to.

In the past, criminal activity mostly concerned physical movements, but, has of late, more and more, related to cyber movements – or crimes perpetrated via the internet – that is, by remote means. Going forward, if we cannot cooperate more successfully in the real world, there will become even more challenges and risks in this new and evolving cyber inter-connected world.

Within a country (such as across states; county/territory jurisdictions) it is perhaps easier to achieve policing collaboration – including the sharing of information and data. Sometimes, this is facilitated through agreements or even legislative practices and protocols being put in place to identify or even require this cooperative interaction. Technology developments have also been key to facilitating the sharing of information and hence aiding cooperation.

An example of this, in the UK, is the Police National Computer (PNC[[30]](#footnote-30)) a database introduced in 1974, a year after the UK joined the European Communities[[31]](#footnote-31) – now the EU.

PNC is used to facilitate investigations and sharing information of both national and local importance.  Since its inception in the early 1970’s, it has developed, evolved, and reacted to meet the everchanging needs of operational and intelligence led policing. It provides mission critical services to the police, plus other UK law enforcement agencies (LEA’s). Over time, the access to PNC has increased with various other bodies now having restricted or read only access – so, thus, a system or cooperation and trust has developed; albeit, with some restrictions. However, one barrier remains privacy and data protection, whereby there remains limitations as to what is able to be shared, and this is made more complex when there is a need to share, liaise and coordinate outside a Member State.

Since 2015 the UK had been part of the European-wide IT system called Schengen Information System (SIS II[[32]](#footnote-32)). SIS II allows all participating member states to be able to share real-time information on persons and objects of interest via a series of ‘*Alert*s.’ This enables competent national authorities to cooperate with relative ease.[[33]](#footnote-33) The SIS II office in the UK is identified as being located at Hendon, London which is the site of the PNC (that is, within the Metropolitan Police Service site). Each Member State has a SIRENE[[34]](#footnote-34) Bureaux[[35]](#footnote-35) - which is responsible for any supplementary information exchange and for the coordination of SIS alerts and related activities.

Thus, the UK[[36]](#footnote-36) (via PNC) as a Member State of the EU agreed to provide the following Alerts to other (identified) Members:[[37]](#footnote-37)

* Persons wanted for extradition (Article 26 – SIS II Dec.)
* Missing persons (Article 32 SIS II Dec.)
* People wanted for judicial purposes (Article 34 – SIS II Dec.)
* People or vehicles requiring discreet checks (Article 36(2) and (3) – SIS II Dec.)
* Misappropriated, lost or stolen objects sought for the purposes of seizure or evidential purposes (Article 38 – SIS II Dec.).[[38]](#footnote-38)

The purpose of SIS is ultimately to make Europe safer, by assisting the competent authorities to preserve internal security (specifically aimed at an EU – which has open borders and which therefore facilitates the ease of free movement – persons, services and goods).

The scope of SIS is defined by three legislative instruments:

1. Border Control cooperation[[39]](#footnote-39)
2. Law enforcement cooperation[[40]](#footnote-40)
3. Cooperation on vehicle registrations[[41]](#footnote-41)
4. **The European Union**

Police Cooperation sits within the Migration and Home Affairs (MHA[[42]](#footnote-42)) Directorate General (DG) at the European Commission, which covers a number of (related) areas[[43]](#footnote-43) (many aspects of which are be discussed/touched on in the context of this paper in respect to cooperation). The remit and focus of the DG is to, “*manage policies that aim at ensuring that all activities necessary and beneficial to the economic, cultural and social growth of the EU may develop in a stable, lawful and secure environment. More specifically ….. to build an open and safer Europe*.”[[44]](#footnote-44) Whilst reference is made to safety this obviously has an overlap into the area of security;[[45]](#footnote-45) recognising also, that policing and security, by their very nature, cross into other policy areas of the EU (for example, transport[[46]](#footnote-46) and free movement[[47]](#footnote-47) as previously discussed).

The origins of police cooperation are traceable back to 1976 and what was known as the ‘Trevi Group.’ This was based on an intergovernmental network and approach and was later followed under the Prüm Treaty.[[48]](#footnote-48)

Prior to the Treaty of Lisbon[[49]](#footnote-49) there had been a three-pillar system:[[50]](#footnote-50) (Figure 3: EU structure before Lisbon). Under the Maastricht Treaty[[51]](#footnote-51) pillar-three related to the Communities external borders; combating terrorism, serious crime, drug trafficking and international fraud. It also encompassed judicial cooperation in both criminal and civil matters; controlling illegal immigration and a common asylum policy. Over time this, cooperative basis has been further strengthened – including by related (EU) legislative acts.

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**Figure 3**: Three-Pillar EU system (prior to Lisbon)

(Source: author)

The Amsterdam Treaty[[52]](#footnote-52) resulted in (amongst other changes) revisions and movements across pillars. The Community method now applied to some major areas which had previously been within the third pillar, such as asylum, immigration, crossing external borders, combating fraud, customs cooperation and judicial cooperation in civil matters. Additionally, some of the cooperation arrangements under the Schengen Agreement, which had been endorsed by the EU and Communities were also transferred. Intergovernmental cooperation in the areas of Police and Judicial Cooperation (PJCC - becoming the newer/revised name) was also further strengthened by defining objectives and precise tasks and creating a new legal instrument similar to a directive. For the first time also, general provisions were included which allowed Member States to take advantage of common institutions so as to develop closer cooperation between themselves ‘*should they wish*’ (or be willing to do so).

The Lisbon Treaty removed the three-pillar structure. The legal basis for police cooperation is now Article 33 (customs cooperation) 87, 88 and 89 of the Treaty on the Functioning of the European Union.[[53]](#footnote-53) Effective police cooperation remains an essential part in making the Union an Area of Freedom, Security and Justice – ‘FSJ’ (which also respects the key area of fundamental rights). Noting, according to Article 4 TFEU, FSJ is a shared competence between the EU and the Member States.[[54]](#footnote-54)

This said, cross-border law enforcement cooperation involves really more players than just the police, it also concerns customs and border force agencies as well as other law enforcement/security services. The cooperation largely relates to serious crimes – such as organised crime, drug trafficking, trafficking in humans, modern day slavery, terrorism and cybercrimes. The cooperation extends across the areas of prevention, detection and investigation of offences across the EU – effectively the focus remains on safety and security.

In this vein, recently (July, 2020) the EU has updated its Security Strategy[[55]](#footnote-55) (for the period 2020-2025). Within it, four strategic priorities (pillars) are identified - namely:

1. **A future-proof security environment:** this area recognises that key infrastructure is vital – identifying in this regards, travel and public services, which need to be protected (physical and digital). Reference is made to the need to protect public spaces, identifying transport hubs and places of worship which have been the focus of many recent terrorist attacks.[[56]](#footnote-56)
2. **Tackling evolving threats**: in this respect it is identified that the Commission intends to revisit existing rules in place relating to cybercrime. Identity theft is particularly singled out, and it is said that measures should be taken to enhance law enforcement capacity in respect to digital investigations with the Commission having already put forward a strategy to enhance more effective ‘fighting’ against child sexual abuse (again online). ‘*Hybrid threats*’ are also identified within this area.
3. **Protecting European from terrorism and organised crime**: Anti-radicalisation is a prominent factor in this area – which will focus on early detection, resilience building and disengagement as well as rehabilitation and reintegration of those identified back into society. In addition to fighting what are seen as root causes – this pillar also aims to increase effective prosecution of terrorist (including those from outside the EU).

In respect to organised crime – an Agenda for tackling such has been created, which includes a sub-agenda specifically aimed at strengthening efforts to tackle drugs (demand and supply) and an agenda to tackle firearms trafficking (which has obvious links to terrorism).

Also targeted under this pillar is migrant smuggling and criminal asset seizure.

1. **A strong European Security ecosystem:** within this it is stressed that security needs to be viewed as everyone in Europe’s common goal and responsibility (not just LEA’s).

Throughout the Strategy (and threaded within all pillars) – cooperation is acknowledged as being a key component, which includes the extension outside of the EU including with other ‘partners,’ such as Interpol.

This Strategy identifies the importance of transport – the modes and hubs, and the risk to these systems, as well as other valuable but vulnerable critical national and regional infrastructure(s) and open spaces. It reinforces this link and synergy in respect of the need to protect the users and general public – in terms of keeping them safe from terrorism or other security threats. This obviously extends into the realms of the cyber dimension, whereby contemporary, as well as more familiar risks (i.e. drugs and weapons) are clearly identified and articulated – however, the reference to ‘*hybrid threats*’ identifies that the physical world and cyber world will invariable begin to further link and merge – child sexual exploitation and extremism being perhaps the more obvious areas we are currently witnessing, but with the developing areas of artificial intelligence and the Internet of Things (IoT) this threat is set to grow, as are the challenges to the police/LEA’s and society in general.

This Strategy should be viewed as warning of the challenges that further technology advancements, together with travel/movements may, *or inevitably, ‘will’* lead to, and should be seen as asserting the need for more cooperation and agreements – in order that policing can be more proactive – rather than responsive.[[57]](#footnote-57)

***3.1. Communications and data exchange developments***

More than ever, communications and the willingness to share and coordinate (cooperate) – particularly, across borders and jurisdictions, is crucial to our developing world, and our safety and security.

Whilst cooperation is key, that is not to say, that it is not a complex system[[58]](#footnote-58) “*of rules and actions that require competent bodies to have a broad knowledge of the EU acquis, nation- al legislations, and the legislations of individual states that directly participate*.”[[59]](#footnote-59)

Over the last 25-years, there has been continuous improvements to facilitate the exchange of police information and data.[[60]](#footnote-60) Hence cooperation extends, now, further, to include legislative ‘requirements’ to facilitate this across some areas, i.e. to ensure that data and information is shared. Most of these interventions are in the form of Regulations which become binding (as written) to EU Member States, for example:

* Europol: Reinforcing the role and coordination responsibilities of Europol[[61]](#footnote-61) - specifically: ‘*supporting and strengthening’* – including, the remit to, ‘*collect, store, process, analyse and exchange information, including criminal intelligence*’ (Article 4.1.).
* The Schengen Information System (SIS) – as previously identified above.[[62]](#footnote-62)
* Operational Management of other Large-Scale IT Systems in the area of Freedom, Security and Justice - FSJ (eu-LISA).[[63]](#footnote-63)

eu-LISA is an agency responsible for managing and promoting information and communication technology (ICT).[[64]](#footnote-64) It is viewed as being pivotal to the success factor for the implementation of FSJ. Recognition is clearly accorded to the transformation that is occurring in terms of threats and challenges, that is, *hybrid threats* and the virtual world. eu-LISA identifies that, more than ever, data and information needs to be coordinated and shared, a necessity in today’s globalised world.

The Prüm Decision[[65]](#footnote-65) clearly realised the need for stepping up cross-border cooperation, particularly in combating terrorism and cross-border crime. In 2012, the Commission adopted a Communication relating to the European Information Exchange Model (EIXM). EIXM reviewed the exchange landscape and recommended concrete steps to increase the efficiency and improve the application of existing cooperation instruments.[[66]](#footnote-66)

An important point to return to at this juncture is that whilst data exchange is viewed as highly significant to fight crime – including terrorism, this nevertheless, also remains a challenge for Police to Police (LEA’s to LEA’s) cooperation.[[67]](#footnote-67) Invariably, there remains a fine line between sharing data and information for safety and security reasons and overstepping into the boundaries of compromising human rights and other entitlements, such as privacy.

Telephone data and data retention has particularly proved problematic. In the aftermath of the terrorist attacks in Madrid in 2004 and London in 2005, a Data Retention Directive[[68]](#footnote-68) was adopted to harmonise EU efforts into the investigation and prosecution of such serious crimes. Part of the Directive required operators to retain certain categories of communications data, i.e. traffic and location data (however, noting, this did not include the content of the communications) for a period of between six month and two years in order to be able to make it available, on request, to law enforcement authorities, in order to assist with the investigation, detection and prosecution of serious crimes and terrorism. Whilst the data provided valuable leads and evidence that resulted in convictions for criminal offences (plus also the acquittals of innocent suspects in relation to offences) it was not without criticism. In April 2011, the EU Commission published a report[[69]](#footnote-69) and while it concluded that it would continue to support and regulate the storage of, access to and use of telecommunications data, the report also concluded that EU rules in this area needed to be improved to prevent operators with unfair obstacles in the Internal Market and to ensure that high levels of respect for privacy and the protection of personal data are applied consistently.

This was taken a step further, in 2014, by a Court of Justice of the European Union (CJEU) case[[70]](#footnote-70) wherein, it was declared that the Data Retention Directive was invalid, with the Court adopting the view that the Directive did not meet the principle of proportionality and should have provided more safeguards to protect the fundamental rights to respect for private life and to the protection of personal data.[[71]](#footnote-71) Following the judgment, the Commission began to monitor developments of data retention practices also at national level.

It is interesting to note that part of the Prüm Decision also identifies the need for rules for more physical operational, police cooperation – such as joint patrols. The Prüm framework also lays down provisions under which EU Member States grant each other access to their automated DNA analysis files,[[72]](#footnote-72) automated fingerprint identification systems and vehicle registration data. The Prüm Council Decisions also regulates the exchange/sharing of vehicle and owner/holder information – including car registration information (including licence plates and chassis numbers) which are exchanged through national platforms that are linked to the online application – called “EUCARIS.[[73]](#footnote-73)”

Again, the EUCARIS platform only too clearly demonstrates the significance of transport and movement monitoring and the sharing of information in order to keep citizens safe and secure. It also evidences the clear cross-over into the realms of the EU Transport Chapter – noting that the legislative basis for EUCARIS[[74]](#footnote-74) overlaps both MHA (formally Justice and Home Affairs EU Directorate – JHA[[75]](#footnote-75)) and transport. Thus, the transport chapter (and legislative basis) is a significant factor utilised in fighting crime and particularly terrorism; and, has been shown, there has been a need to look outside the area of JHA in the past.[[76]](#footnote-76) This therefore identifies and highlights some of the weaknesses in terms of a cooperative approach which can lack a commitment from all Member States to act in unison and with the same assertion, inevitable being more subject to State will.

An important area and development relating to policing and coordination, particularly, across the area of transportation, relates to aviation security and terrorist attacks, both regionally – that is within the EU, and internationally.[[77]](#footnote-77) What should be borne in mind, is that, prior to 9/11, cooperation in the field of counter-terrorism was largely informal and ad-hoc;[[78]](#footnote-78) and after 9/11, the then structure of the EU presented challenges in terms of taking collaborative and coordinated measures in the EU (under the pillar of JHA/FSJ). Ultimately, it was via the transport chapter that measures were initially taken and adopted.[[79]](#footnote-79) This said, in 2016, a Directive relating to obtaining passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime had as a legislative basis Article 82(1) and point (a) of Article 87(2) – which relates to judicial cooperation in criminal matters and police cooperation respectively.[[80]](#footnote-80) This has been an intensely controversial subject matter in terms of transferring information, particular outside of the EU.[[81]](#footnote-81) Only on 16 July 2020 did the judgement of the CJEU, in the *Schrems II* case,[[82]](#footnote-82) declare that the existing framework was no longer a valid mechanism to transfer personal data from the European Union to the United States. The *Schrems II* case remains an important constitutional judgment with profound implications. Not least, it has led to the U.S. Department of Commerce and the European Commission re-initiating discussions to evaluate the potential for an enhanced EU-U.S. Privacy Shield framework.

Further afield, *Schrems II* creates a lot of uncertainties about the future of data transfers outside the EU to other third countries. It remains a stark reminder of the continuing conflict and tension between maintaining human rights and transferring mass data, that could lead to policy and competence creep, in terms of creating (or the potential to create) a surveillance system, the over monitoring of society or the misuse of information. Inevitably, this calls into question the aspect of trust and cooperation; but invariably, the willingness to ensure adequacy, particularly the adequacy level of protection afforded by a third country, which remains a primary questioned to be determined.

The aspect of data transferral, therefore, also continues to remain a challenge to policing and other LEA’s[[83]](#footnote-83) and none more so than in the case of the UK – which now sits outside the bloc of EU Member States.

**4. *The UK and beyond 2021***

The UK has always had somewhat of a precarious and yet privileged position in the EU.[[84]](#footnote-84) In many ways it has had the best of both worlds – it has been able to ‘cherry pick’; opting in and opting out – including in respect to opening up its borders,[[85]](#footnote-85) to fully engaging in police cooperation[[86]](#footnote-86) *and even…. human rights*.[[87]](#footnote-87) It was part of the most successful union of countries that has ever occurred – attested by the simple fact that this alliance has not seen a war in Europe for over 75-years. *Lest we forget*[[88]](#footnote-88) – *the longest period ever.*

Everything we have learnt over time points to the failures of taking a rigid Westphalian (isolative) approach. There is the added danger that this could inevitably shift to a nationalist stance that has no place in today’s globalised world. The UK, former Prime Minister, Tony Blair, identified how key cooperation is and how significance it remains to us, when he said;

“*We live in a world where isolationism has ceased to have a reason to exist. By necessity we have to co-operate with each other across nations. Many of our domestic problems are caused on the other side of the world. …... Poverty in the Caribbean means more drugs on the streets in Washington and London. …… These problems can only be addressed by international co-operation. We are all internationalists now, whether we like it or not. ……... We need new rules for international co-operation and new ways of organising our international institutions*.”[[89]](#footnote-89)

Clearly this extends to close neighbours and regional cooperation. The EU recognises that, “*No man is an island: …….No one country can protect all [*its*] external borders – it’s a joint effort*.”[[90]](#footnote-90) Whilst the UK is, without doubt, an island, it did build a ‘*bridge*[[91]](#footnote-91)’ metaphorically to connect to neighbouring nations and it did chose to join this cooperative alliance of countries. Does it really mean that it wants to be separated…. separated from progression, unity and arguably, through such segregation, lack the best of means to protect its citizens?

Globalisation has led to a different world (different to when the UK joined the EU in 1973[[92]](#footnote-92)) – where challenges come externally but also internally. From 1973 until 2021 the UK ‘*stood’* as a Member of one of the most progression models of unity across nations.

Given this, should the UK really have aimed to go back to the 1970’s? In many ways, ‘*we*’[[93]](#footnote-93) has evolved so much that it is difficult to contemplate and impossible to achieve. So, it is with some irony, that in an ever-globalised world (taking the current environment with regards to Covid-19 out of the equation) that the UK – has taken this backwards (devolutionary) regressive step – to minimise opportunities of free movement and ultimately to risk the ability to share and coordinate – including in respects to data sharing and police cooperation.

**4.1. *The UK where it currently ‘sits!’***

At the beginning of 2019 the EU produced a document warning of the potential to the UK after withdrawal from the Union;[[94]](#footnote-94)

“*Unless otherwise provided …… at the end of the transition period the United Kingdom shall cease to be entitled to access any network, any information system and any database established on the basis of Union law. The United Kingdom shall take appropriate measures to ensure that it does not access a network, information system or database which it is no longer entitled to access*” (Article 8).

As of 1 January, 2021 the UK’s *standing* in Europe is noticeably different. It no longer is a Member of the EU and that means it stands to lose the majority of mechanisms for coordination and cooperation that it availed itself of previously (as of 2020) with its neighbours in this European bloc. This also will affect linked policy areas, such as transport and free movement. Currently there is a 6-months window which allows personal data to continue to flow, as it did before the end of the Brexit transition period, while the EU completes the adequacy process.[[95]](#footnote-95)

The UK still has its ‘National’ Police Computer (PNC) which has evolved in terms of data held and capabilities since its original concept and inception in the 1970’s. Noting, that this was complemented by the Police National Database (PND) introduced in 2009, which receives intelligence data from predominantly police forces (and some other LEA’s) on a daily basis relating to persons, events, locations, organisations (including criminal) and other related matters.

In 2016, the same year as the Referendum which saw the UK start its journey to leave the EU, it was announced that a replacement for both the PNC and PND would occur. The National Law Enforcement Data Programme (NLEDP) declared the aim to relocate both systems onto a single technology platform the Law Enforcement Data Service (LEDS).

The intention was said to support the police and other LEA’S with ‘current and joined up information, on-demand and at the point of need.’ It was argued that this would ‘*prevent crime and better safeguard the public*.’[[96]](#footnote-96)

Currently, NLEDP is behind the schedule anticipated and is continuing to incur heavy costs, with the programme overspend being reported as being in excess of over £45m.[[97]](#footnote-97) Concerns have also been raised within the UK that the system-merger could lead to over-policing and that extra data collection could compromise liberties as well as be a security risk through the data processing mechanisms.[[98]](#footnote-98) This said, in January 2021, as the UK left the EU, reports circulated of a technical issue which resulted in 150,000 records being deleted from the UK PNC database. Ironically, as a direct consequence of the UK leaving the EU, some 40,000 alerts relating to European criminals were purposely removed.[[99]](#footnote-99)

Whilst supporters of LEDS are still hopeful, given the delays, it will still be possible to test part of the LEDS system in 2021 (specifically, identified pilot police forces to access Driving Licence Images at the roadside by Police issued mobile devices) there remains so much irony in this project, not least considering the UK’s position in Europe at the end of 2020 and future uncertainty.

The NLED programme clearly recognised the need to aid the police (and other agencies) by providing up-to-date information which would aid to safeguard the public (as well as frontline officers). Affirmation was accorded to the necessity of ensuring information and intelligence is joined-up and part of this means sharing, coordinating and cooperating. However, with the UK withdrawing from the EU, the cooperative mechanism to share information held on the PNC (or any replacement) is no longer compatible with the legislative instrument, which recognised the UK as being a Member State of the Union.[[100]](#footnote-100) In December 2020 a partnership agreement between the EU and UK (of over 1,000 pages[[101]](#footnote-101)) was published, whereby security provisions were identified within but were not confirmed specifically. This puts the UK into somewhat of a precarious position regarding what mechanisms are actually in place. The UK however advocates that the partnership ‘agreement *aims* to mitigate the impact of these changes by providing replacement law enforcement tools, and support action against criminal and terrorist activity in the UK and EU.’ This said, as of February 2021 – this is still not conclusive and sufficiently determined, with the UK acknowledging that, it ‘*no longer has access to some databases (SIS II*[[102]](#footnote-102) *and ECRIS*[[103]](#footnote-103)*) or law enforcement mechanisms (European Arrest Warrant)*’ (EAW) etc., having, ‘*changed its relationship with Europol*.’[[104]](#footnote-104) The mention to the UK’s relationship within Europol[[105]](#footnote-105) is noticeably stark, in other words, as is acknowledged by Europol, agreements still need to be negotiated and finalised.[[106]](#footnote-106)

The UK is now not an EU Member State and currently is not is any type of open and disclosed relationship with Europol in terms of the available and current agreements to other countries:

* An Operational Agreements (such as Australia and other have)
* A Strategic Agreement (such as with China and others)
* A Working Agreements (as exists with Japan and others).

So, on the one hand, whilst the UK acknowledges the need to advance its own internal police databases, *to better safeguard the public and reduce crime*, it lacks the external mechanism, facilities and support to realistically actually do this in today’s globalised world. Even with regards to the basics (the origins for PNC) - driver checks, the UK is restricted from searching and sharing data via tools, such as EUCARIS.[[107]](#footnote-107)

In the meantime, the UK (according to the Home Affairs Committee) still continues to examine “*the* ***extent*** *to which the agreement supports security cooperation between the UK and EU, and its consequences for the UK’s law enforcement capability.*” It also continues to examine “*the* ***scope*** *for building on the agreement in the future to improve how the UK and EU share information or enable cross-border policing activity*.”[[108]](#footnote-108)

These are worrying words in terms of ensuring current protections are in place or can be put in place to the same level as the UK previously had post-Brexit.

It should be identified that in 2007 the UK’s right to ‘opt in’ was extended to cooperation in policing and criminal justice.[[109]](#footnote-109) This meant that the UK had the ability to opt into EU JHA measures where the UK determined it was in the national interest to do so, and quite clearly it exercised this right as a means to ensure safety and security to citizens.[[110]](#footnote-110) This can be evidenced from the simple analysis of the effectiveness of the EAW – in the period 2004-2015:[[111]](#footnote-111)

* Prior to 2004 fewer than 60 individuals a year were extradited from the UK (this figure includes all countries, not just EU Member States). Since 2004 and until 2015, the EAW enabled the UK to extradite over 7,000 individuals accused or convicted of a criminal offence to other Member States.[[112]](#footnote-112)
* One of those who were extradited back to the UK was Hussain Osman, one of the 21/7 bombers.[[113]](#footnote-113) He was extradited from Italy to the UK after just 56 days under an EAW issued by UK authorities.[[114]](#footnote-114)

Currently, the UK is also reverting back to a reliance on intelligence that is arguably not so up-to-date in term of ‘real-time’ information from Interpol and the use of red notices – in order to inform and share data and alerts. The National Crime Agency have already expressed concerns about the loss of access to SIS II, informing UK-MPs, ‘*that officers would instead be “reliant” on EU member states sharing information through Interpol, and warning there would be a “gap” if they did not.*’[[115]](#footnote-115)

Cooperation is key to preventing terrorist atrocities which is clearly acknowledged in the new Counter-Terrorism (CT) Agenda for the EU.[[116]](#footnote-116) While the UK has its own CT (CONTEST[[117]](#footnote-117)) Strategy there were obvious synergies with the EU, given the driver was the events of 9/11. It was in the aftermath of 9/11, that the EU adopted its first action plan and, in June 2002, produced a fundamental piece of legislation: the Framework Decision on Combating Terrorism, providing a common definition of terrorist offences across Europe.[[118]](#footnote-118) Following the 2004 and 2005 attacks on Madrid and London the EU adopted an overarching counter-terrorism strategy. This was centred around recognising that the terrorism threat is both global and borderless. At every stage the UK has supported the EU approach to unity and cooperation to tackle terrorism. This has included being a staunch supporter of the PNR Directive, of April 2016,[[119]](#footnote-119) which established an EU system to collect flight passenger data in order to detect suspicious traveller.[[120]](#footnote-120) When it was initially presented as a proposal the UK stated the following:

“*There is no doubt that our more inter-connected world is a better world. But greater freedom of movement also provides opportunities for those who wish to do us harm. We know that terrorists have long had an interest in aviation related attacks. We know too that serious criminals, people traffickers and drug smugglers have exploited easy international forms of travel to carry out their crimes. ….. governments around the world are increasingly exercising greater vigilance to keep their citizens safe. Passenger Name Records …. is a vital and proven tool in the fight against terrorism and other serious crimes*.”[[121]](#footnote-121)

The PNR Directive was transposed into UK law via a Statutory Instrument in 2018 and is listed under a criminal law and data protection heading.[[122]](#footnote-122) The new EU CT Agenda reinforces the need to further develop aviation security risk assessments in respect to the response after an incident and the level of exchange of information within the EU, including “*the participation of like-minded third countries, notably the U.S., Australia and Canada,*”…. and now…… presumably also the UK too.[[123]](#footnote-123) As was commented upon earlier, the transfer of data, particularly to third countries has proved highly problematic and the UK is positioned to have to navigate/conclude an agreement in this position regarding the PNR and transfer of data.

Ironically, in 2018 in an EU barometer survey across the Member States, the UK was critical of the action of the EU in terms of believing that the EU should intervene more than it currently does. This was particularly the case in relation to the *fight against terrorism* (72%). UK citizens also indicated that the EU has not done enough when it came to *the protection of external borders* (40%); and, when asked whether more EU intervention was required, 60% of those surveyed indicated yes.[[124]](#footnote-124)

**5. CONCLUSION**

In the 2016 referendum, 48% of the UK population voted to stay in Europe.[[125]](#footnote-125) It is questionable whether the 52% who voted to leave were aware of the full consequences of voting this way – in terms of the risk (less protection or the means to ensure the mechanism for sharing, identifying and mitigating risk) which could potentially compromise state and personal safety/security. Currently, the UK continues to negotiate this minefield - in terms of the ability (or inability) to cooperate with (police and other LEA) partners, in the same manner it did until the end of 2020. This ultimately will be achieved only through state willingness and trust.

One glimmer of hope and reassurance is that on 19 February, 2021, the UK announced that it welcomed the European Commission’s draft data adequacy decisions, which recognised the UK’s high data protection standards as ‘adequate.’[[126]](#footnote-126) It urged the EU to follow-up on this swiftly so that cooperation could continue between the UK and the EU, thus ensuring that ‘*law enforcement authorities can keep* [UK] *citizens safe*.’[[127]](#footnote-127)

If this is extended past this draft agreement then it would allow for personal data to continue to flow freely from the European Union (EU) and wider European Economic Area (EEA) to the UK[[128]](#footnote-128) in compliancy with the EU General Data Protection Regulation (GDPR[[129]](#footnote-129)) and the Law Enforcement Directive (LED[[130]](#footnote-130)). The draft adequacy decisions will continue the process through comitology.[[131]](#footnote-131)

There can be little doubt that by leaving the EU the UK gave up many benefits including compromising its position with regards to SIS and the transfer and access to vital information and data held within Europe, and other areas of police (LEA) cooperation.[[132]](#footnote-132) Covid-19 has shown just how interconnected our societies are and while international cooperation is so very important – so is regional cooperation; if the UK cannot cooperate with its European neighbours how will it fair any better internationally?

Citizens of the UK have lost their right to equal treatment within the EU – and that could translate to their safety and security.

*Evolution* (joining the EU) meant that UK citizens were also European Citizen – *devolution* (leaving the EU) means that a UK citizen cannot now be. With this momentous decision and action, comes extraction of entitlements and other, still unknown, consequences. Only time will tell – just how successful the current negotiations will be and how much UK citizens may have their safety and security risked by Brexit.

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1. Cambridge Dictionary online: <https://dictionary.cambridge.org/dictionary/english/cooperation> [↑](#footnote-ref-1)
2. Authors proposed definition for policing cooperation. [↑](#footnote-ref-2)
3. Authors previous papers wherein this is discussed - see for example:

   S. J. Fox (2015) ‘To practice justice and right’ – international aviation liability: have lessons been learnt? International Journal of Public Law and Policy, (2015) Vol. 5, No. 2, pp. 162-182. DOI: 10.1504/1JPLAP.2015.071027.

   S. J. Fox (2017) Borderless skies! Sovereign dominance, Regionalism: Lessons from Europe. IJWP, Vol. XXXIV, No. 4 (2017) pp 9-41

   S. J. Fox (2014) The evolution of aviation: *In times of war and peace – blood tears and salvation!*  International Journal on World Peace (2014) Vol. XXXI No. 4 Dec. pp. 49-79

   S. J. Fox (2015) ‘CONTEST’ing Chicago. Origins and Reflections: *Lest we forget!* International Journal of Private Law, (2015) Vol. 8, No. 1, pp. 73-98.

   S.J. Fox (2020) The ‘risk’ of disruptive technology today (A case study of aviation – Enter the drone), Technology in Society (2020), doi: <https://doi.org/10.1016/j.techsoc.2020.101304>

   Conference presentations:

   S. J. Fox; ‘Cyber governance’ Jurisdiction and Boundaries - *Diplomacy? - A question of willing!* International Conference on Cyberlaw, Cybercrime and Cyber Security. 14–16th November, 2018 New Delhi, India. [↑](#footnote-ref-3)
4. A point discussed by the author in other publications, see for instance: S. J. Fox (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92 – wherein it is said;

   “It is widely known that the … 9/11 Report makes critical reference to the liaison and coordination (or lack of such) by the respective security agencies, stating that, “*the intelligence community is not organized well for joint intelligence work*.” Whilst it was said, that the “*U.S. government has access to a vast amount of information*.” It was, furthermore, acknowledged to have, “*a weak system for processing and using what it has*.” The recommendation was that the “*system of ‘need to know’ should be replaced by a system of ‘need to share’*.” [↑](#footnote-ref-4)
5. A. Goldsmith (2005) Police reform and the problem of trust. Theoretical Criminology 9(4): 443–470.

   (See also J. Jackson, B. Bradford, (2010) What is Trust and confidence in the police? Policing 4(3): 241–248. M. Hough, J. Jackson, B. Bradford, A. Myhill, P. Quinton (2010) Procedural justice, trust, and institutional legitimacy. Policing 4(3): 203–210.) [↑](#footnote-ref-5)
6. S. J. Fox (2017) Borderless skies! Sovereign dominance, Regionalism: Lessons from Europe. IJWP, Vol. XXXIV, No. 4 (2017) pp 9-41*.* [↑](#footnote-ref-6)
7. As of the 23:00 GMT on January 31, 2020 UK stopped being a member of the European Union. The transition period ended on December 31, 2020. [↑](#footnote-ref-7)
8. In the UK the Channel separating the UK from France is known as the English Channel. In France it called La Manche. [↑](#footnote-ref-8)
9. Including EEA (and EFTA). [↑](#footnote-ref-9)
10. This is further discussed within the following paper (by the author):

    S. J. Fox (2016) BREXIT: A bolt from the blue! – *Red sky in the morning? Issues in Aviation Law and Policy.* Volume 16, No. 1. Autumn, 2016, pp 83-119. [↑](#footnote-ref-10)
11. From a personal perspective, I was presenting at an international aviation conference on a Greek island, talking about unity and how aviation had made the world smaller – when I woke to hear the results; the UK had decided, by a small majority, that it wished to leave the Union. [↑](#footnote-ref-11)
12. Pan Am flight 103, was a passenger airliner (operated by Pan American World Airlines) that exploded over Lockerbie, Scotland on 21 December 1988, when a bomb was detonated on board. All 259 people on board were killed, as well as 11 individuals on the ground. The Boeing 747 plane was en route from Frankfurt, Germany to New York (via London and then with a link onto Detroit after New York). [↑](#footnote-ref-12)
13. On September 11, 2001, 19 terrorist extremists, associated with the Islamic group al Qaeda, hijacked four airplanes and carried out suicide attacks against targets in the United States.

    Two of the planes were flown into the twin towers of the World Trade Center in New York City, a third plane hit the Pentagon just outside Washington, D.C., and the fourth plane crashed in a field in Shanksville, Pennsylvania.

    Almost 3,000 people were killed during the 9/11 terrorist attacks. [↑](#footnote-ref-13)
14. The 2004 Madrid train bombings (also known in Spain as 11-M) [↑](#footnote-ref-14)
15. Particularly 7/7 (7 July 2005) the attacks to the London transport system (tube and buses).

    On 21 July 2005 (21/7) there was an attempt to launch further bomb attacks on the London transport system to replicate the 7/7 bombings.

    See also the attacks and attempted attacks to Glasgow and Liverpool (John Lennon) airports (30 June 2007). [↑](#footnote-ref-15)
16. I have continued to write extensively across these areas and hence throughout this paper some reference is made to my previous research (particularly to show this subject overlap).

    For example – safety and security:

    S. J. Fox (2014) ‘Safety & Security: *The influence of 9/11 to the EU Framework.’* Research in Transportation Economics – Special Edition DOI: 10.1016/j.retrec.2014.07.004 Vol. 45 (2014), pp. 24–33

    S. J. Fox (2017) “Mobility and Movement Are ‘Our’ Fundamental Rights”. . . Safety & Security – Risk, Choice & Conflict! Issues in Aviation Law and Policy. Volume 17 No. 1. Autumn, 2017, pp 7-43.

    Terrorist attacks:

    * S. J. Fox (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92
    * S. J. Fox (2015) ‘CONTEST’ing Chicago. Origins and Reflections: Lest we forget! International Journal of Private Law, (2015) Vol. 8, No. 1, pp. 73-98

    [↑](#footnote-ref-16)
17. Cyber challenges:

    S. J. Fox (2016) Flying challenges for the future: Aviation preparedness – in the face of cyber-terrorism. Journal of Transportation Security. First published online Sept. 2016.

    S. J. Fox (2018) Policing - the technological revolution: Opportunities & Challenges! ….. Technology in Society. https://doi.org/10.1016/j.techsoc.2018.09.006 (online). Printed in Technology in Society 56 (2019) 69-78. (Linked to presentation at the UN – 2018)

    Transport modes (particularly to/by aviation and drones/unmanned aerial vehicles and systems – UAV’s):

    * S. J. Fox (2017) THE RISE OF THE DRONES: Framework and Governance – Why risk it! 82 J. Air L. & Com. 683-715
    * S. J. Fox (2019) POLICING: MONITORING, INVESTIGATING and PROSECUTING: Drones. European Journal of Comparative Law and Governance 6 (2019) 1-57.

    S. J. Fox (2019) Positioning the Drone: Policing the Risky Skies, Issues in Aviation Law and Policy. Volume 18, Issue 2. Pp 295-332

    S. J. Fox (2020) The ‘risk’ of disruptive technology today (A case study of aviation – Enter the drone), Technology in Society (2020), doi: <https://doi.org/10.1016/j.techsoc.2020.101304> [↑](#footnote-ref-17)
18. Space travel and technologies and supporting infrastructures:

    S. J. Fox (2019/2020) Policing Mining: in outer-space Greed and Domination vs. Peace and Equity A governance for humanity! Resources Policy 64 101517.

    Fox, S. J. *Tracking the position*: Global satellite navigations in Europe. Expanding man's understanding

    ‘*GALILEO*: 2020!’Communications Law Vol. 25, No. 4, 2020. 191-208. [↑](#footnote-ref-18)
19. Noting that to those who have studied the legal discipline policy is ultimately viewed as ‘soft-law.’ [↑](#footnote-ref-19)
20. This is purposely applied as it demonstrates the complexity of police cooperation and the need to sometimes revisit events and processes; or, as in the UK’s recent approach (i.e. – Brexit) to arguably take a backwards direction in terms of the potential to reduce police cooperation channels. [↑](#footnote-ref-20)
21. Where relevant and prudent, reference and comment will be also made to the author’s previous work. [↑](#footnote-ref-21)
22. Jean-Paul Rodrigue (2020) *The Geography of Transport Systems*. Routledge.

    A. Wright (2002) *Policing: An Introduction to Concepts and Practice.* Willan Publishing

    S. J. Fox (2018) Policing - the technological revolution: Opportunities & Challenges! ….. Technology in Society. https://doi.org/10.1016/j.techsoc.2018.09.006 (online). Printed in Technology in Society 56 (2019) 69-78. [↑](#footnote-ref-22)
23. See authors papers as cited within notes:

    3, 4, 6, 16, 17, 18, in particular. [↑](#footnote-ref-23)
24. Philip E. Steinberg (2009) Sovereignty, Territory and the Mapping of Mobility: A view from the Outside, *Annals of the Association of American Geographers*, 99:3 467–495.

    See also Sarah Jane Fox (2016) SPACE: The race for mineral rights. ‘*The sky is no longer the limit.’* Lessons from Earth. *Resources Policy.* Vol. 49, September 2016, Pages 165-178. [↑](#footnote-ref-24)
25. Ibid. Also see for example:

    S. J. Fox (2017) Borderless skies! Sovereign dominance, Regionalism: Lessons from Europe. IJWP, Vol. XXXIV, No. 4 (2017) pp 9-41

    S. J. Fox (2016) Green and level playing fields: A paradox of virtues. DUMPING – Anti-competitiveness. Int. J. Public Law and Policy, Vol. 5, No. 4, 2016, 333-367.

    S. J. Fox (2015) ‘CONTEST’ing Chicago. Origins and Reflections: *Lest we forget!* International Journal of Private Law, (2015) Vol. 8, No. 1, pp. 73-98

    S. J. Fox (2014) The evolution of aviation: *In times of war and peace – blood tears and salvation!*  International Journal on World Peace (2014) Vol. XXXI No. 4 Dec. pp. 49-79 [↑](#footnote-ref-25)
26. Ibid. [↑](#footnote-ref-26)
27. Ibid. See particularly:

    S. J. Fox (2016) SPACE: The race for mineral rights. ‘*The sky is no longer the limit.’* Lessons from Earth. *Resources Policy* (2016) Vol. 49, September 2016, Pages 165-178 – wherein international Treaties are discussed and the implications of International Law. [↑](#footnote-ref-27)
28. S. J. Fox (2015) “To practise justice and right’– international aviation liability: have lessons been learnt?” *International Journal of Public Law and Policy,* Vol. 5, No. 2, 2015. [↑](#footnote-ref-28)
29. Anthony, C. Arend (1999) *Legal Rules and International Society.* Oxford University Press. Pp. 208. [↑](#footnote-ref-29)
30. Plans for PNC began in 1968 and the system was introduced in 1974.

    Today, it operates on a 24/7 basis to provide accurate and timely information. PNC is the primary source of information relating to previous convictions, or other information relating to criminal justice interactions (e.g. are subject to the legal process - waiting to appear at court; are wanted by the police; have certain court orders made against them, etc.,)

    Vehicle information, such as a description (colour, make model, vehicle identification number, if a vehicle is stolen, insurance details, plus, some other forms of lost and found property (e.g. including plant and machinery) are also stored on it.

    Various other data and information stored within it includes - in relation to people who are missing, disqualified from driving, are a firearms certificate holder, etc.

    The PNC is also linked to a fingerprint identification system and the National DNA database. If a record exists, biometric information can be used to prove identity for missing or vulnerable persons and crime detection.

    Source and historical information: <https://discovery.nationalarchives.gov.uk/details/r/C13430160> (Accessed 1 August 2020)

    See also: https://www.inbrief.co.uk/police/police-national-computer/ [↑](#footnote-ref-30)
31. Edward Heath (the Conservative PM) took the UK into the EEC in January 1973. French President, Charles de Gaulle had previously blocked UK membership twice in the 1960s.

    The UK European Communities Act, 1972, was the legal provision for the accession of the UK to the three Communities – the European Economic Community (the EEC) the European Atomic Energy Communit9 (Euratom) and the European Coal and Steel Community (ECSC).

    <https://www.legislation.gov.uk/ukpga/1972/68/contents>

    In 1975 the UK held a referendum whereby the UK electorate voted to stay in the EEC under renegotiated terms of entry. [↑](#footnote-ref-31)
32. Operational management of the second generation Schengen Information System (SIS II) entered into operation on 09 April 2013 replacing its predecessor SIS1. [↑](#footnote-ref-32)
33. Understood as, national border agents, police, customs, judicial, visa and vehicle registration authorities. A list of competent authorities which are authorised to directly search the data is contained in the second generation Schengen Information System pursuant to Article 31(8) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council and Article 46(8) of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System. OJ C 226, 28.6.2018, p. 1–169. [↑](#footnote-ref-33)
34. Standing for Supplementary Information Request at the National Entries. [↑](#footnote-ref-34)
35. List of N.SIS II Offices and the national Sirene Bureaux 2018/C 226/02. OJ C 226, 28.6.2018 p. 170-180. [↑](#footnote-ref-35)
36. *Noting*: however, that the UK also chose not to join the Schengen Area and thus lost the facilities (does not, cannot, issue or access) to the Schengen-wide alerts for refusing entry and stay in the Schengen Area. [↑](#footnote-ref-36)
37. See UK – College of Policing (<https://www.college.police.uk/What-we-do/Learning/Professional-Training/Information-communication-technology/Pages/PNC-Police-National-Computer.aspx>) [Accessed 3 August, 2020]

    List of competent authorities which are authorised to search directly the data contained in the second generation Schengen Information System pursuant to Article 31(8) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council and Article 46(8) of Council Decision 2007/533/JHA on the establishment, operation and use of the second generation Schengen Information System. (2018/C 226/01). OJ C 226, 28.6.2018, p1-169. [↑](#footnote-ref-37)
38. Ibid.

    Legal Base: Article 31(8) of Regulation (EC) No 1987/2006 of the European Parliament and of the Council dated 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 381, 28.12.2004, p. 4) (SIS II Regulation) and Article 46(8) of Council Decision 2007/533/JHA dated 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) (OJ L 205, 7.8.2007, p. 63) (SIS II Decision). This requires Member States to send to the Management Authority a list of its competent authorities authorised to search directly the data contained in SIS II pursuant the said legal instruments as well as any changes to the list. The list has to specify (i) each authority; (ii) which data this authority may search; and (iii) for what purposes. [↑](#footnote-ref-38)
39. Regulation (EC) No 1987/2006 of the European Parliament and of the Council of 20 December 2006 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

    OJ L 381, 28.12.2006, p. 4–23

    Updated by:

    Regulation (EU) 2018/1861 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of border checks, and amending the Convention implementing the Schengen Agreement, and amending and repealing Regulation (EC) No 1987/2006

    ELI: <http://data.europa.eu/eli/reg/2018/1861/2019-06-11> [↑](#footnote-ref-39)
40. Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) OJ L 205, 7.8.2007, p. 63–84

    Updated by:

    Regulation (EU) 2018/1862 of the European Parliament and of the Council of 28 November 2018 on the establishment, operation and use of the Schengen Information System (SIS) in the field of police cooperation and judicial cooperation in criminal matters, amending and repealing Council Decision 2007/533/JHA, and repealing Regulation (EC) No 1986/2006 of the European Parliament and of the Council and Commission Decision 2010/261/EU

    OJ L 312, 7.12.2018, p. 56–106

    Consolidated text: Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)

    ELI: <http://data.europa.eu/eli/dec/2007/533/2019-12-28> [↑](#footnote-ref-40)
41. Originally: Regulation (EC) No 1986/2006 of the European Parliament and of the Council of 20 December 2006 regarding access to the Second Generation Schengen Information System (SIS II) by the services in the Member States responsible for issuing vehicle registration certificates.

    OJ L 381, 28.12.2006, p. 1–3 as above: Regulation (EU) 2018/1862 [↑](#footnote-ref-41)
42. Formally Justice and Home Affairs (JHA) [↑](#footnote-ref-42)
43. The following three sitting outside the scope of this paper:-

    * *Migration*

    *Defined as:*

    1. *Legal migration and Integration*
    2. *Irregular migration and Return*
    * *Common European Asylum System*
    * *Innovation and Industry for Security*

    [↑](#footnote-ref-43)
44. EU Commission – DG Migration and Home Affairs

    https://ec.europa.eu/home-affairs/who-we-are/about-us\_en [↑](#footnote-ref-44)
45. This is discussed in terms of the overlap/meaning of safety and security, within previous papers of the author:

    Fox, S. J. (2017) “Mobility and Movement Are ‘Our’ Fundamental Rights”. . . Safety & Security – Risk, Choice & Conflict! *Issues in Aviation Law and Policy.* Volume 17 No. 1. Autumn, 2017, pp 7-43 [↑](#footnote-ref-45)
46. TITLE VI - TRANSPORT

    Articles 90 – 100 TFEU (Treaty on the Functioning of the European Union – Lisbon Treaty) [↑](#footnote-ref-46)
47. For example:

    FREE MOVEMENT OF GOODS TITLE II (TFEU) – Articles 28 & 29;

    TITLE IV FREE MOVEMENT OF PERSONS, SERVICES AND CAPITAL (TFEU)

    Chapter 1, 2 & 3 [↑](#footnote-ref-47)
48. This was introduced at an EU level by Council Decision 2008/615 JHA of 23 June, 2008.

    To be returned to later within this paper. [↑](#footnote-ref-48)
49. Signed on 13 December, 2007 at Lisbon – it did not enter into force until 1 December 2009. [↑](#footnote-ref-49)
50. For further information see:

    https://www.europarl.europa.eu/factsheets/en/sheet/3/the-maastricht-and-amsterdam-treaties [↑](#footnote-ref-50)
51. Signed in Maastricht on 7 February 1992, entered into force on 1 November 1993. [↑](#footnote-ref-51)
52. The Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts, signed in Amsterdam on 2 October 1997, entered into force on 1 May 1999. [↑](#footnote-ref-52)
53. Also see Title IV, Provisions of Enhanced Co-operation – Article 20 TEU (Treaty on European Union).

    To note: there are other key areas within the Treaty which are also relevant (but sit by and large outside the remit of this paper); such as, [↑](#footnote-ref-53)
54. See also: Chapters 4 and 5 of Title V of Part Three relating to the area of freedom, security and justice. [↑](#footnote-ref-54)
55. COM(2020) 605 final - COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS on the EU Security Union Strategy

    Brussels, 24.7.2020

    This has obvious origins back to the Stockholm Programme and builds this recognising the need for – An open and secure Europe serving and protecting citizens (Official Journal C 115 of 4 May 2010).

    Noting Article 71 (TFEU) Article 71 establishes a Standing Committee on Operational Cooperation on Internal Security (COSI) within the Council. COSI is composed of members of the respective competent national Ministries and authorities – i.e. justice (who are assisted by the permanent representatives to the European Union in Brussels and by the Secretariat of the Council).

    The Stockholm Programme (2010-2015) build upon the earlier Hague Programme (2005-2010)

    The Hague Programme: introduced the principle of "availability" as the guiding concept for law enforcement information exchange. This concept means that throughout the Union, information that was available to law enforcement authorities in one Member State should also be made accessible to law enforcement authorities in other Member States.

    The Stockholm Programme to take this further highlighting the need to further develop law enforcement cooperation instruments in the EU. [↑](#footnote-ref-55)
56. One of my previous papers considered the cyber threats to transport (aviation) and the reluctance to take these threats seriously and be proactive at an earlier time: Fox, S. J. (2016) *Flying challenges for the future:* Aviation preparedness – *in the face of cyber-terrorism. Journal of Transportation Security.* (Part delivered to UN - 2016): First published online Sept. 2016. [↑](#footnote-ref-56)
57. This is an area that I have spoken on, within Europe (including at the UN - Geneva) and internationally in terms of policing challenges for the future and the need to be proactive now – rather than responsive later.

    S. J. Fox: Policing Society: Utilising “*cool gadgets and tools.”* Safety, Security and Disasters. WSIS Forum EC Medici Framework. 19-23 March, 2018 – UN, Geneva.

    S. J. Fox: Policing challenges in the Cyber and Autonomous era (*Cybercrimes: Emerging Trends…… and developing risks).* International Conference on Cyberlaw, Cybercrime and Cyber Security. 14–16tth November, 2018 New Delhi, India. [↑](#footnote-ref-57)
58. As per the introduction to this paper. [↑](#footnote-ref-58)
59. G.Meško (2017) Police Cooperation in the European Union, Supported by Strengthening the EU Internal Security’s External Dimension. (Editorial Comment) European Journal of Crime, Criminal Law and Criminal Justice 25 (2017) 109-12. [↑](#footnote-ref-59)
60. As Meško (2017) identifies: this relates also to ‘pre-trial criminal proceedings, as well as analytical support to the competent authorities of the member states;’ however it does not extend to the transferral of investigative and police powers to the authorities of other member states or any EU institutions. [↑](#footnote-ref-60)
61. Initially established by a Council Decision 2009/371/JHA – a Regulation later replaced and repealed this (as well as several others earlier Decisions):

    Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA, applicable since 1 May 2017. OJ L 135, 24.5.2016, p. 53–114. [↑](#footnote-ref-61)
62. See above – regarding the three areas linked to legislative instruments (as identified). [↑](#footnote-ref-62)
63. Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (eu-LISA), and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, applicable since 11 December 2018.

    OJ L 295, 21.11.2018, p. 99–137. [↑](#footnote-ref-63)
64. eu-LISA full-fills the operational management tasks for Schengen Information System (SIS II),Visa Information System (VIS) and EURODAC. It ensures that these IT systems are kept functioning 24 hours a day, seven days a week to allow continuous and uninterrupted exchange of data between the national authorities using these systems. [↑](#footnote-ref-64)
65. Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime

    OJ L 210, 6.8.2008, p. 1–11

    Also see the implementing provisions: COUNCIL DECISION 2008/616/JHA of 23 June 2008.

    Noting the origins of the Decision was the multilateral treaty signed in Prüm, Germany, in 2005 (by Germany, Spain, France, Luxembourg, the Netherlands, Austria and Belgium). [↑](#footnote-ref-65)
66. The main legal instruments covered by EIXM are the Prüm Council Decision (2008/615/JHA) and the so-called Swedish Initiative (2006/960/JHA). [↑](#footnote-ref-66)
67. Excluding of course the added complexity in terms of sharing information with academics – a point to be returned to later. [↑](#footnote-ref-67)
68. Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC, OJ L 105, 13.4.2006, p. 54-63. [↑](#footnote-ref-68)
69. REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

    Evaluation report on the Data Retention Directive (Directive 2006/24/EC)

    18.4.2011 COM(2011) 225 final. Brussels, 18.4.2011. [↑](#footnote-ref-69)
70. Cases C-293/12 and C-594/12. 8 April 2014.

    See also Court of Justice of the European Union PRESS RELEASE No 54/14, Luxembourg, 8 April 2014

    Relating to the Judgment in the joined Cases C-293/12 and C-594/12 (Press and Information Digital Rights Ireland and Seitlinger and Others). [↑](#footnote-ref-70)
71. The Court also recognised that data retention serves, under clear and precise conditions, a legitimate and general interest, namely the fight against serious crime and the protection of public security. [↑](#footnote-ref-71)
72. DNA and fingerprint exchanges take place based on a "hit/no-hit" approach. This means that DNA profiles or fingerprints found at a crime scene in one EU Member State can be compared automatically with profiles held in the databases of other EU States. [↑](#footnote-ref-72)
73. EUCARIS is not a database nor a central repository. The *EU*ropean *CAR* and driving licence *I*nformation *S*ystem (EUCARIS) is a system that connects States so they can share vehicle and driving licence information and other transport related data. [↑](#footnote-ref-73)
74. The legal framework comes from various elements:

    Council Decision 2008/615/JHA and Council Decision 2008/616/JHA

    The Third Driving Licence Directive (2006/126)

    Directive (EU) 2015/413 of the European Parliament and of the Council of 11 March 2015 facilitating cross-border exchange of information on road-safety-related traffic offences.

    OJ L 68, 13.3.2015, p. 9–25

    The Register of Road Transport Undertakings (ERRU): Regulations (EU) No 1071/2009, 1072/2009, 1073/2009 and 1213/2010

    Delegated Regulation (EU) No. 305/2013 relating to the interoperable EU-wide eCall (technical information)

    Tachograph data exchange – Council Regulation (EEC) No. 3821/85 of 20 December 1985

    on recording equipment in road transport. [↑](#footnote-ref-74)
75. Noting JHA is commonly still used, including within Europol. [↑](#footnote-ref-75)
76. For example, after 9/11, as discussed in the following publications by the author:

    S. J. Fox (2014) ‘Safety & Security: *The influence of 9/11 to the EU Framework.’* Research in Transportation Economics – Special Edition DOI: 10.1016/j.retrec.2014.07.004 Vol. 45 (2014), pp. 24–33.

    See also: S. J. Fox (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92. [↑](#footnote-ref-76)
77. It is an area that I have written extensively on – that is, aviation security (and terrorist attacks) and regional and international approaches:

    S. J. Fox (2014) ‘Safety & Security: *The influence of 9/11 to the EU Framework.’* Research in Transportation Economics – Special Edition DOI: 10.1016/j.retrec.2014.07.004 Vol. 45 (2014), pp. 24–33. [↑](#footnote-ref-77)
78. This is discussed extensively within:

    S. J. Fox (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92. Fox, S. J. (2014) ‘Safety & Security: *The influence of 9/11 to the EU Framework.’* Research in Transportation Economics – Special Edition DOI: 10.1016/j.retrec.2014.07.004 Vol. 45 (2014), pp. 24–33. [↑](#footnote-ref-78)
79. S. J. Fox (2014) ‘Safety & Security: *The influence of 9/11 to the EU Framework.’* Research in Transportation Economics – Special Edition DOI: 10.1016/j.retrec.2014.07.004 Vol. 45 (2014), pp. 24–33.

    See also: S. J. Fox (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92. [↑](#footnote-ref-79)
80. Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. OJ L 119, 4.5.2016, p. 132–149. [↑](#footnote-ref-80)
81. Discussed at length in: Fox, S. J. (2019) Policing aviation and keeping peace: intelligence-fed security. International Journal on World Peace. Vol. XXXVI, No.1 (March - 2019) pp. 63-92. [↑](#footnote-ref-81)
82. Judgment in Case C-311/18 Press and Information Data Protection Commissioner v Facebook Ireland and Maximillian Schrems. ECLI:EU:C:2020:559

    The CJEU ruling invalidated Decision 2016/1250 on the adequacy of the protection provided by the EU-US Data Protection Shield. However, it did consider that Commission Decision 2010/87 on standard contractual clauses for the transfer of personal data to processors established in third countries is valid. [↑](#footnote-ref-82)
83. In June 2020, the EU published a Communication relating to the ‘Way forward on aligning the former third pillar acquis with data protection rules.’

    COM(2020) 262 final. Brussels, 24.6.2020.

    This recognised the need to realign many of the agreements (Regulation, Directive, Decisions, etc.,) under the former third pillar – JHA.

    The review was conducted by the Commission under Article 62(6) of the Data Protection Law Enforcement Directive (Directive 2016/680. [↑](#footnote-ref-83)
84. S. J. Fox (2016) BREXIT: A bolt from the blue! – *Red sky in the morning? Issues in Aviation Law and Policy.* Volume 16, No. 1. Autumn, 2016, pp 83-119.

    In 1997 the UK secured EU agreement to give the UK the right to choose whether to participate in any new EU legislation covering asylum and judicial cooperation in civil matters. [↑](#footnote-ref-84)
85. Protocol annexed to the Lisbon Treaty:

    PROTOCOL ON THE SCHENGEN *ACQUIS* INTEGRATED INTO THE FRAMEWORK OF THE EUROPEAN UNION and the UK position. [↑](#footnote-ref-85)
86. PROTOCOL ON THE POSITION OF THE UNITED KINGDOM AND IRELAND IN RESPECT OF THE AREA OF FREEDOM, SECURITY AND JUSTICE: which includes data processing also. [↑](#footnote-ref-86)
87. PROTOCOL ON THE APPLICATION OF THE CHARTER OF FUNDAMENTAL RIGHTS OF THE EUROPEAN UNION TO POLAND AND TO THE UNITED KINGDOM [↑](#footnote-ref-87)
88. The phrase **"Lest we forget"** is commonly used in war remembrance services and commemorative occasions in English speaking countries. It was also used throughout Rudyard Kipling 1897 poem, called " Recessional." The phrase is repeated a number of times to warn of the dangers of failing to remember. [↑](#footnote-ref-88)
89. Known as the Blair (International) Doctrine (speech in Chicago, April 1999).

    ww.chicagotribune.com/news/ct-xpm-1999-04 [↑](#footnote-ref-89)
90. Justice and Home Affairs: Used to refer specifically to Frontex: <https://ec.europa.eu/home-affairs/index_en>

    Frontex information can be found at: https://frontex.europa.eu [↑](#footnote-ref-90)
91. *Actually a tunnel under the Channel*: facilitating the ease of movement and transport of persons, goods and services. [↑](#footnote-ref-91)
92. The United Kingdom joined the, then, European Communities on 1 January 1973, along with Denmark and the Republic of Ireland. [↑](#footnote-ref-92)
93. Viewed as a multi-interpretations: individuals; society; the UK as a nation; as part of the EU and as part of an international entity… [↑](#footnote-ref-93)
94. Entitled - AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community. OJ C 66I, 19.2.2019, p. 1–184.

    and, although it is not in force (basically because the terms have not been agreed/finalised) – it is very telling in terms of the risks and possible potential to the UK and, therefore, arguably, also to the EU. [↑](#footnote-ref-94)
95. EU-UK Trade and Cooperation Agreement. The agreement creates significant changes to the mechanisms and policies that support law enforcement and judicial cooperation (Brussels, 25.12.2020 COM(2020) 857 final)

    This interim period expires on 30 June 2021. [↑](#footnote-ref-95)
96. UK Home Office document: National Law Enforcement Data Programme

    Law Enforcement Data Service (LEDS) – Privacy Impact Assessment Report

    Published: July 2018.

    The key objectives of the Law Enforcement Data Service (LEDS) programme are to:

    rationalise national information systems;

    enhance the national information data set;

    deliver more service capabilities from the national information data set; and

    reduce the cost of providing and maintaining national information. [↑](#footnote-ref-96)
97. Parliamentary questions on LEDS:

    The programme had expected to transition all users of PNC to LEDS by December 2021 and decommission PNC by June 2022. The programme is now targeting the transition of PNC users to LEDS by June 2023 and the decommission of PNC by December 2023.

    The programme had expected to transition all users of PND to LEDS by June 2023 and decommission PND by December 2023. The programme is now targeting the transition of PND users to LEDS by September 2024 and the decommission of PND by March 2025.

    https://questions-statements.parliament.uk/written-questions/detail/2020-11-02/110205 [↑](#footnote-ref-97)
98. See Privacy International: https://privacyinternational.org/long-read/4122/over-policing-future-development-uk-law-enforcement-data-service-leds [↑](#footnote-ref-98)
99. BBC News: Technical issue resolved after 150,000 police records lost. 15 January, 2021. <https://www.bbc.co.uk/news/uk-55672194>

    See also the letter from the Home Affairs Committee (UK) 15 January, 2021.

    <https://committees.parliament.uk/publications/4321/documents/43864/default/> [↑](#footnote-ref-99)
100. Regulation (EU) 2018/1862 of the European Parliament and of the Council constitutes the legal basis for SIS in respect of matters falling within the scope of Chapters 4 and 5 of Title V of Part Three of the Treaty on Functioning of the European Union (TFEU).

     Noting: The European Union Agency for Law Enforcement Cooperation (Europol) was established by Regulation (EU) 2016/794 of the European Parliament and of the Council and plays an important role in the use of SIS and in the exchange of supplementary information with Member States on SIS alerts [↑](#footnote-ref-100)
101. The security relationship between the UK and EU, following the end of the transition period on 31 December 2020, is set out as part of the Trade and Cooperation Agreement. The agreement creates significant changes to the mechanisms and policies that support law enforcement and judicial cooperation (Brussels, 25.12.2020 COM(2020) 857 final) [↑](#footnote-ref-101)
102. Currently SIS II is used by 29 countries (25 EU MS + 4 Associated Countries).

     25 EU are: Austria; Belgium; Bulgaria; Croatia; Czech Republic; Denmark; Estonia; Finland; France; Germany; Greece; Hungary; Italy; Latvia; Lithuania; Luxembourg; Malta; the Netherlands; Poland; Portugal; Romania; Slovakia; Slovenia; Spain; Sweden

     The Associated Countries connected to SIS II are: Iceland; Liechtenstein; Norway and Switzerland.

     The UK is not an EU or an associated country – as it currently stands. [↑](#footnote-ref-102)
103. ECRIS is the European Criminal Records Information System and was established in April 2012 in order to improve the exchange of information on criminal records throughout the EU. All EU countries are currently connected to ECRIS – the UK, since leaving the EU, is not.

     https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/tools-judicial-cooperation/european-criminal-records-information-system-ecris\_en [↑](#footnote-ref-103)
104. UK Parliament - Security cooperation with the European Union examined (9/10 February, 2021)

     https://committees.parliament.uk/committee/83/home-affairs-committee/news/139076/security-cooperation-with-the-european-union-examined/ [↑](#footnote-ref-104)
105. Including on the Europol website. [↑](#footnote-ref-105)
106. Conversation on Thursday 18 February by the author with Europol. [↑](#footnote-ref-106)
107. Due to the BREXIT measurements, as of 1st January 2021, the UK is no longer able to participate in certain systems (i.e. - the VDL, ERRU, RESPER, CBE and VAT services). It continues to explore solutions: for example, when it comes to the services based on the EUCARIS Treaty (VHInfo, DLInfo/AVI), the EUCARIS Operations Team and the UK Driver and Vehicle Licensing Agency (DVLA) are currently looking into the options for a connection via internet.

     **Overview of the UK situation (Jan. 2021):**  
     It is only able to exchange tachograph card information based on Council Regulation (EEC) no 3821/85 in combination with the respective AETR Agreement, with the TACHOnet connection via TESTA staying available.  
     All the other EUCARIS/EU-hub services were disconnected as from the 1st of January.  
     – VHInfo, DLInfo, AVI (based on the EUCARIS Treaty);  
     – RESPER (3rd Driving Licence Directive 20016/126/EC);  
     – ERRU (Regulation (EC) No 1071/2009, 1072/2009, 1073/2009);  
     – ERRU/RSI-part (Directive 2014/47/EU) ;  
     – CBE (Directive (EU) 2015/413);  
     – VAT (Directive 2010/24 EU and 2011/16/EU, Council Regulation (EU) No 904/2010);

     The Prüm Council Decisions: the EU-UK Trade Agreement offers a legal base for the exchange of DNA, Fingerprints and Vehicle Data via TESTA. This said, thee respective services for the exchange of vehicle data however are not implemented yet by the UK.. [↑](#footnote-ref-107)
108. Emphasis added.

     UK Select Committee on EU cooperation – 9/10 February, 2021: <https://committees.parliament.uk/committee/83/home-affairs-committee/news/139076/security-cooperation-with-the-european-union-examined/> [↑](#footnote-ref-108)
109. See also FN – 84. [↑](#footnote-ref-109)
110. Protocol No. 21 to the EU Treaties, Articles 3 and 4. [↑](#footnote-ref-110)
111. Annex D to the Review of the United Kingdom's Extradition Arrangements, presented to the Home

     Secretary on 30 September 2011.

     Historical European Arrest Warrant Statistics: Calendar and Financial Year Totals 2004-April 2015, National Crime Agency. [↑](#footnote-ref-111)
112. Ibid. [↑](#footnote-ref-112)
113. See at 1.1. of this paper [↑](#footnote-ref-113)
114. In comparison it took 10-years from the French to extradite Rachid Ramda from the UK prior to the EWA being in place and under the previous arrangements. He was convicted of terrorist bombings in Paris in 1995. [↑](#footnote-ref-114)
115. UK news outlet – Evening Express – 7 January, 2021.

     https://www.eveningexpress.co.uk/news/uk/uk-not-missing-out-on-crime-intelligence-since-brexit/ [↑](#footnote-ref-115)
116. As identified within Section 3 of this paper. [↑](#footnote-ref-116)
117. It was first developed by Sir David Omand and the Home Office in 2003 in the aftermath of 9/11, having since been revised several times.

     https://www.gov.uk/government/publications/counter-terrorism-strategy-contest [↑](#footnote-ref-117)
118. This framework decision (2002/475/JHA) and amending decision (2008/919/JHA) required all EU countries (hence the UK) to align their legislation and introduce minimum penalties regarding terrorist offences. [↑](#footnote-ref-118)
119. Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. OJ L 119, 4.5.2016, p. 132–149

     Also see: the LED (Law Enforcement Directive)

     Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

     OJ L 119, 4.5.2016, p. 89–131 [↑](#footnote-ref-119)
120. The national legislation transposing the Directive provided the legal basis for the collection and processing of PNR data this was in accordance with the horizontal provisions, in particular those of Directive (EU) 2016/6803 ("the Police Directive") which replaced Framework Decision 2008/977/JHA and which needed to be transposed, save exceptional circumstances, by 6 May 2018 i.e. before the deadline for transposition of the EU PNR Directive. [↑](#footnote-ref-120)
121. Taken from the oral statement to Parliament on the proposal for an EU Directive on Passenger Name Records.Given to the House of Commons by the minister for immigration on Tuesday 10 May 2011.

     https://www.gov.uk/government/speeches/eu-directive-on-passenger-name-records [↑](#footnote-ref-121)
122. Passenger Name Record Data and Miscellaneous Amendments Regulations 2018. It came into force on 25th May 2018. Statutory Instrument: 598 refers. [↑](#footnote-ref-122)
123. A Counter-Terrorism Agenda for the EU.Brussels, 9.12.2020 COM(2020) 795 final.

     Note: the author has a separate paper pending relating purely to the impact and consequences to aviation. [↑](#footnote-ref-123)
124. This Eurobarometer survey of the European Parliament (EP/EB 89.2) was carried out in all 28 Member

     States of the European Union, from 11 until 22 April 2018.

     https://www.europarl.europa.eu/at-your-service/files/be-heard/eurobarometer/2018/delivering\_on\_europe\_citizens\_views\_on\_current\_and\_future\_eu\_action/report.pdf [↑](#footnote-ref-124)
125. I would identify that I voted to stay a member of the EU – having studied EU law and policy, transport, security/safety and policing for a number of years. [↑](#footnote-ref-125)
126. Press release: UK government welcomes the European Commission’s draft data adequacy decisions

     Department for Digital, Culture, Media and Sport. 19 February, 2021.

     https://www.gov.uk/government/news/uk-government-welcomes-the-european-commissions-draft-data-adequacy-decisions [↑](#footnote-ref-126)
127. Ibid. [↑](#footnote-ref-127)
128. Noting: Data flows in the other direction – from the UK to the EU – are regulated by UK legislation, which applies since 1 January 2021, given that the UK decided that the EU ensures an adequate level of protection and that therefore data can flow freely from the UK to the EU. [↑](#footnote-ref-128)
129. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)

     OJ L 119, 4.5.2016, p. 1–88. [↑](#footnote-ref-129)
130. Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA

     OJ L 119, 4.5.2016, p. 89–131. [↑](#footnote-ref-130)
131. Comitology process explained:

     https://ec.europa.eu/info/law/law-making-process/adopting-eu-law/implementing-and-delegated-acts/comitology\_en [↑](#footnote-ref-131)
132. It should be noted at part of my research in 2020 I have also investigated the implications to satellite systems (including in a policing and post Brexit environment): Fox, S. J. *Tracking the position. Global satellite navigations in Europe. Expanding man's understanding:* ‘*GALILEO*: 2020!’ Communications Law Vol. 25, No. 4, 2020. 191-208. [↑](#footnote-ref-132)