



HM Government

Security, law enforcement and criminal justice

A FUTURE PARTNERSHIP PAPER

The United Kingdom wants to build a new, deep and special partnership with the European Union.

This paper is part of a series setting out key issues which form part of the Government's vision for that partnership, and which will explore how the UK and the EU, working together, can make this a reality.

Each paper will reflect the engagement the Government has sought from external parties with expertise in these policy areas, and will draw on the very extensive work undertaken across Government since last year's referendum.

Taken together, these papers are an essential step towards building a new partnership to promote our shared interests and values.

Security, law enforcement and criminal justice: a future partnership paper

Executive Summary

1. The UK and the EU face a range of shared threats to the security of their citizens and way of life. The UK and the EU have a shared interest in a secure neighbourhood and in the security of friends and allies around the world. This paper is part of a series being published that sets out key issues that form part of the Government's vision for the UK's future partnership with the EU. A paper was published on 12 September that focused on foreign policy, defence and security, and development. This paper builds on that, focusing on security, law enforcement and criminal justice. In order to tackle the threats faced, and work towards common objectives, it is vital that the UK and the EU maintain and strengthen their close collaboration in these areas after the UK's withdrawal from the EU. The UK's responsibilities as a good neighbour for the security of European citizens, as well as its own, will remain upon leaving the EU. The UK's future partnership with the EU should ensure those responsibilities can be met.
2. The UK brings leading capabilities and expertise in security, the delivery of justice and the fight against crime and terrorism. International operational cooperation on internal security takes place on a daily basis at multiple levels: at the EU level, bilaterally with Member States, and through non-EU multilateral fora. Non-EU mechanisms are, and will remain, very important tools to facilitate cooperation between law enforcement agencies and judicial authorities working across borders, but they often complement, rather than replicate, the capabilities the UK has developed with its EU partners.
3. At present, the UK works with other EU Member States through a range of EU tools and measures that help facilitate cooperation in the area of security, law enforcement and criminal justice, including data sharing tools, practical cooperation arrangements, and a number of EU agencies. EU cooperation is undertaken in accordance with a shared commitment to ensure the protection of rights and liberties. The UK has been instrumental in the development and operation of many of these tools. It is through pooling expertise and resources with EU partners that the UK has been able to develop some of the world's most sophisticated cross-border systems and arrangements in the fight against crime. This close relationship has produced a comprehensive and sophisticated suite of mutually reinforcing arrangements that help protect citizens and the continent. The basis on which the UK cooperates at the EU level will evidently be affected by the UK's withdrawal, raising the question of how that partnership should be shaped in the future.
4. With threats evolving faster than ever before, it is in the clear interest of all citizens that the UK and the EU sustain the closest possible cooperation in tackling terrorism, organised crime and other threats to security now and into the future. The UK and the EU should work together to design new, dynamic arrangements as part of the future partnership. Those arrangements should allow both parties to continue and strengthen their close collaboration on internal security – the areas of security, law enforcement and criminal justice – after the UK's withdrawal from the EU, drawing on long-standing shared traditions of respect for the rule of law and the protection of human rights. This would be a partnership that goes beyond the existing, often ad hoc arrangements for EU third-country relationships in this area, and draws on the legal models that the EU has used to structure

cooperation with third countries in other fields, such as trade. It would involve identifying shared priorities for future cooperation and building new ways to facilitate cooperation on security, law enforcement and criminal justice. It is important to continue to cooperate to keep countries and citizens safe and to promote the values the UK and the EU share, including respect for human rights and dignity, democracy and the rule of law.

Introduction

5. The first duty of government is to keep its people safe. As seen from recent events, the threats to the UK and the EU are varied, increasingly international, and can change rapidly. They include, but are not limited to, terrorism, serious and organised crime, cybercrime, illegal migration, fragile states in the near neighbourhood, and hostile state activity. In a globalised world of immediate communication and cheap cross-border travel, criminality and terrorism are increasingly agile, organised and difficult to disrupt.
6. The terrorist threat is one faced by all, and is evolving quickly, highlighting the need to maintain and reinforce cooperation. In 2017, the UK has suffered a number of terrorist attacks, with the authorities foiling further plots. The terrorism threat to the UK therefore remains at SEVERE, meaning an attack is highly likely. The UK is not alone in facing this threat: mainland Europe has also suffered from a series of terrorist atrocities in recent years and a number of EU countries face the same threat level as the UK. There are clear benefits for both the UK and the EU in coordinating efforts to protect citizens by making best use of resources and ensuring that complementary action is taken in areas with common objectives, such as health and aviation security, counter-radicalisation and civil protection.¹
7. European countries face many other common threats. Firearms smuggling networks supply both criminals and terrorists, Modern Slavery gangs exploit the most vulnerable around the world, and financial crime can undermine the integrity and stability of financial markets and institutions. Organised Crime Groups (OCG) continue to generate profits through crimes including human trafficking, fraud and drug trafficking. Europol's 2017 Serious and Organised Crime Threat Assessment (SOCTA) identifies approximately 5,000 organised crime groups as currently under investigation in the EU,² with the actual total number of groups thought to be significantly higher.
8. Cyber threats from state and non-state actors and cyber criminals are also continuing to grow as modern technologies advance. These threats do not respect borders. In May this year, the WannaCry ransomware infections saw thousands of simultaneous cyberattacks recorded across the globe, affecting more than 100 countries in a coordinated breach of IT systems in both private and public sector bodies.³ Future security and prosperity depend on the ability to safeguard digital information, data and networks at home and abroad. As technologies evolve and cyber threats grow in scale and sophistication, it is vital that law enforcement keeps pace and develops capabilities to stay ahead of attackers. The UK and the EU operate in a single, global, cyber space and are collectively stronger when each country improves its cyber defences and are able to drive coordinated action against the threats.

¹ The UK's position on disaster response, preparedness and prevention is further set out in the UK future partnership paper on foreign policy, defence and development published on 12 September 2017.

² Europol, European Union Serious and Organised Crime Threat Assessment, February 2017.

³ "WannaCry" ransomware attack Technical intelligence analysis', EY, May 2017.

9. The UK has long been at the forefront of international efforts to tackle such challenges, committing significant political, financial and security resources to strengthen the rules-based international system that benefits all nations. The UK works with like-minded partners in Europe and around the world, sharing expertise and capabilities in the fight against international crime and terrorism. The UK's memberships of the United Nations, the North Atlantic Treaty Organisation (NATO), and the Organisation for Security and Cooperation in Europe (OSCE) complement strong bilateral partnerships, and provide invaluable channels for sharing information and taking collective action.
10. The UK has developed increasingly sophisticated ways of working with its international partners to respond to the evolving nature of the threats faced. On the island of Ireland, existing EU instruments underpin strong cooperation between the Police Service of Northern Ireland and An Garda Síochána, and HMRC and Ireland's Revenue Commissioners in their efforts to combat terrorism and serious and organised crime. The UK has a broad range of security cooperation arrangements with other countries that take a number of different forms. The arrangements that facilitate cooperation with the UK's nearest neighbours – its EU partners – are among the strongest and most effective. They have been built on the basis of shared democratic values and respect for the rule of law, and have helped deliver unique capabilities that provide benefits across the continent and beyond.

UK-EU cooperation

11. The UK has been one of the leading contributors to the development, at an EU level, of practical, effective measures to strengthen information-sharing and cooperation. These in turn improve the ability of operational partners to prevent crimes from taking place, prosecute those who have committed offences, deliver justice, deport foreign criminals and terrorists, or stop them coming to the EU in the first place.
12. As part of this work, the UK has supported and benefited from the development of a series of legal instruments, forming a 'toolkit' that facilitates a level of operational cooperation among EU Member States, and in some cases third countries, that can be more comprehensive and sophisticated than other multilateral cooperation. Many of those tools are underpinned by a legal base set out in Title V of Part Three of the Treaty on the Functioning of the European Union (TFEU).
13. As illustrated below, the toolkit that has been assembled is the product of sustained efforts over many years by EU Member States, including the UK, to build resilience against the threats the UK and the EU jointly face.
 - The EU's recent Directive on Passenger Name Records (PNR) data means there will be a pan-EU approach to processing passenger data. This will enable identification of known individuals and, from their patterns of travel, otherwise unknown individuals involved in terrorism-related activity and serious crime, including victims of trafficking and individuals vulnerable to radicalisation. The UK was the first EU country to have a fully functioning Passenger Information Unit, and was at the forefront of efforts to encourage the development of this capability at an EU level, but it was only through collaboration between Member States that agreement was secured on a pan-EU approach. That approach, now being implemented, will greatly increase the UK's ability to work with EU partners to identify suspicious travel patterns across the EU, and across all routes into the EU.

- The Schengen Information System (SIS) II is a real-time alert system that is the product of law enforcement agencies from across the EU and the Schengen area coming together to develop state-of-the-art technology for flagging people and objects of interest to law enforcement. From April 2016 to end March 2017, over 9,500 foreign alerts received hits in the UK, allowing UK enforcement agencies to take appropriate action, while over 13,100 UK-issued alerts received hits across Europe.⁴ The UK has for example uploaded details of registered sex offenders onto SIS II, enabling the UK and its EU partners to track and monitor them throughout the EU. Article 36(2) and (3) SIS II alerts provide particularly important functionality in preventing criminality and terrorism by allowing participating states to share real-time information on wanted criminals or suspected terrorists.
- The European Arrest Warrant (EAW) is a mechanism by which individuals wanted in relation to significant crimes are extradited between EU Member States to face prosecution or to serve a prison sentence for an existing conviction. From 2004 to 2015 the UK extradited over 8,000 individuals accused or convicted of a criminal offence to other EU countries using the EAW.
- The Europol Internet Referral Unit (IRU) was set up in July 2015, following the Charlie Hebdo attacks in Paris. The purpose of the IRU is to detect and combat terrorist propaganda online. It builds upon the Europol ‘check-the-web’ service, which was originally a German initiative, and has since expanded its remit to develop functionality based on the UK Metropolitan Police Service’s Counter Terrorism Internet Referral Unit (CTIRU). The establishment of the Europol IRU was strongly supported by the UK and the UK has appointed a Metropolitan Police Service Liaison Officer to the UK Liaison Bureau in order to provide a dedicated operational channel of communication between Europol’s IRU and the UK’s own CTIRU. Within its first year of operation, the Europol IRU successfully secured the removal of 8,949 pieces of content by service providers.⁵ In addition to the Europol IRU, the European Strategic Communications Network (ESCN) is a network of 26 EU Member States who collaborate on the use of strategic communications in countering violent extremism (CVE) across Europe. The UK has provided substantial support to ESCN, including provision of strategic communications experts and tailored advice and solutions to Member States and EU Institutions on CVE communications challenges.
- The EU’s law enforcement priorities are set with reference to a Serious and Organised Crime Threat Assessment (SOCTA) carried out by Europol. The 2017 SOCTA report informed the priorities for the 2018-2021 cycle, as endorsed by JHA Council Conclusions in June. SOCTA was introduced to Europol during the Directorship of Rob Wainwright, and draws from the UK National Intelligence Model (NIM) and Control Strategy. NIM has been the cornerstone of UK policing since 2000 and the UK has been working with Europol to help develop a similar model.

⁴ National Crime Agency, SIRENE bureau annual statistics. Figures are based on hit reports received into the SIRENE bureau from UK Law Enforcement Agencies and their international partners. Hit reports are based on high confidence matches with alerts, but it is not guaranteed in all cases that the hit is the alert-subject. Also, as hits may be reported to the bureau using other channels there may be under-reporting – the NCA estimates this effect to be minimal.

⁵ Europol, EU Internet Referral Unit, Year One Report, July 2016.

- More generally, the UK is a significant contributor to the Europol Analysis Projects and has made over 7,400 intelligence contributions to these projects, focused on tackling serious and organised crime and terrorism in 2016.⁶ The UK participates in all 13 of the EU's current law enforcement priority projects. It plays a leading role in a significant number of those projects, as well as contributing to over 40 Joint Investigation Teams.⁷
- The UK was a key instigator in the creation of the Joint Cybercrime Action Taskforce (J-CAT) founded at Europol in 2014. J-CAT is part of EC3, Europol's cybercrime centre, and is a forum for specialist officers from Member States and third countries to work in close proximity to drive coordinated action against threats from cybercrime. In its first three years, J-CAT has led and coordinated cybercrime investigations and campaigns enabling hundreds of arrests. It provides significant support to many UK investigations both proactive and reactive, including the UK's investigation into the recent WannaCry ransomware attack.

Objectives for the future partnership

14. Although the UK is withdrawing from the EU, the UK and the EU will continue to share common objectives in this area. The European Council's negotiating guidelines set out that "[the] EU stands ready to establish partnerships in areas unrelated to trade, in particular the fight against terrorism and international crime, as well as security, defence and foreign policy."⁸ In parallel, the Prime Minister made clear in her letter triggering Article 50 of the Treaty on European Union the UK's commitment to a deep and special partnership in both economic and security spheres. As she stated in her letter: "we want to play our part in making sure that Europe remains strong and prosperous and able to lead in the world, projecting its values and defending itself from security threats."⁹ The UK remains committed to this vision and to the strength and security of the European continent as a whole. The UK's commitment to protecting the safety and security of EU citizens as well as UK citizens will not diminish.
15. When the UK leaves the EU, the legal framework that currently underpins cooperation between the UK and the EU on security, law enforcement and criminal justice will no longer apply to the UK. As part of a deep and special partnership, it will be in the mutual interest of the UK and the EU to agree new arrangements that enable them to sustain cooperation across a wide range of these structures and measures, reflecting the importance of the extensive collaboration that currently exists. These arrangements should be based on a commitment to:
 - build on, and where possible enhance, the strong foundation of existing cooperation and work collaboratively against shared threats;
 - cooperate across a range of measures, agencies and other fora and continue the facilitation of operational business across borders, avoiding operational gaps for law enforcement agencies and judicial authorities in the UK and the EU;

⁶ Europol, Europol Operational Centre, Analysis of 2016 contributions.

⁷ Home Office, Eurojust National Desk, record of Joint Investigation Teams as of 1 September 2017.

⁸ 'Guidelines Following the United Kingdom's Notification under Article 50 TEU', European Council, April 2017.

⁹ 'Prime Minister's letter to Donald Tusk triggering Article 50', Prime Minister's Office, March 2017.

- continue to develop a dynamic relationship over time as threats change and opportunities for joint working develop; and
 - assist one another when needed, if for example the UK or a Member State is subject to a terrorist attack.
16. These arrangements should be underpinned by three core objectives, which reflect a mutual desire to continue to work closely in this area, namely to:
- protect the safety and security of citizens and uphold justice in the UK and across the EU;
 - maintain the closest and most cooperative of partnerships, continuing the long-standing traditions of friendship between the 27EU and the UK; and
 - continue to cooperate on the basis of shared democratic values and respect for the rule of law.
17. In order to function properly, these arrangements will need to be supported both by a means of resolving any disputes between the UK and the EU, and by arrangements that allow for the free flow of personal data. More information on the UK's approach to these issues is set out in other papers in this series, as well as in the 'mechanisms for cooperation' section below.

Areas of cooperation

18. The EU law enforcement and criminal justice 'toolkit' has developed over many years in response to changes both in the nature of EU and international security threats and in the increased movement of people across borders. The EU tools in this area support law enforcement and the criminal justice system in:
- **preventing** potential criminal activity and terrorism;
 - **detecting** criminal activity and terrorism;
 - **investigating** criminal activity and terrorism;
 - **prosecuting** those accused of terrorism and other serious crimes; and
 - **administering** justice.
19. The toolkit provides practical mechanisms to support collaboration across Europe and delivers benefits that are shared by all Member States. It covers cooperation designed to facilitate data-driven law enforcement and to provide practical assistance to operations. It also enables cooperation to be facilitated through the EU's agencies in the field. The UK will be seeking to ensure that future cooperation spans these three core areas.

20. The exact contours of the UK's future relationship with the EU on internal security will need to be agreed in the course of negotiations. During those negotiations, the UK considers that the focus should be on the areas of cooperation that deliver the most significant operational benefit, to ensure the best possible outcome for both the UK and its EU partners. The sections below set out examples of cooperation that currently deliver mutual operational benefit. The list is not exhaustive but illustrates the types of capability that a future partnership should encompass if it is to afford maximum protection to citizens.

Facilitating data-driven law enforcement

21. The increasingly international nature of crime makes the swift and efficient availability of data essential in modern law enforcement, subject to appropriate safeguards. The ability for law enforcement agencies to conduct point-to-point data exchange is critical for developing lines of enquiry, identifying suspects and informing appropriate action. The value of direct police-to-police information sharing can be maximised through the use of processes and systems that ensure the availability of data through reliable, secure channels and with a clear legal framework for data protection.
22. A number of Member States have dedicated resource to the development of such channels over recent years. The UK is one instrumental party in that work and contributes high quality information, analysis and expertise in areas such as passenger data and financial intelligence. The UK also gains considerable benefit from the additional information provided by other Member States in bringing criminals to justice within its own borders and protecting victims of crime.
23. Increasing volumes of data create a greater need for connecting different sets of data quickly and securely, while ever more sophisticated analytical capabilities enable this. Multilateral data exchange and centralised storage, analysis and dissemination of data are invaluable. For example, being able to wash biometric data against large data sets of fingerprints, facial images and DNA adds a level of accuracy when identifying individuals involved in criminality, particularly where aliases and fake identification documents are used.
24. The ability to cross reference data against a wide range of sources is delivering real benefits to investigations across Europe on a daily basis. EU-developed tools such as Prüm (a system for rapid law enforcement information exchange on fingerprints, DNA and Vehicle Registration Data) and Eurodac (a mechanism for sharing fingerprint data for asylum and law enforcement purposes) have already demonstrated how biometric data can be shared to identify criminals and this capability is expected to grow and expand across a number of other systems.
25. The value of systems for data exchange includes their speed and also their reach. Real-time or very rapid responses, such as those provided by Prüm or SIS II, make a significant difference to the value of the information to operational partners. Likewise the systematic nature of exchange of information such as criminal records can help to deliver fair and robust justice.

Box 1: Real-time data sharing

The Second Generation Schengen Information System (SIS II) enables alerts on missing and wanted individuals and lost and stolen objects to be circulated automatically to operational partners across the EU and the Schengen area. Before SIS II was operational, EAW requests were only sent to countries where there was a reason to believe that the person being sought might be there. This means that whenever a check is run against the UK's Police National Computer, or equivalent systems in other countries, law enforcement officers are immediately alerted to the fact that someone is wanted in another country. This includes people wanted for arrest, as well as acting as a watch-listing system to follow the movements of sex offenders and suspected terrorists.

Every 'hit' on an alert has a two-way benefit. The country that places the alert gets information on the person or object of interest to them. The country that makes the hit finds out that the person or object they are dealing with is of interest to another Member State. Depending on the type of alert, this could enable an arrest, raise awareness of a potential threat to national security, or return a missing person to their home.

One of the alerts on SIS II (an 'Article 26' alert) signifies that someone is wanted for arrest and extradition in relation to a criminal offence. Before SIS II was operational, each Member State would usually only have sight of extradition requests from other EU countries if they had a reason to think the person being sought might be in that country. Article 26 alerts on SIS II mean that every country has sight of all extradition requests, and in the first two years after the UK joined SIS II in April 2015, we had over 4,000 hits on people subject to these alerts.¹⁰ This has enabled other countries to bring people to justice, and potentially dangerous people being removed from the UK. Where a person subject to an Article 26 alert tries to enter the UK, SIS II allows the police and Border Force to detain and arrest them at the border, meaning they do not have the opportunity to offend in the UK.

The UK's participation in SIS II also means that when the UK issues an EAW against someone (seeking their arrest and extradition), it is automatically broadcast to police forces across Europe and vice versa. As a result, the number of people arrested in England and Wales based on an EAW from another Member State increased by 25 per cent in the first year after the UK joined SIS II.¹¹

For example, when a prolific child sex offender fled the country after being granted bail, UK law enforcement circulated an EAW on SIS II and he was arrested following a car accident in Cahors. Although the fugitive had been using a false name, the SIS II alert revealed his real identity to the French authorities. He was returned to the UK in January 2017 and is now serving a prison sentence. Had the UK not put the alert on SIS II, he may have remained at large in France and a risk to children.

¹⁰ See footnote 4.

¹¹ National Crime Agency, 2015-16 EAW statistics, May 2016.

Practical operational cooperation

26. While effective methods for sharing and analysing law enforcement data are crucial for initiating action, they are also vital for law enforcement officers to be able to implement streamlined processes for practical operational cooperation with EU partners.
27. Investigators and prosecutors greatly benefit from streamlined processes to allow for the collection of evidence, the arrest and transfer of suspects and offenders, and the enforcement of penalties and confiscation of criminal proceeds. The EU has developed a package of measures that support a streamlined end-to-end process of cooperation, from the initial stages of identification and investigation of a suspect through to arrest, prosecution and prisoner management. Through them, countries can cooperate effectively with one another at each stage of proceedings to help prevent criminals from using international borders to avoid detection and justice. These measures enhance law enforcement agencies' ability to identify and pursue threats and the individuals behind them, as well as assisting judicial authorities in delivering appropriate justice.
28. Being able to trace individuals linked to criminal activity and terrorism, regardless of where they are in Europe, is crucial for tackling cross-border crime. Law enforcement officers also need to be able to initiate operational action quickly in response to real-time developments in criminal activity.
29. It is also valuable for law enforcement agencies to share intelligence gained from experience to the benefit of others facing similar challenges, such as in tackling specific cross-border threats or safeguarding major international events. For instance, the Prüm Convention and Football Disorder measures enable Member States to cooperate and share law enforcement intelligence before and after major events – both planned events such as major football tournaments, and unforeseen events such as terrorist attacks.

Box 2: Practical cooperation

Among other benefits of tools for practical cooperation, is the ability to provide secure channels to request assistance from law enforcement officers. These channels also provide streamlined processes for sharing evidence and other trial-related documents that make it quicker and easier to investigate crime and bring criminals to justice. Measures such as the Naples II Convention on customs cooperation and the European Investigation Order facilitate the targeting of suspects, gathering of evidence and taking action to disrupt criminal activity.

For example, a number of EU Member States worked together in a joint operation to target an OCG operating across Europe. The group were suspected of smuggling cigarettes, and law enforcement officers were specifically working to disrupt a shipment moving within a number of European countries. Member States shared information on the basis of the information sharing provisions of the Naples II Convention, which enabled targeted surveillance to be conducted.

After a prolonged period of surveillance and investigation co-ordinated between Member States, 11.1 million cigarettes were seized. There are methods of cooperation outside of the EU, but in this instance, EU rules on mutual legal assistance and customs investigations enabled evidence to be rapidly shared to support law enforcement action and prosecutorial cooperation. If this smuggling had gone undetected, the OCG would have evaded duties of approximately £3.6 million.¹²

Multilateral cooperation through agencies

30. International crime and terrorism requires international agencies to coordinate multinational responses. The EU agencies Europol and Eurojust provide particularly well-developed platforms for liaison and joint action, multiplying the national capabilities of each of their members. Having law enforcement officers and legal experts working in close proximity means operations and judicial proceedings can be coordinated quickly and with the support of funding and facilities not otherwise available to many Member States.
31. As well as providing valuable platforms for liaison, these agencies are a central source of analysis and expertise. Analysis conducted within Europol draws on law enforcement information provided by all 28 EU Member States and a number of third countries, meaning they are able to pick up links and patterns in order to expose widespread criminality that would not have been within any single country's capacity to identify. This analysis can also support strategic planning and encourage common priorities amongst Member States to ensure resources are being deployed to tackle the most significant threats.

¹² HM Revenue & Customs, Internal Analysis.

Box 3: Joint investigations

Europol and Eurojust both actively support Joint Investigation Teams (JITs), which are set up between Member States to pursue a specific line of enquiry. As of September 2017, the UK was participating in over 40 JITs.¹³

In July 2016, a JIT between Romanian and UK authorities was set up to investigate an OCG engaged in trafficking Romanian nationals for sexual exploitation. The OCG set up temporary brothels in major towns across the South of England.

The hierarchy of the crime group was based in Romania and controlled their operation from outside of the UK. The JIT, coordinated by Europol and Eurojust, provided the legal gateway to target the group and disrupt their activities and safeguard vulnerable female sex workers. It also facilitated agreement of a prosecution strategy under which Romania would lead on the prosecution using evidence gathered in the UK.

Action by UK officers resulted in arrests of controllers and the protection of vulnerable victims. Vital evidence collected showed a large number of victims being subject to horrific abuse. This evidence supported the Romanian arrest and prosecution phase. Cooperation through a JIT resulted in the complete dismantling of the OCG. In total there were over 30 adults safeguarded in addition to vehicles and cash seized. Over a dozen arrests were made in connection with suspected offences of controlling prostitution for gain and membership of an OCG.¹⁴

Mechanisms for cooperation

32. As a former Member State, the UK will be a third country whose operational processes and data sharing systems are uniquely aligned with approaches adopted at an EU level. Those EU processes, which have been developed over recent decades, are often interconnected, enhancing capabilities through each different stage of a law enforcement operation, from sharing fingerprints at crime scenes at the beginning of an investigation all the way through to transferring a prisoner so that they can serve their sentence in their home country. Individual EU measures each enhance a specific capability, but cooperation produces cumulative shared benefits that extend well beyond an ad hoc collection of capabilities.

Existing models

33. There are a number of ways in which third countries already work with the EU in the field of security, law enforcement and criminal justice, enhancing the safety and security of the EU as well as that of third countries.
34. Existing mechanisms for cooperation between the EU and third countries in this area span data driven law enforcement, practical cooperation, and EU agencies.
 - **Data driven law enforcement:** a number of third countries, including the US and Australia, have agreements with the EU on the protection of European Passenger

¹³ Home Office, Eurojust National Desk, record of Joint Investigation Teams as of September 2017.

¹⁴ ZEPHYR ROCU – South West Regional Organised Crime Unit.

Name Records (PNR) data. These agreements provide legal certainty for airlines required to disclose PNR data to third countries accessing PNR data from EU carriers, and provide clarity on how the PNR data may be used. Existing agreements do not allow third countries to work together on using PNR to identify travel patterns in the same way that EU countries can under the EU Directive.

- **Two non-EU countries** – Norway and Iceland – have concluded agreements with the EU to participate in Prüm (an EU IT system for rapid sharing of fingerprint, DNA and vehicle registration data for law enforcement purposes). Switzerland and Liechtenstein are also in the process of seeking participation in Prüm.
 - **Practical cooperation:** the EU has concluded agreements in regard to mutual legal assistance (MLA – for example sharing evidence that needs to be used in a criminal trial in another country) with a number of third countries, including the US and Japan. Norway and Iceland also have MLA agreements with the EU, which facilitate streamlined judicial cooperation.
 - **EU agencies:** a number of non-EU countries such as the US, Norway and Switzerland have agreements with Europol and Eurojust that allow them to work with the EU and its Member States through those agencies.
35. One option for future EU-UK cooperation in this area would be to limit cooperation to those areas where a precedent for cooperation between the EU and third countries already exists. While this would be one possible approach, it would result in a limited patchwork of cooperation falling well short of current capabilities. It would also fall short of current channels used to assess the strategic threats facing European countries – threats that will still be shared after the UK withdraws from the EU. A piecemeal approach to future UK-EU cooperation would therefore have more limited value, and would risk creating operational gaps for both the UK and for its European partners, increasing the risk for citizens across Europe.

A new UK-EU partnership

36. The UK therefore believes that while existing precedents for EU cooperation with third countries under Title V of Part Three TFEU provide context, they are not the right starting point for a future UK-EU partnership. In the face of growing and evolving threats, it is in the interests of both the UK and the EU to ensure that close cooperation remains possible. The UK's geographical proximity to its European neighbours, the volume of cross-border movements between the UK and the EU, and the high degree of alignment in the scale and nature of the threats faced call for a new, more ambitious model for cooperation.
37. The UK will be approaching negotiations on the future partnership with the EU as an opportunity to build on what has already been achieved through decades of collaboration, integrated working, and joint systems and procedures. While the EU's cooperation with third countries in the field of security, law enforcement and criminal justice has generally been limited to tool-by-tool solutions, other approaches are legally viable. The EU has adopted more ambitious and strategic relationships in other fields. For example, the EU facilitates cooperation in relation to the free movement of goods, services, persons and capital between the EU and a number of non-EU third countries. The agreements associating certain third countries with the implementation, application and development of the Schengen acquis (the Schengen association agreements) enable cooperation in

relation to borders and some associated security and law enforcement matters. Both on trade and on the Schengen association agreements there are examples of the EU's relationships being based on overarching legal frameworks that support close and dynamic cooperation with third countries. Neither of these arrangements involve direct jurisdiction of the Court of Justice of the European Union (CJEU) in those third countries. Any internal security arrangements in the UK's future partnership with the EU should be subject to the same principles on dispute resolution that are set out in the Enforcement and dispute resolution paper published on 23 August 2017.

38. The UK sees a strong case for building on these models to develop a strategic agreement that provides a comprehensive framework for future security, law enforcement and criminal justice cooperation between the UK and the EU. This would be a treaty between the UK and the EU providing a legal basis for continued cooperation between the UK and the EU in this vital area and could include provisions on scope and objectives; the obligations for each side; and what mechanism should apply to resolve disputes. There are clear practical benefits to each side from sustaining deep, broad and dynamic cooperation in the fight against crime and terrorism in view of the evolving and growing nature of cross-border threats, as well as the proven value in operating a suite of mutually reinforcing arrangements. The UK believes the right approach is to explore and design this new model with the EU, as part of wider discussions on the deep and special partnership.
39. In doing so, the ambition should be to construct a model that:
 - establishes mechanisms to maintain operational capabilities between the UK and the EU and its Member States;
 - is underpinned by shared principles, including a high standard of data protection and the safeguarding of human rights;
 - ensures the UK-EU relationship can be kept versatile and dynamic enough to respond to the ever-changing threat environment;
 - creates an ongoing dialogue in which law enforcement and criminal justice challenges and priorities can be shared and, where appropriate, tackled jointly; and
 - provides for dispute resolution over, for example, interpretation or application of the agreement – as set out in the 23 August paper on that subject, the UK will no longer be subject to direct jurisdiction of the CJEU, meaning consideration will need to be given to dispute resolution as part of the new relationship.
40. The Government will work with the Devolved Administrations and the governments of Gibraltar and the Crown Dependencies as negotiations progress on the UK's new partnership with the EU. Close working will be especially important where justice and policing are devolved. The UK Government will continue to work closely with these governments on the detail of these proposals as they affect their interests. In particular, it will be important to ensure that the new relationship with the EU ensures ongoing effective cooperation between Northern Ireland and the Republic of Ireland.

Security, law enforcement and criminal justice cooperation in the context of implementation and separation

Moving to a new framework

41. Cooperation will need to move to a new legal basis following the UK's withdrawal from the EU. In moving to any new agreement, it will be important to ensure that there are no operational gaps created by the transition from one set of arrangements to another. The aim should be to move swiftly to the new arrangements, but the aim should also be to ensure legal certainty about cooperation that continues during any interim period, should one be required. The Government believes it would help both sides to minimise unnecessary disruption and provide certainty if this approach is agreed early in the process.

Separation issues

42. As set out above, the UK will be seeking a future partnership with the EU that would allow them to continue, and indeed intensify, cooperation in the fight against crime and terrorism. The UK therefore anticipates that the final content of a Withdrawal Agreement will need to reflect what is agreed in later phases of negotiations under Article 50 of the Treaty on European Union on how the UK and the EU will cooperate in this area in future.
43. Ahead of negotiations on the future UK-EU relationship, the position paper published by the Commission on 12 July envisages using the first phase of negotiations to consider how cooperation that is ongoing on the day the UK withdraws from the EU could be completed in an orderly manner.
44. General principles for completing ongoing procedures might be applied to aspects of current cooperation that are not included in an agreement on future cooperation or to aspects of current cooperation that will continue after the UK withdraws from the EU, but where there might be a move from ongoing cooperation completed under one set of rules to cooperation that begins after withdrawal and is governed by a new set of rules.
45. Any provisional agreement will need to be revisited once negotiations on the future relationship between the UK and the EU in this area have progressed. Against this background, and without prejudice to later phases of negotiations, the annex to this paper sets out the UK's position with regard to police and judicial cooperation in criminal matters that are ongoing on the day the UK withdraws from the EU.

Conclusion

46. All European countries face serious and increasing collective threats to the security and the safety of their citizens. The only way to respond effectively to that threat is by ensuring that effective security, law enforcement and criminal justice cooperation between the UK and the EU continues after exit. This will be a vital element of discussions on the deep and special partnership because it is through this that it will be possible to maintain, deepen and strengthen operational and practical cooperation in this critical area for all citizens.
47. It is clear that developing a new framework to sustain this cooperation will require a shared level of ambition: the UK and the EU need to look beyond existing third country precedents, designing instead comprehensive arrangements that reflect the exceptionally broad and deep security relationship that exists today, and which are capable of evolving as threats change in the future. That is how best to protect the safety and security of UK and EU citizens.

ANNEX

Ongoing police and judicial cooperation in criminal matters

Context

1. This annex outlines the UK's position without prejudice to negotiations on the future partnership between the UK and the EU.
2. The Withdrawal Agreement should allow for the orderly completion of ongoing cooperation in areas where cooperation is expected to cease or move onto a different legal footing as a result of the UK's exit from the EU.
3. In providing for the orderly completion of ongoing cooperation, the following principles should be observed:
 - protecting the safety and security of citizens across Europe;
 - providing legal certainty for citizens and for law enforcement and judicial authorities;
 - ensuring effective administration of and access to justice;
 - minimising operational disruption to the work of law enforcement agencies and judicial authorities; and
 - maintaining high standards of data protection.
4. Informed by these principles, the orderly completion of ongoing cooperation will require agreement in the following areas.
 - Legal clarity regarding the completion of operational procedures that are ongoing on the day the UK withdraws from the EU ('ongoing procedures').
 - Legal clarity on the rules that apply to data and information that was exchanged between the UK and the EU or its Member States under EU provisions on law enforcement and criminal justice cooperation prior to the UK's exit or during completion of 'ongoing procedures'.
 - A shared understanding that in addition to 'ongoing procedures' requiring specific legal provision in the Withdrawal Agreement, the orderly completion of police and judicial cooperation in criminal matters would require significant practical co-ordination in advance of exit between the UK and the EU, its Member States and agencies. At this stage, those practical requirements should be noted. They will need to be considered once there is greater clarity on the future relationship in this area.

The UK's approach

5. The UK's starting point is that measures with a legal base in Chapters 4 and 5 of Title V of Part Three of the TFEU (Articles 82-89)¹⁵ in which the UK has chosen to participate should fall within the remit of this discussion to determine the extent to which they potentially require legal or practical provision for orderly completion of ongoing cooperation.¹⁶
6. This broad group of measures may be broken down into three categories, the first two of which overlap in some cases.

Ongoing procedures

7. Within Chapters 4 and 5 of Title V of Part Three TFEU, a number of EU instruments set out formal and sequential procedures for cooperation among Member States that could be underway at the point of exit. For example, under the European Investigation Order, judicial authorities in one Member State can make an order for investigative measures (e.g. interviewing witnesses or searching premises for relevant evidence) to be carried out in another Member State. The orders are transmitted using a standard form and are subject to specified timeframes for recognition and execution in the receiving Member State. A decision on whether to recognise the order must be taken within 30 days of receipt. If a decision is taken to execute the order, the investigative measure(s) must be carried out within 90 days (extendable) of that decision, and the product (the evidence or other information) transmitted to the judicial authority issuing the order as soon as possible.
8. The measures listed in TF50 position paper (2017) 8/2 provide a helpful starting point for identifying measures that include formal and sequential procedures of this nature, but the UK has identified a number of other instruments with similar processes. In particular, the following are measures that set out clear sequential procedures:
 - financial Intelligence Units (Council Decision 2000/642/JHA);
 - the Second Generation Schengen Information System (SIS II) (Council Decision 2007/533/JHA);
 - law enforcement cooperation under the Schengen Convention (Council Decision 2014/854/EU);
 - the Prüm decisions (Council Decisions 2008/615/JHA and 2008/616/JHA); and
 - Joint Investigation Teams (Council Framework Decision 2002/465/JHA).
9. In respect of this category of instruments, the UK agrees with the EU that procedures that are ongoing at the point of exit should continue to completion.

¹⁵ This should be read as including equivalent legal bases from previous versions of the Treaties.

¹⁶ While the UK's starting point is that measures with a legal base in Chapters 4 and 5 of Title V of Part Three TFEU in which the UK has chosen to participate should be the focus of this discussion, there are other internal and external security measures that may also require separate provisions in relation to separation in the Withdrawal Agreement.

10. The UK further agrees with the EU that an agreed definition of the procedural threshold beyond which cooperation will be treated as 'ongoing' will be required, in order to provide legal clarity around which procedures are to continue, and which are to cease at the point of exit. It should be possible to use the same procedural threshold in relation to more than one measure where procedures are similar.
11. Consideration should also be given to the procedural threshold beyond which cooperation will be treated as 'completed' for the purposes of the Withdrawal Agreement (i.e. an end point).

Ongoing cooperation

12. The UK anticipates that, in addition to providing legal clarity in respect of 'ongoing procedures', many instruments with a legal base in Chapters 4 and 5 of Title V of Part Three TFEU will require some level of practical coordination between the UK and the EU, its Member States, and agencies in order to bring cooperation to an orderly close. This is the case, for example, where a measure provides for ad hoc or ongoing cooperation without setting out detailed procedures for how that cooperation should be conducted in the instrument itself. The steps needed to wind down such cooperation will vary.
13. One example is cooperation under Europol. The UK is clear that it will be seeking a bespoke relationship with Europol as part of a future partnership between the UK and the EU. However, if there were no agreement on future cooperation with Europol, or if current cooperation were to be wound down in advance of moving to a new set of arrangements, consideration would need to be given to all of the different operations and investigations that the UK and Europol were involved in. These include investigations into drug trafficking, human trafficking, and cybercrime, including online child sexual exploitation. An investigation often involves a lengthy period of evidence gathering, leading up to a short joint operation. Consideration would need to be given to ensuring that any ongoing investigations would not be affected in such a way that criminals might escape prosecution or vulnerable individuals might be rendered less safe.
14. At this stage, the existence of this category of practical requirements should be noted. Further consideration of these practical requirements, including how to plan for them to facilitate an orderly withdrawal in areas where the UK and the EU do not agree future cooperation, should take place once negotiations on the nature of the future relationship between the UK and the EU have progressed.

Minimal or no requirements

15. The UK has also identified a third category of instruments in Chapters 4 and 5 of Title V of Part Three TFEU that are not likely to require specific legal provision in the Withdrawal Agreement nor any significant measure of practical coordination in order to bring cooperation to a close. Without any future cooperation agreement, such measures would fall away.

Data

16. The UK is committed to upholding the highest standards of data protection both while it remains a member of the EU and following withdrawal. The UK adheres to current EU data protection rules and intends to have fully implemented the new EU data protection package by May 2018. When the UK leaves the EU it will therefore be operating the same standards as EU Member States, with safeguards clearly set out in domestic law.
17. As part of police and judicial cooperation in criminal matters, UK information and data, including personal data, has been transferred to other Member States and the EU institutions and agencies, and vice versa. The UK agrees with the EU that the Withdrawal Agreement will need to include provision on whether such data can be kept and used by the parties that hold it at the point of exit (subject to any measure-specific rules on retention), and what rules will govern the processing and handling of such data.
18. The processing and handling of each others' data following withdrawal is a cross-cutting issue that is relevant to other provisions likely to feature in a Withdrawal Agreement. The UK has published a separate policy paper on the exchange and protection of personal data.

Other cross-cutting considerations

19. The EU proposal regarding continued application of relevant provisions of Union law applicable on the withdrawal date to 'ongoing procedures' raises issues around governance, on which the UK has set out its position separately.

the 1990s, the number of people in the UK who are employed in the public sector has increased from 10.5 million to 12.5 million, and the number of people in the public sector who are employed in health care has increased from 1.5 million to 2.5 million (Department of Health 2000).

There are a number of reasons for this increase. One of the main reasons is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and asthma. This has led to an increase in the number of people who need to be treated in hospitals and other health care settings.

Another reason for the increase is the increasing number of people who are employed in the public sector. The public sector has become a major employer in the UK, and this has led to an increase in the number of people who are employed in health care. This is particularly true of the NHS, which is the largest employer in the public sector.

There are a number of challenges facing the public sector in the UK. One of the main challenges is the increasing demand for health care services. The population of the UK is ageing, and there is a growing number of people with chronic conditions such as heart disease, diabetes, and asthma. This has led to an increase in the number of people who need to be treated in hospitals and other health care settings.

Another challenge is the increasing number of people who are employed in the public sector. The public sector has become a major employer in the UK, and this has led to an increase in the number of people who are employed in health care. This is particularly true of the NHS, which is the largest employer in the public sector.

There are a number of ways in which the public sector can meet these challenges. One way is to increase the number of people who are employed in the public sector. This can be done by recruiting more people to the public sector and by providing training and development opportunities for existing staff.

Another way is to improve the efficiency of the public sector. This can be done by reducing waste and by improving the quality of services. This can be done by using technology and by implementing best practice.

There are a number of other ways in which the public sector can meet these challenges. These include increasing the number of people who are employed in the public sector, improving the efficiency of the public sector, and increasing the quality of services.

The public sector in the UK is facing a number of challenges. These include the increasing demand for health care services, the increasing number of people who are employed in the public sector, and the increasing number of people who are employed in health care. There are a number of ways in which the public sector can meet these challenges. These include increasing the number of people who are employed in the public sector, improving the efficiency of the public sector, and increasing the quality of services.