



# A 'NO-DEAL' BREXIT: POLICE AND JUDICIAL COOPERATION

April 2019

EU police and judicial cooperation in criminal matters is key to keeping Europeans safe. The EU has a comprehensive framework in place to ensure that police and judicial authorities cooperate closely in preventing and prosecuting crime and terrorism, be it through information exchange, judicial cooperation procedures or via EU agencies.

Brexit will not change this cooperation between the 27 Member States. The EU will continue to build an effective and genuine Security Union.



## Consequences of a 'no-deal' for the UK

In case of a 'no-deal' Brexit this legal framework will, however, no longer apply to the UK. This means in particular that:

- The UK will be disconnected from all EU networks, information systems and databases;
- Judicial cooperation procedures will no longer be pursued in an EU framework;
- The UK will no longer be able to participate in EU Agencies. It will be a third country and will be treated as such.



## Switch to a bilateral and multilateral approach, and other measures

In case of a 'no-deal' Brexit, cooperation between the EU27 and the UK will switch to already existing alternative bilateral or multilateral legal frameworks and cooperation mechanisms. The Commission has worked with Member States to ensure appropriate contingency action and to be prepared to use reliable fall-back mechanisms for any scenario, particularly regarding the following issues:

- Disconnection from EU networks, information systems and databases;
- Transfer from the Schengen Information System to Interpol;
- Cooperation with EU Agencies including Europol, Eurojust and eu-LISA;
- Judicial cooperation on pending criminal cases (European Arrest Warrant, Transfer of Prisoners, European Investigation Order, etc.).

The EU27 have been preparing, assisted by the Commission, for the switch to these alternative cooperation mechanisms by making operational adaptations to procedures, structures, tools, staffing and other resources.

## “Fall-back instruments” by the Commission<sup>1</sup>

EU instrument	Fall-back
<b>Schengen Information System (SIS)<sup>2</sup></b>	Interpol databases (documents, vehicles) and notices (persons)
<b>Supplementary Information Request at the National Entries (SIRENE bureaux) channel</b>	Interpol channel, existing bilateral channels
<b>Europol<sup>3</sup></b>	Interpol, bilateral channels, possibilities of exchange of data by way of derogations based on Article 25 of Europol Regulation (EU) 2016/794
<b>Swedish Initiative<sup>4</sup> (general framework for sharing law enforcement information between Member States)</b>	Interpol, existing bilateral channels  Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters from 2001 (ETS 182)  UN Palermo Convention (transnational organised crime) ensures a minimum level of approximation
<b>FIU.Net (Financial Intelligence Units)</b>	Financial Action Task Force (international), Council of Europe Warsaw Convention, EG MONT secure web
<b>ARO (Asset Recovery Offices)<sup>5</sup></b>	Camden Asset Recovery Inter-Agency network (CARIN), bilateral channels
<b>European Image Archiving System (FADO)<sup>6</sup></b>	Interpol Stolen and Lost Documents Database

<sup>1</sup> All fall-backs identified are to be used in full respect of applicable EU data protection rules.

<sup>2</sup> 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; 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; 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.

<sup>3</sup> 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, OJ L 135, 24.5.2016, p.53.

<sup>4</sup> Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, OJ L 386, 29.12.2006, p. 89.

<sup>5</sup> Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime, OJ L 332, 18.12.2007, p. 103.

<sup>6</sup> Joint Action 98/700/JHA of 3 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union concerning the setting up of a European Image Archiving System (FADO), OJ L 333, 9.12.1998, p. 4.

<b>EU instrument</b>	<b>Fall-back</b>
<b>Cooperation on Football Disorder<sup>7</sup></b>	2016 Council of Europe (CoE) Convention on an Integrated Safety, Security and Service Approach at Football Matches and Other Sports Events (CETS 218) <sup>8</sup>
<b>Joint Investigation Teams (JITs)<sup>9</sup> - Mutual Assistance in Criminal Matters between Member States of the European Union<sup>10</sup></b>	Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters from 2001 (ETS 182)
<b>Joint Action on Organised Crime<sup>11</sup></b>	United Nations Convention against Transnational Organized Crime
<b>EURODAC<sup>12</sup></b>	None necessary; UK will no longer participate to the Dublin Regulation (EU) 604/2013
<b>Cybercrime Directive<sup>13</sup></b>	2001 CoE Convention on Cybercrime (ETS 185) <sup>14</sup> with 2003 Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems (ETS 189) <sup>15</sup>
<b>Combating the sexual abuse and sexual exploitation of children and child pornography<sup>16</sup> Combating child pornography on the internet<sup>17</sup></b>	2007 CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS 201) <sup>18</sup>

<sup>7</sup> Council Decision 2002/348/JHA of 25 April 2002 concerning security in connection with football matches with an international dimension, OJ L 121, 8.5.2002, p. 1.

<sup>8</sup> AT, BE, BG, HR, CY, CZ, DK, EE, FI, DE, EL, HU, IE, IT, LV, LT, LU, NL, RO, SK, SI, ES and SE have not ratified. UK has not ratified.

<sup>9</sup> Council Resolution on a Model Agreement for setting up a Joint Investigation Team (JIT), OJ C 18, 19.1.2017, p. 1.

<sup>10</sup> Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union - Council Declaration on Article 10(9) - Declaration by the United Kingdom on Article 20, OJ C 197, 12.7.2000, p. 3-23; Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 197, 12.7.2000, p. 1.

<sup>11</sup> Joint Action 97/827/JHA of 5 December 1997 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organized crime, OJ L 344, 15.12.1997, p. 7.

<sup>12</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1.

<sup>13</sup> Directive 2013/40/EU of the European Parliament and of the Council of 12 August 2013 on attacks against information systems and replacing Council Framework Decision 2005/222/JHA, OJ L 218, 14.8.2013, p. 8.

<sup>14</sup> IE and SE have not ratified.

<sup>15</sup> AT, BE, BG, EE, HU, IE, IT, MT and SE have not ratified. UK has not ratified.

<sup>16</sup> Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA, OJ L 335, 17.12.2011, p. 1.

<sup>17</sup> Council Decision of 29 May 2000 to combat child pornography on the Internet, OJ L 138, 9.6.2000, p. 1.

<sup>18</sup> IE has not ratified.

EU instrument	Fall-back
<b>Preventing and combating trafficking in human beings<sup>19</sup></b>	United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; 2005 CoE Convention on Action against Trafficking in Human Beings (CETS 197) <sup>20</sup>
<b>European Arrest Warrant<sup>21</sup></b>	1957 CoE Convention on Extradition (ETS 24) <sup>22</sup> 1975 First Additional Protocol (ETS 86) <sup>23</sup> 1983 Second Additional Protocol to the European Convention on Extradition (ETS 98) <sup>24</sup> 2010 Third Additional Protocol to the European Convention on Extradition (CETS 209) <sup>25</sup> 2012 Fourth Additional Protocol to the European Convention on Extradition (CETS 212) <sup>26</sup>
<b>European Investigation Order<sup>27</sup></b>	1959 CoE Convention on Mutual Assistance in Criminal Matters (ETS 30) <sup>28</sup> 1978 Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 99) <sup>29</sup> 2001 Second additional Protocol to the European Convention on Mutual Assistance in Criminal Matters (ETS 182) <sup>30</sup> 2001 CoE Convention on Cybercrime (ETS 185) <sup>31</sup>

<sup>19</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1.

<sup>20</sup> Ratified by all Member States.

<sup>21</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States - Statements made by certain Member States on the adoption of the Framework Decision, OJ L 190, 18.7.2002, p. 1.

<sup>22</sup> Ratified by all Member States and the UK.

<sup>23</sup> Not ratified by the UK or AT, FI, FR, DE, EL, IE and IT.

<sup>24</sup> Not ratified by FR, EL, IE and LU.

<sup>25</sup> Not ratified by BE, BG, CZ, HR, EE, EL, IE, FI, FR, HU, IT, LU, MT, PL, PT, SE and SK.

<sup>26</sup> Only ratified by the UK, and LV, AT and SI.

<sup>27</sup> Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters, OJ L 130, 1.5.2014, p. 1.

<sup>28</sup> Ratified by all Member States and the UK.

<sup>29</sup> Ratified by all Member States and the UK.

<sup>30</sup> Not ratified by EL, IT and LU.

<sup>31</sup> Not ratified by IE and SE.

<b>EU instrument</b>	<b>Fall-back</b>
<b>European Freezing and Confiscation Orders<sup>32</sup></b>	1990 CoE Convention on Laundering, search, seizure and confiscation of the proceeds of crime (ETS 141) <sup>33</sup>  2005 CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198) <sup>34</sup>
<b>Transfer of Prisoners<sup>35</sup></b>	1983 CoE Convention on the transfer of sentenced persons (ETS 112) <sup>36</sup>  1997 Additional Protocol to the Convention on the Transfer of Sentenced Persons (ETS 167) <sup>37</sup>  2017 Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons (CETS 222) <sup>38</sup>
<b>European Criminal Records Information System (ECRIS)<sup>39</sup></b>	Article 13 of the 1959 CoE Convention on Mutual Assistance in Criminal Matters
<b>Mutual Recognition of Financial Penalties<sup>40</sup></b>	1970 CoE Convention on the International Validity of Criminal Judgments (ETS 70) <sup>41</sup>

<sup>32</sup> Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders, OJ L 328, 24.11.2006, p. 59–78; Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45–55.

<sup>33</sup> All Member States and the UK have ratified.

<sup>34</sup> Not ratified by AT, CZ, EE, FI, IE, LT and LU.

<sup>35</sup> Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union, OJ L 327, 5.12.2008, p. 27.

<sup>36</sup> All Member States and the UK have ratified.

<sup>37</sup> Not ratified by IT, PT and SK.

<sup>38</sup> Not ratified by any Member States or the UK.

<sup>39</sup> Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings, OJ L 220, 15.8.2008, p. 32.

<sup>40</sup> Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties, OJ L 76, 22.3.2005, p. 16.

<sup>41</sup> Not ratified by the UK or HR, CZ, FI, FR, DE, EL, HU, IE, IT, LU, MT, PL, PT and SK.

