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The Rt Hon Yvette Cooper MP  
Committee Chair  
Home Affairs Committee

***By e-mail***

5 November 2020

Dear Ms Cooper

### **Future Security Cooperation**

Thank you for your letter dated 21 October 2020 in relation to future Law Enforcement cooperation with European partners from 1 January 2021.

Whilst we await the outcome of negotiations, our overriding objective is to maximise operational cooperation with EU Member States (EUMS) and to minimise disruption with our domestic and international Law Enforcement partners. We will continue to work with EUMS to share intelligence, develop investigations and pursue high risk offenders. This is vital to ensure our countries and citizens remain safe from the ever growing and complex threat of Serious and Organised Crime (SOC).

The NCA is preparing for the end of the Transition Period and we have comprehensive plans in place to cover both a Negotiated Outcome (NO) or Non Negotiated Outcome (NNO). We will be ready to transfer to alternative mechanisms such as INTERPOL, Council of Europe Conventions and bi-lateral channels if necessary. We have been working with the Home Office and HMG partners to ensure that the UK is as prepared as it can be on security matters ahead of the conclusion of negotiations. The NCA has received funding for the financial year 2019-2020 to implement our contingency plans, with future funding subject to the outcome of the NCA's settlement in the one year Spending Review.

I have outlined below responses to the questions you have posed, and trust that you will find this information helpful.

*Tool responses (Q 1a,b,c,d,e)*

## **SECOND GENERATION SCHENGEN INFORMATION SYSTEM (SIS II)**

SIS II enables UK and EU Member States (MS) to share and act on real-time data on persons and objects of interest including wanted and missing persons. MS have access to a vast amount of information - for example, SIS II contained a cumulative total of over 983,000 alerts on persons (as of 31 December 2019). UK Law Enforcement (UKLE) has made extensive use of SIS II, which (as of 31 December 2019), contained 4.6 million UK alerts relating to people and objects, including over 37,000 person alerts circulated by the UK. We have noted that the Commission has maintained that there is no legal basis for the UK to retain access to SIS II post-December 2020 and this is reflected in our planning assumptions.

INTERPOL Notices and Diffusions are the alternative mechanism for sharing this type of data with EUMS, although it is not a like for like system, so there are capability gaps affecting both sides which will reduce our ability to dynamically exchange real time alerts and data on persons and objects of interest.

The NCA is working closely with our UK Law Enforcement partners to ensure our preparations to utilise INTERPOL channels in place of SIS II alerts are maximised and coordinated. The NCA's UK International Crime Bureau (UKICB) is undertaking two key exercises:

1. Details from INTERPOL Notices and Diffusions received by the UK are routinely circulated on the Police National Computer (PNC) and at Borders. A 'data refresh exercise' has been completed, which ensured that live and legacy Notices and Diffusions are circulated.
2. UK Police Forces are reviewing all existing and new SIS II Alerts to determine which are suitable for 'dual' circulation via INTERPOL channels. NCA officers are working closely with Police colleagues to ensure that the correct level of detail is submitted or upload to INTERPOL systems.

Unlike SIS II, INTERPOL systems are not directly integrated into UK PNC and Border systems. As such the upload/circulation of UK Notices and Diffusions is manual, so it takes longer. The circulation of non-UK Notices and Diffusions to PNC and at Borders is being managed through the implementation of RPA (Robotic Processing Automation) to help improve timescales for circulation and to minimise the amount of manual data entry. Over 60 additional UKICB officers have been recruited and trained to manage this workload, and they have also facilitated an increased number of front line Law Enforcement officers having direct access to INTERPOL databases and systems. The NCA has received 2020/21 funding for the recruitment of additional officers and investment in RPA.

## **EUROPEAN ARREST WARRANT (EAW)**

The NCA and our UKLE partners have extensively utilised the EAW to enable the fast track surrender and extradition of wanted individuals to and from EUMS. In 2019, the UK surrendered 781 individuals to the EU under the EAW to face trial

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or detention. Between 2009 and 2019, there were 16,034 arrests in the UK and 11,300 surrenders under EAW part 1<sup>1</sup>, including those accused or convicted of murder, terrorism and CSAE offences. During the same time period, there were 1,894 MS EAW part 3<sup>2</sup> arrests at the request of the UK and 1,625 surrenders to the UK.

As you will be aware, the UK is not seeking to participate in the EAW as part of the future relationship, and instead an agreement for fast-track extradition arrangements, based on the EU's Surrender Agreement with Norway and Iceland is being sought. In a NNO, we will rely on the 1957 European Convention on Extradition (ECE), which allows extradition between both EU and non-EU members of the Council of Europe.

In addition, the new Extradition (Provisional Arrest) Act 2020 will provide a power of arrest for those circulated on an INTERPOL Red Notice or Diffusion as wanted in relation to a serious crime by EUMS and EEA countries. When implemented, the NCA will be the Designated Authority to process these Notices and Diffusions. The new role of certification of INTERPOL circulations is a more complex function than the NCA currently undertakes under the existing EAW procedure. However, we have received funding (for this financial year) and recruitment is underway to ensure the NCA is sufficiently resourced to fulfil this function. We will of course require funding for future years if we are to continue to provide this service.

### **Prüm**

Access to Prüm provides significant benefits by enabling reciprocal, automated searching of bulk DNA, Fingerprint data for Law Enforcement purposes, and is a key tool in scope for internal security negotiations.

Prüm also provides for the exchange of Vehicle Registration Data (VRD) but that element has not yet been implemented in the UK. The UK has been connected to Prüm DNA since July 2019, and live daily DNA exchanges are now occurring with 11 EUMS, with a further three countries pending connection. In this short period of connectivity, over 89,000 initial data matches have already been made with EU held DNA data (as of September 2020). The UK is also now live with Fingerprint Exchange, which commenced with Germany on 5 October 2020. In relation to fingerprint exchanges, there have so far been 20 matches in relation to UK to MS Outbound requests and four in relation to MS to UK Inbound requests. A quota process applies to fingerprint exchange which explains, as does the fact that we have only connected to Germany so far, why the numbers in relation to fingerprint exchange are so much smaller than those that relate to DNA.

The NCA's UKICB carries out the follow up process in relation to a Prüm hit. Acting on behalf of requesting forces, we are responsible for obtaining additional information from the country that owns the Fingerprints or DNA profile. This enables UKLE agencies to progress investigations more quickly, with viable lines

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<sup>1</sup> Part 1 of the Extradition Act 2003 covers Extradition from the UK to Category 1 territories including EUMS.

<sup>2</sup> Part 3 of the Extradition Act 2003 covers Extradition to the UK from Category 1 territories including EUMS.

of enquiry. To date, for DNA follow up requests, there have been 816 UK to MS Outbound requests and 1777 MS to UK Inbound requests. The automated exchange of biometrics through Prüm greatly improves the effectiveness and efficiency of the process, and enhances the ability of UK law enforcement to quickly progress criminal investigations. So far we have completed the follow up activity in relation to 1427 UK Subject Profiles and 422 MS subject profiles, and over 500 UK investigations have benefited with identification of offenders or links to multiple crime scenes.

In the event of a NNO, there is no direct alternative to Prüm. From 1 January 2021, the UK would need to revert to individual manual exchanges of data. Requests would need to be submitted to individual MS through INTERPOL channels on a case by case basis. This will be a slower and less efficient process, with a subsequent impact on UKLE investigations.

## **EUROPOL**

The NCA and UK Law Enforcement partners make extensive use of Europol's significant and unique capabilities. Although we have undertaken contingency planning, the potential loss of access to Europol in a NNO is the tool area we are most concerned about from a SOC perspective.

Europol hosts 220 liaison officers from Member States and associated third countries, with UK Liaison Bureau (UKLB) Officers facilitating 47,000 intelligence exchanges each year through the SIENA messaging system. In 2019, the UK engaged in 170 Europol funded operational meetings (leading 66 of these), and 3,862 new cases were sent by the UK to EUMS, Third Parties and Europol itself.

The UK makes widespread operational use of Europol analytical and coordination services across all serious and organised crime threat areas, and is among the highest contributors to Europol Analysis Projects, with 130,000 suspects submitted in 2019. This level of contribution identifies previously unknown connections between high harm individuals, criminal groups and international investigations, which can then be developed into tangible operational outcomes.

In a NNO, the UK would leave Europol, with very basic wind-down provisions under Title V of the Withdrawal Act. The UK would aim to put in place a basic working arrangement with the Agency to retain liaison officers. However as a contingency measure, the NCA is leading preparations to transfer several hundred live investigations onto bilateral channels, and utilise INTERPOL channels to manage more routine intelligence enquires.

The NCA is preparing to surge additional International Liaison Officers (ILO) to European capitals in December 2020, to ensure readiness to manage cases on bilateral channels from 1<sup>st</sup> January 2021. The NCA has received 2020/21 funding for surge ILO deployments, with future funding (if required in a NNO) dependent on the outcome of the NCA's settlement in the one year Spending Review. However, these deployments could be impacted by Covid-19 related travel restrictions, which we continue to monitor and assess our plans accordingly.

The multilateral coordination and specialist analytical services offered by Europol cannot be replicated through bilateral channels. Information exchange will be slower, more labour intensive, and opportunities to identify new intelligence leads could be diminished without access to the extensive data held on Europol Analysis Projects.

In a NO, the UK is likely to be able to reach an agreement on Europol as part of the negotiations. This would allow us to post Liaison Officers to Europol and be sufficient to exchange information through the UK Liaison Bureau. However we will no longer be able to second national experts and we will not have the same influence in prioritising UK operations for specialist analytical assistance. Both the EU and UK have already confirmed the UK would no longer attend the Europol Management Board, so can no longer exert influence over the future focus and prioritisation of threats within the agency.

### **EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM (ECRIS)**

ACRO is the UK lead on ECRIS and with the Home Office, responsible for managing readiness plans to utilise alternative arrangements in the event access is lost in a NNO.

The NCA is a user of ECRIS, and we are aware that UK is consistently the most active Member State in terms of the total volume of notifications, requests and replies sent to other member states via ECRIS. In 2019, ACRO notified member states of over 31,000 convictions handed down to their nationals in the UK and responded to over 3000 requests (24,852 offences) for conviction information from the EU relating to UK Nationals offending in the EU.

ECRIS is an automated system which provides standardised, electronic exchange of criminal records with set timeframes for requests. The alternative mechanism in a NNO (Council of Europe – 1959 Convention on Mutual Assistance in Criminal Matters) does not impose timescales.

Losing access to the automated system will impact on ACRO and change the way in which data can be exchanged with EUMS. Our understanding is that capability will be notably reduced as responses to UK requests will be significantly slower, impacting on public protection, and judicial decisions. The current automated system enables requests to be sent to MS within approximately 15 minutes of ACRO receiving them – this timescale cannot be matched through non-automated alternative channels. Notifications regarding UK national's offences overseas will be less regular, again impacting on public protection. Our colleagues at ACRO and the Home Office will be best placed to provide any further information to the Committee.

### **PASSENGER NAME RECORDS (PNR)**

Preparations for the potential loss of access to PNR in the event of a NNO are being led by the Home Office, however the NCA is a user of PNR data - both proactively and reactively to gather information in our investigations. The PNR Directive provides a legal basis to enable EU airlines to share data with Law Enforcement Authorities, and help prevent, detect and investigate SOC and

Terrorism offences. Home Office colleagues may be best placed to provide further information in relation to your questions.

**IMPACT of loss of tools** (Q1g)

AC Neil Basu is right to highlight that there will be some operational deficit in the loss of EU tools which we have invested in over a number of years. In the case of Europol, the UK has been the biggest contributor of data in relation to Serious and Organised Crime and over 600 UK operations are supported by the agency each year. As a full member of Europol we have prioritised access to data from all EUMS, and analytical expertise adding significant value to our operations. This is something that simply cannot be replicated at the bilateral level.

In a NNO, we assess that information exchange would be slower and opportunities to develop intelligence leads reduced. It will be more time consuming to coordinate operational action over multiple European jurisdictions, and a lack of access would mean us placing greater reliance on bilateral channels. Whilst new powers at the border, such as the provision of advance data on EU goods, will have a positive impact on Border Force's targeting ability, this may not fully offset the overall operational deficit.

Following the outcome of negotiations and the future security relationship which is agreed, UKLE will also retain an interest in emerging EU tools, systems and capabilities which we may wish to consider seeking future third party access to.

**TRAINING AND GUIDANCE** (Q1f)

We are ensuring that NCA officers receive sufficient guidance so that they understand the implications of, and are prepared for the UK's exit from the EU and the non-EU tools they may be using in the future. Detailed operational 'Tool and Contingency' guidance is being updated in liaison with the International Crime Coordination Centre (ICCC) and Border Force, and will be cascaded to accredited NCA officers, UK police officers and wider UKLE partners.

We are working closely with our counterparts in the ICCC to align and deliver this new guidance. However, the uncertainty regarding the outcome of negotiations makes the timing around delivery of guidance difficult, with all operational partners wanting to ensure that we provide a clear unambiguous message to front line officers.

**ENGAGEMENT** (Q3)

The effectiveness of contingency plans relies greatly on the cooperation and goodwill of Member States. This is particularly true in a NNO where there will be a range of significant changes in how they engage with the UK in relation to law enforcement and criminal justice. We recognise that the more labour intensive and manual processes required in the UK are likely to be replicated in each EUMS. There is a risk therefore of a delay or reduction in the intelligence we receive, or that they action appropriately. Our relationships with key Law Enforcement partners – both bilaterally and multilaterally are already strong and

will become increasingly important in the future. EU Exit will not change the fact that many of the UK's SOC threats emanate from Europe.

We have been clear with our international Law Enforcement partners that our commitment to working together is unchanged – this is the message we hear from them consistently: they are committed to working with us and see the significance of UK operational impact and leadership around the threats we face.

As we head toward the end of the Transition Period, our network of ILOs are actively engaging with their operational counterparts to ensure they understand the law enforcement tools we may need to rely on in future, and to make final confirmations on Day 1 Operability.

We also continue to undertake crucial engagement with the London-based Foreign Law Enforcement Community, which is comprised of over 140 officers representing over 36 countries.

### **DATA ADEQUACY**

If the European Commission do not award Data Adequacy before the end of the Transition Period there would be a direct impact on all UK Law Enforcement agencies to facilitate efficiently inward information transfers from the EU and we would be reliant on MS authorities applying the alternative tests to transfer data to the UK, such as appropriate safeguards.

These alternatives are less efficient, and would require additional demonstration by UK law enforcement of the standards that are in place before the data is transferred. As with preparedness around Law Enforcement tools, our ILOs are engaging with their counterparts on the use of appropriate safeguards, and demonstrating that the UK remains closely aligned in terms of protection of data standards.

You reference CJEU judgement C-623/17. This judgment relates to a previous regime under s94 Telecommunications Act 1984 that has since been replaced by provisions in the Investigatory Powers Act 2016. We now have a completely new regime which sets strict requirements of necessity and proportionality, limits the use of the power and provides significant safeguards and independent oversight to guard against abuse. So far, our domestic courts have found our current law to be compatible with domestic and EU law. Therefore, we remain compatible, and we do not anticipate this judgment blocking our ability to obtain a positive EU adequacy decision.

Finally, it is important to note that whilst deadlines around EU Exit have shifted a number of times over the past eighteen months, we have been prepared for the various possible outcomes at all times. We are in a good state of readiness, but are not complacent and we continue to engage with our EU partners and prepare our officers for the changes which will come in the new year. An important factor for us is the announcement of a one year Spending Review settlement. We are working closely with Home Office colleagues on what this means for the NCA, particularly in the event of a Non Negotiated outcome.

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I hope this information is useful to you and the Home Affairs Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read "Rodhouse", is centered within a light gray rectangular box.

Steve Rodhouse

**Director General Operations**