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The Rt Hon Suella Braverman KC MP
Home Secretary
Home Office
2 Marsham Street
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25 July 2023

Dear Home Secretary,

1. The Justice and Home Affairs Committee has recently conducted a short inquiry into UK-EU cooperation on law enforcement and criminal justice. The inquiry followed up on the report of the EU Security and Justice Sub-Committee of the former EU Select Committee, "Beyond Brexit: policing, law enforcement and security", published on 26 March 2021, and debated by the House on 11 March 2022, which examined the arrangements introduced by Part Three of the UK-EU Trade and Cooperation Agreement (TCA). The Government responded to the original report in May 2021.

2. On 7 March 2023, the Committee held an evidence session with UK and European defence lawyers and a representative from the Crown Prosecution Service for England and Wales. In a second evidence session on 14 March 2023, the Committee heard from representatives of UK law enforcement: the National Crime Agency (NCA) and the National Police Chiefs' Council (NPCC). We also received written evidence from interested parties: the ACRO Criminal Records Office, the Bar Council for England and Wales, the Crown Prosecution Service for England and Wales, the Crown Office and Procurator Fiscal Service Scotland, the NCA, the Police Service of Northern Ireland (PSNI), the Police Service of Scotland, and the Scottish Government.[1] We are grateful to all our witnesses for their contribution.

3. The Justice and Home Affairs Committee's remit includes international cooperation in respect of criminal justice. The focus of this inquiry was on the operational aspects of Part Three of the TCA, in particular criminal data exchange and extradition arrangements. The European Affairs Committee (EAC), chaired by Lord Ricketts, retains primary responsibility for considering matters relating to the UK's relationship with the EU, including governance of the TCA. We are grateful to Lord Liddle, an EAC member, for attending our evidence sessions.

4. We start with the view that international cooperation is essential in tackling present-day crime. As Rebecca Niblock, Partner at Kingsley Napley, told us:

[1] Invited to submit written evidence, the Public Prosecution Service for Northern Ireland declined the offer to contribute.

> "crime is increasingly international and in even the seemingly smallest, most domestic criminal case there is usually some international element involved … Without being able to access that evidence, it makes even those purely domestic cases very difficult to investigate and prosecute. The ultimate consequence of that is impunity."[2]

5. The Committee is particularly concerned about the provisions relating to termination and suspension of Part Three of the TCA. Under certain scenarios, including the UK denouncing the European Convention on Human Rights (ECHR) or being deficient in the domestic protection of the rights it contains, Part Three of the TCA can be terminated immediately and/or suspended (in whole or in part). In the context of ongoing speculation about the UK's relationship with the ECHR, we had the opportunity to raise our concerns about the future of UK-EU security cooperation under Part Three with the then Lord Chancellor and Secretary of State for Justice, Rt. Hon. Dominic Raab MP, when he appeared before the Committee on 15 March 2023. We are equally concerned that changes to our domestic data protection legislation, especially in the context of the Data Protection and Digital Information (No. 2) Bill, could also lead to the termination and/or suspension (in whole or in part) of UK-EU security cooperation under Part Three of the TCA.

6. We set out our findings in 3 appendices. Appendix A relates to UK-EU cooperation on law enforcement and includes discussions of the exchange of Prüm data (DNA, fingerprints, vehicle registration data) and Passenger Name Record data, of the exchange of information on criminal records, of the UK's efforts to mitigate the consequences of the loss of access to the Second-Generation Schengen Information System (SIS II), and of the UK's new role within Europol. Appendix B relates to UK-EU cooperation on criminal justice, touching upon surrender arrangements (TCA warrants, proportionality, consequences of the loss of access to SIS II, nationality bar, and provisional arrest powers) and Mutual Legal Assistance (MLA). Appendix C relates to the possibility of a termination or suspension of Part Three of the TCA, in full or in part.

7. Our questions are set out in bold italicised text and our conclusions are set out in bold text. Appendix D consists of a list of all these questions and conclusions. We would be grateful for a response to each of them in their numbered sequence, separately, without combining responses to more than one point, by Friday 6 October 2023.

8. The original report of the EU Security and Justice Sub-Committee also included a chapter on the UK's application to accede to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. While this is not the focus of this letter, we would welcome a progress update on the UK's application in your response.

[2] Q 9 (Rebecca Niblock)

9. I am copying this letter to Rt. Hon. Alex Chalk KC MP, Lord Chancellor and Secretary of State for Justice; Rt. Hon. Michelle Donelan MP, Secretary of State for Science, Innovation and Technology; Angela Constance MSP, Scottish Cabinet Secretary for Justice and Home Affairs; Lord Ricketts, Chair of the EAC, chair of the original EU Security and Justice Sub-Committee inquiry, and a former member of the Justice and Home Affairs Committee; Lord Jay of Ewelme, Chair of the Protocol on Ireland/Northern Ireland Sub-Committee; Rt. Hon. Dame Diana Johnson MP, Chair of the Home Affairs Committee; and Rt. Hon. Sir Bob Neill MP, Chair of the Justice Committee.

Yours sincerely,

Baroness Hamwee,
Chair, House of Lords Justice and Home Affairs Committee

Appendix A—UK-EU cooperation on law enforcement

Prüm data

1. Part Three of the TCA makes provisions for the "automated transfer", between the UK and the EU, of so-called "Prüm data". Prüm data includes DNA profiles, fingerprints, and "certain domestic vehicle registration data".[3]

2. The EU Security and Justice Sub-Committee welcomed these provisions but noted that "the UK's handling of DNA, fingerprint, and vehicle registration data on the basis of the Prüm system will be subject to an evaluation by the EU", which could have resulted in a suspension of the automated transfer of such data.[4] The UK successfully passed the evaluation in June 2022.[5]

3. Deputy Chief Constable Peter Ayling, International Crime Coordination Centre Lead at the National Police Chiefs' Council (NPCC), told us that cooperation on the exchange of Prüm data is "growing in value".[6] Steve Rodhouse, Director-General (Operations) at the National Crime Agency (NCA) explained that, as of March 2023, "the UK is now connected to 15 countries across the Prüm network for the sharing of DNA—that is 95% of all DNA profiles held in Europe—and 12 countries for fingerprint searching but with a further five countries to come on stream."[7] The Police Service of Northern Ireland notes that the Republic of Ireland does not share DNA and fingerprints data through that mechanism.[8] The Crown Office and Procurator Fiscal Service Scotland (COPFS Scotland) gave a different estimate of "over 80% of the EU's DNA data".[9]

4. Mr Rodhouse emphasised the operational value of such data exchanges, arguing that this is "a significant capability to allow us to try to match unidentified crime stains from the UK with known profiles from Europe and to match UK profiles, known individuals, to stains and marks overseas."[10] DCC Ayling confirmed that the exchange of Prüm data was of use not only to tackle "high-level serious organised crime", but also for "everyday business that affects territorial police forces across the UK".[11] COPFS Scotland concurred that there are "cases where suspects have been identified, who

[3] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one Part, and the United Kingdom of Great Britain and Northern Ireland, of the other Part, Part Three, Title II, Articles 527—541, OJ L 149, 30 April 2021

[4] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250). This process, which could have resulted in the suspension of the exchange of Prüm data, is distinct from other suspension or termination mechanisms that apply to Part Three or other parts of the TCA, which we discuss in Appendix C.

[5] Council Decision (EU) 2022/1014 of 17 June regarding the determination, of the date from which personal data relating to DNA profiles and dactyloscopic data as referred to in Articles 530, 531, 534 and 536 of that Agreement may be supplied by Member States to the United Kingdom 28 June 2022 L 170/68

[6] Q 14 (Deputy Chief Constable Peter Ayling)

[7] Q 14 (Steve Rodhouse)

[8] Written evidence from the Police Service of Northern Ireland (PBS0005)

[9] Written evidence from the Crown Office and Procurator Fiscal Service Scotland (PBS0004)

[10] Q 14 (Steve Rodhouse)

[11] Q 14 (Deputy Chief Constable Peter Ayling)

but for this system would have been undetected".[12] The Police Service of Scotland agreed that "the use of Prüm has, both for EU countries and Scottish cases, resulted in the detection of offenders for crimes that would not otherwise be resolved" and the Police Service of Northern Ireland described the mechanism for the exchange of Prüm data as "efficient and accurate".[13]

5. In December 2021, the European Commission brought forward a proposed Regulation seeking to reform the basis on which EU Member States operate the exchange of Prüm data.[14] If adopted as proposed, the Commission's reforms will broaden the categories of data exchanged through the system to cover facial imagery and police records and would enable Member States to make an automatic check on biometric data shared with Europol by non-EU Member States, such as the UK. A provision in the TCA seeks, in part, to deal with the ramifications of this eventuality.[15]

6. Mr Rodhouse told us that "the package of measures under Prüm 2 is still under discussion" and that it may "involve an expansion of the material that will be provided—custody imagery and some further police records." He explained that "we need the EU to complete its internal negotiations" first and that it would then be "a matter for the Government" to negotiate cooperation.[16] DCC Ayling expressed "a strong preference that the UK will continue to be included [in] any new arrangements" and Mr Rodhouse concurred that "an exchange of information that provides greater material for investigators to work with to solve crimes and protect the public is a good thing."[17]

7. Meanwhile, the Police Service of Northern Ireland (PSNI) drew our attention to the state of play of their cooperation with Irish authorities. PSNI explained that An Garda Síochána (AGS), the Irish national police service, is "operating with a different encryption certificate" compared with that used by other EU Member States, meaning that Ireland's fingerprints database "will not be available to Prüm users". PSNI stressed that "this may become challenging going forward, given the shared land border and crime traffic" between Northern Ireland and Ireland. PSNI also mentioned issues related to the sharing of information, on a "police-to-police basis", of people identified

[12] Written evidence from the Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[13] Written evidence from the Police Service of Scotland (PBS0009) and written evidence from the Police Service of Northern Ireland (PBS0005).
[14] Proposal for a regulation of the European Parliament and of the Council on automated data exchange for police cooperation, COM(2021) 784 Final
[15] The TCA provides that the UK and the EU will engage in consultations on amending the TCA should the EU's Prüm framework be reformed. If these consultations fail, the Union can decide to suspend the "application of this Title" or any of its provisions for up to nine months. This period can be extended for a further nine months. If at the end of the suspension period, the Parties have failed to reach an agreement, the suspended provision will cease to apply. It is left to the Partnership Council's Specialised Committee on Law Enforcement and Judicial Cooperation (SCLEJC), which oversees the operation of Part Three of the TCA, to meet and decide what steps are taken to conclude the suspended cooperation "in an appropriate manner". See TCA, Article 541, OJ L 149, 30 April 2021.
[16] Q 15 (Steve Rodhouse)
[17] Q 15 (Steve Rodhouse)

against Ireland's DNA database, but is "encouraged by the pragmatic approach taken by Irish authorities".[18]

8. **We welcome reassurances that the exchange of Prüm data continues to be broadly effective and about the positive contribution it makes to everyday policing in the UK. We note that the UK and Ireland have, for historical reasons, found pragmatic solutions to the sharing of Prüm data on the island of Ireland. We also note that the EU is reforming the Prüm mechanism and that it remains to be determined whether the UK will participate in the new mechanism. Like our witnesses, we favour continued participation.**

9. **Facial imagery could be exchanged under the reformed Prüm mechanism. We remain supportive of the use of such data and of new technologies by the police and in the justice system but are concerned about the lack of transparency and safeguards that surround such use. We set out our conclusions and recommendations in our 2022 report *Technology rules? The advent of new technologies in the justice system*.[19]**

10. ***What assessment has been made of the resource implications of the new mechanism by which the UK exchanges Prüm data with the EU, compared with the previous mechanism (full membership)?***

11. ***What is the Government's view on the proposed reforms to the Prüm mechanism? Will the Government seek to participate in that new mechanism?***

12. ***The UK having successfully passed, in June 2022, an evaluation by the EU of the UK's handling of Prüm data, are further evaluations to be expected in the future?***

Passenger Name Records

13. Part Three of the TCA provides for the transfer, use, and processing of "Passenger Name Record" (PNR) data gleaned from flights between the European Union and the United Kingdom. According to the TCA, all such data should be processed by the UK "strictly" for the purposes of "preventing, detecting, investigating or prosecuting terrorism or serious crime" or in "exceptional cases" where it is necessary "to protect the vital interests of any natural person".[20] Part Three also includes provisions dealing with the transfer of PNR data between the UK and both Europol and Eurojust.[21]

14. Having received PNR data, the UK must delete them within five years of receipt or immediately upon the departure of a passenger (whichever comes first).[22] In the latter scenario, the UK is allowed to retain PNR data if it identifies "objective evidence" from

[18] Written evidence from the Police Service of Northern Ireland (PBS0005)
[19] Justice and Home Affairs Committee, *Technology rules? The advent of new technologies in the justice system* (First report, Session 2021-22, HL Paper 180)
[20] TCA, Article 544, OJ L 149
[21] TCA, Article 546, OJ L 149
[22] TCA, Article 552, OJ L 149

which "it may be inferred that certain passengers present the existence of a risk" related to terrorism or serious crime.[23] Furthermore, all PNR data held by the UK must be "depersonalised" (which involves "masking out" some data, such as names and addresses) within six months of receipt.[24]

15. The UK and the EU agreed a derogation to the UK's obligation to delete PNR data immediately upon the departure of a passenger. This derogation, which reflects the Opinion of the Court of Justice of the European Union on Canada's access to PNR data[25], was granted on the basis of the "special circumstances" of the UK's departure from the European Union, and applies only during an interim period.[26] The interim period was recently renewed by the Partnership Council's Specialised Committee on Law Enforcement and Judicial Cooperation (SCLEJC) "for a second and last time until 31 December 2023".[27] It is designed to give the UK sufficient time to make "the technical adjustments necessary to transform the PNR processing systems which the United Kingdom operated whilst Union law applied to it into systems which would enable PNR data to be deleted" in accordance with TCA requirements.[28]

16. Witnesses stressed the importance of PNR data. Mr Rodhouse told us that PNR data "give us access to important data that allows us to plan operations and keep people safe".[29] The Crown Office and Procurator Fiscal Service Scotland described PNR data as "an important law enforcement tool allowing us to prevent, detect and investigate terrorism and other forms of serious crime" and the Police Service of Scotland told us that "continuation of the sharing of PNR data is of crucial importance to the security of Scottish communities and the UK in general".[30] The Police Service of Northern Ireland agrees that PNR data is a "valuable tool in the fight against terrorism and serious crime" and argues that "opportunities to further expand to rail and sea travel are worthy of additional consideration."[31]

17. What assessment has the Government made of TCA provisions for the exchange of PNR data? How effective has such exchange been in practice?

18. The UK is required to update its PNR processing systems by the end of the year to comply with TCA requirements. Will that deadline be met? If not, when can we expect the requirements to be met?

19. How realistic is the suggestion that the exchange of PNR data could be extended to rail and sea travel? Would the Government consider pursuing that idea?

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[23] TCA, Article 552, OJ L 149
[24] TCA, Article 552, OJ L 149
[25] Court of Justice of the European Union (Grand Chamber), *Opinion pursuant to Article 218(11) TFEU*, Opinion 1/15
[26] TCA, Article 552, OJ L 149
[27] Council Decision 2/2022 of 21 December 2022 on the second and last extension of the interim period during which the UK may derogate from the obligation to delete Passenger Name Record data of passengers after their departure from the UK (OJ L328/153, 22 December 2022)
[28] TCA, Article 552, OJ L 149
[29] Q 16 (Steve Rodhouse)
[30] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004) and written evidence from the Police Service of Scotland (PBS0009)
[31] Written evidence from the Police Service of Northern Ireland (PBS0005)

Criminal records

20. EU Member States exchange criminal records among themselves using the European Criminal Records Information System (ECRIS). Part Three of the TCA provides for the sharing of criminal records between the UK and the EU on a similar basis. To that effect, the UK was expected to develop its own digital infrastructure, called the United Kingdom Criminal Records Information System (UKCRIS).[32]

21. The EU Security and Justice Sub-Committee heard positive evidence about these provisions in the TCA. It concluded:

> "The Government should be congratulated for securing an agreement whereby criminal records data will be shared with the EU on a very similar basis to that which applied when the UK had access to the European Criminal Records information Service (ECRIS), including within comparable time frames. It will be important for parliamentary committees to continue to monitor the future effectiveness of the replacement system now being built, to assess whether it provides capability comparable to ECRIS, in terms of the data that can be accessed and the speed with which it is made available to UK law enforcement agencies."[33]

22. The ACRO Criminal Records Office[34] was tasked with developing the required infrastructure to allow for the sharing of criminal record data. ACRO confirmed in written evidence that they "have implemented these requirements and ensured that UKCRIS has been fully operational with no interruption in service throughout our EU exit and the end of the Transition Period, and with arrangements in place to provide ongoing maintenance to ensure this remains the case."[35]

23. ACRO told us that "the implementation of Title IX of Part [Three] of the UK-EU Trade and Co-operation Agreement 2020 did not change ACRO's core operational processes for criminal conviction exchange between the UK and EU, nor the type of data that is shared." They stressed that "the operational benefits to the UK and to law enforcement of retaining our ability to receive and share criminal conviction information within a similar mechanism to that already established under ECRIS are considerable."[36]

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[32] TCA, Part Three, Title IX, OJ L 149
[33] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[34] The ACRO Criminal Records Office was established in 2006 under the Police Act 1996 to act as the "competent authority" for the exchange of criminal records with the EU. It is hosted by Hampshire & Isle of Wright Constabulary.
[35] Written evidence from ACRO Criminal Records Office (PBS0002)
[36] Written evidence from ACRO Criminal Records Office (PBS0002)

24. ACRO added that "the volumes of data exchanged have continued to grow" but a closer look at the statistics they provided reveal a more nuanced picture.[37] On the one hand, we observe a steep increase in the number of "inward" requests for criminal record data from EU Member States to the UK in recent years, rising from around 4,500 in April—June 2018 to over 10,000 in April—June 2022.[38] On the other hand, we observe a steep decline in the number of "outbound" requests for criminal record data from the UK to EU Member States from 2020: where the UK made over 37,000 and 28,000 requests in April—June 2018 and April—June 2019 (respectively), the volume of requests fell to around 18,500 in April—June 2020, at the heart of the first Covid-19 lockdown, and has not exceeded 22,000 in either of the two corresponding windows in 2021 and 2022. In other words, in relation to outbound requests, ACRO's statement that "the volumes of data exchanged have continued to grow" holds only when comparing recent figures with those from the months affected by the first Covid-19 lockdown.[39]

25. The EU Security and Justice Sub-Committee was told that TCA arrangements could lead to criminal records being shared more slowly than under ECRIS, but was reassured by Mr Rodhouse that this was unlikely to be the case.[40] In written evidence to us, ACRO confirmed that "there has been no detrimental impact on the speed and effectiveness of exchange of criminal records information between the EU and UK."[41] Statistics, which ACRO has "pro-actively recorded … to identify patterns and trends in criminal conviction data exchanges between the UK and EU Member States", show that the average time it takes EU Member States to respond to UK's request has remained broadly consistent since 2018, and that ACRO still processes an overwhelming majority of requests from EU Member States within its target turnaround time—noting that the target itself has doubled from 10 days to 20 days by virtue of the TCA.[42]

26. We welcome ACRO's assessment that the exchange of criminal records between the UK and the EU has suffered from "no detrimental impact" under Part Three of the TCA.[43] We note a steep decline in the volume of outbound requests and a steep increase in the volume of inward requests. Parliament may wish to monitor these trends.

27. What assessment has the Home Office made of the operations of the exchange of criminal records between the UK and the EU? How does the Government explain the decline in the volume of outbound requests and the increase in the volume of inward requests? What do these trends signify?

[37] Written evidence from ACRO Criminal Records Office (PBS0002) and supplementary written evidence from ACRO Criminal Records Office (PBS0006)
[38] Supplementary written evidence from ACRO Criminal Records Office (PBS0006)
[39] Supplementary written evidence from ACRO Criminal Records Office (PBS0006)
[40] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[41] Written evidence from ACRO Criminal Records Office (PBS0002)
[42] Supplementary written evidence from ACRO Criminal Records Office (PBS0006)
[43] Written evidence from ACRO Criminal Records Office (PBS0002)

Second-Generation Schengen Information System (SIS II)

28. The Second-Generation Schengen Information System (SIS II) is the largest EU-wide security database containing palm prints, fingerprints, facial images, and DNA data, as well as alerts on vulnerable or sought-after people (including missing persons) and on certain property, including passports, vehicles, banknotes, and firearms. Part Three of the TCA excludes the UK from SIS II.

29. The EU Security and Justice Sub-Committee found that "the UK's loss of access to the Schengen Information System leaves the most significant gap in terms of lost capability"; this was the Sub-Committee's greatest concern. The Sub-Committee added that "it means that, for the time being, law enforcement officers can no longer have immediate access to real-time data about persons and objects of interest, including wanted and missing persons."[44]

30. The Police Service of Scotland explained that "SIS II previously played a vital role in supporting the operations of UK law enforcement agencies, providing a mechanism for EU Member States to share and act on real-time data on persons and objects of interest including wanted and missing persons."[45] DCC Ayling confirmed that the NPCC "said from the outset that the loss of SIS II represented a significant loss in capability" and that "there is no doubt that we would prefer to have kept SIS II".[46] Mr Rodhouse concurred and explained that "it was a live-time system so the information was extremely timely and, importantly, it was the system used consistently by European partners."[47]

31. The EU Security and Justice Sub-Committee heard that, in 2019, UK police had checked SIS II "603 million times".[48] Mr Rodhouse indicated that this very high figure can be explained by the fact that SIS II had become ubiquitous to policing:

> "Every time an officer conducted a name check on someone they came across on the street, whether they knew it or not they were checking across the Schengen Information System. Equally, every time they put an alert on the Police National Computer—let us say they were dealing with a missing person, and there was no cause to think that they had gone abroad but they needed to be circulated within the UK as missing—they were also creating an alert on the Schengen Information System."[49]

32. DCC Ayling told us that "what we have at the moment is a process that you can only describe as suboptimal compared with SIS II but that nevertheless has proven to be effective".[50] Mr Rodhouse explained that "the predominant system to replace that as

[44] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[45] Written evidence from the Police Service of Scotland (PBS0009)
[46] Q 12 (Deputy Chief Constable Peter Ayling)
[47] Q 12 (Steve Rodhouse)
[48] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[49] Q 12 (Steve Rodhouse)
[50] Q 13 (Deputy Chief Constable Peter Ayling)

part of our tools is the Interpol mechanism through I-24/7", an Interpol database for the dissemination of arrest warrants. He identified two challenges associated with that database. First, "this system does not provide live-time access direct to front-line officers". Second, "we are reliant on EU member states using the I-24/7 system to circulate their own notices, and potentially to use both systems simultaneously".[51] This is known as "double-keying" diffusion notices into both SIS II and I-24/7.

33. **Instantaneous access**—The first challenge relates to the ability of officers to access data instantaneously. Mr Rodhouse assured us that "we have made some good progress, I think, in minimising the issue of live-time access." He explained that "when the UK receives Interpol notices from member states, they now go through a process and almost all are available through the Police National Computer to officers on the front line."[52] DCC Ayling confirmed that it is the case that they can access the notices "in minutes, not hours".[53] Both Mr Rodhouse and DCC Ayling explained that this near-instantaneous access was made possible thanks to "some robotic process automation" that automatically feeds Interpol notices into the Police National Computer (PNC), which is accessible to officers on the ground.[54]

34. Looking forward, DCC Ayling told us about the International Law Enforcement Alerts Platform (I-LEAP). DCC Ayling explained:

> "I-LEAP will work in two phases. The first phase will make Interpol data available via domestic systems and mobile devices in real time … Phase 2, as you rightly say, would require the signing of a multilateral agreement, which would recreate the functionality or similar functionality to SIS II where there was real-time alert sharing."[55]

35. Regarding phase 1, DCC Ayling explained that I-LEAP will enable Interpol notices to be shared with officers "in real time" and "without any delay". He added that this would include "a richer set of data, including images" and told us that "all forces of England and Wales, the Police Service of Northern Ireland and Scotland are scheduled to be onboarded to I-LEAP before April 2024."[56] The Police Service of Northern Ireland, which was an "early adopter for the I-LEAP pilot", confirmed that the platform is "utilised daily and to effective use", noting that "awareness and benefits are not fully realised and utilised to their full potential".[57]

36. DCC Ayling described phase 2 as "a return to what we enjoyed with SIS II, which is real-time sharing of alerts and automation", including EU data.[58] This would involve agreements with other countries for data to be shared instantaneously. Talking about the negotiation of such agreements, DCC Ayling explained:

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[51] Q 12 (Steve Rodhouse)
[52] Q12 (Steve Rodhouse)
[53] Q13 (Deputy Chief Constable Peter Ayling)
[54] Q12 (Steve Rodhouse). See also Q 13 (Deputy Chief Constable Peter Ayling).
[55] Q13 (Deputy Chief Constable Peter Ayling)
[56] Q13 (Deputy Chief Constable Ayling)
[57] Written evidence from the Police Service of Northern Ireland (PBS0005)
[58] Q13 (Deputy Chief Constable Ayling)

> "while it was perhaps originally intended that there might be a sequential signing of bilateral agreements, I think the focus is now on a multilateral agreement that would potentially enable connectivity to EU member states en masse. Clearly, from my perspective, that is a prize worth striving for as opposed to the inevitable delay that would be inherent in trying to sign a series of bilateral arrangements."[59]

37. The Home Office recently announced an alternation of its target to complete phase 2. The EU Security and Justice Sub-Committee was originally told, in February 2021, that the Government was hoping to conclude bilateral agreements "over next two or three years, not 10 years' time".[60] The Home Office is now, we understand, aiming to conclude a multilateral agreement in time to complete phase 2 during the 2027-28 financial year.[61]

38. The process is "not as quick" when it comes to the UK sharing notices with the EU, Mr Rodhouse told us. He explained that "That is still largely a manual process with a degree of reworking needed, so does not happen as quickly."[62]

39. **Double-keying**—The second challenge relates to the "double-keying" of data, by EU Member States, into both SIS II and I-24/7. Mr Rodhouse explained that "[his] assessment, looking at the data that comes across on I-24/7, is that EU member states are overwhelmingly double-keying so that the information is available to the UK."[63] He explained that the number of Interpol red notices fed by EU Member States into I-24/7 "has grown" and that it now "roughly matches the numbers of European Arrest Warrant circulations in the past".[64]

40. However, Mr Rodhouse also said that knowing whether all EU Member States are systematically double-keying "is hard, because I do not know what is on the Schengen Information System and what we would necessarily expect to be sent to the UK … that is the X factor and something I cannot guarantee."[65] The Police Service of Scotland confirmed that "it is difficult to quantify how much double keying is taking place and how accurate I-24/7 is compared to SIS II."[66]

41. Mr Rodhouse added: "Overall, it seems that our efforts to work with European partners to reiterate the importance of Interpol notices have paid off … we are continuing to reinforce the importance of I-24/7 notices."[67]

42. We note that the UK's loss of access to SIS II represents a great decline in operational capacity for policing across the country. We welcome progress

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[59] Q13 (Deputy Chief Constable Ayling)
[60] Oral evidence taken before the EU Security and Justice Sub-Committee on 16 February 2021 (Session 2019-21) Q 49 (Kevin Foster MP, Minister for Future Borders and Immigration and Chris Jones, Europe Director, Home Office)
[61] Home Office, 2023, "International Law Enforcement Alerts Platform (I-LEAP) programme", Transparency data [accessed 23 March 2023]
[62] Q 12 (Steve Rodhouse)
[63] Q 22 (Steve Rodhouse)
[64] Q 12 (Steve Rodhouse)
[65] Q 12 (Steve Rodhouse)
[66] Written evidence from the Police Service of Scotland (PBS0009)
[67] Q 12 (Steve Rodhouse)

towards the instantaneous sharing of some data to officers on the ground and reassuring statements on the propensity of EU Member States to feed information into Interpol's I-24/7 database.

43. ***Does the need for EU Member States to double-key incur any delays? For instance, do EU Member States typically feed information into Interpol's I-24/7 database at the same time as they feed information into SIS II?***

44. ***Not knowing whether information was double-keyed and whether information is shared promptly creates uncertainty for the police. What consequences does this uncertainty have? How is it mitigated?***

45. **We are supportive of efforts to encourage EU Member States to keep double-keying and are looking forward to international agreements, as part of phase 2 of the development of I-LEAP, that will facilitate the exchange of a wide range of information between the EU and the UK.**

46. ***What progress has been made towards the completion of phase 1 of I-LEAP? Does it remain the Government's ambition to complete it by April 2024?***

47. ***What does the Government hope to achieve through multilateral international agreements as part of the further development of I-LEAP? When does the Government expect these negotiations to start and conclude? What explains the significant delay in the timeline for the completion of phase 2?***

Cooperation with Europol

48. As an EU Member State, the UK used to be a member of Europol and of its management board. Europol is the European Union Agency for Law Enforcement, established "with a view to supporting cooperation among law enforcement authorities in the Union."[68] Part Three of the TCA provides for continued "mutual cooperation in preventing and combating serious crime, terrorism and forms of crime which affect a common interest".[69] Under these arrangements, the UK has lost its position on Europol's management board but designates "liaison officers" working in Europol's headquarters in The Hague and a UK-based "national contact point", together in charge of liaising between European and competent domestic authorities.[70]

49. The EU Security and Justice Sub-Committee took stock of these developments. It noted that "the UK has secured an agreement to continue its involvement with Europol … that reflects its status as a country outside the EU, but with a continuing close relationship on law enforcement and criminal justice." "The UK still has much to offer", the Sub-Committee continued, "in terms of experience and operational intelligence". The Sub-Committee was hopeful that cooperation could be strengthened over time.[71]

[68] 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) 24 May 2016 OJ L 135/53
[69] TCA, Article 564, OJ L 149
[70] TCA, Part Three, Title V, OJ L 149
[71] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)

50. Mr Rodhouse told us that "there are some things that we have lost" by transitioning from being a member of Europol to being a third country. "Predominantly, we have lost our management influence in Europol—our ability to direct the types of work that are taken on and to directly access the Europol information system", he explained.[72] The Scottish Government agrees that "the UK, and its operational authorities, no longer have a seat at the table where key, long-term decisions are made", resulting in "the UK's voice being lost in strategic discussions". [73]

51. Nevertheless, the Police Service of Scotland told us that "very little appears to have changed in our relationship with Europol despite now being a third country".[74] Mr Rodhouse agreed "we have very close relationships with Europol" and "we remain very influential".[75] He explained: "we are still able to influence the types of work that Europol undertake, and although we are not a member of the management committee, what has been reported to me by my people on the ground is that that has not led to a significant loss of influence." [76]

52. He put forward several reasons why the UK has maintained its influence. One of them was "the size and scale of our operation in Europol" as the UK has "one of the largest" bureaux (among EU Member States and other Europol partner countries), made up of "17 staff", and contributes "significant amounts of intelligence". Another reason he put forward was the "inherently transnational" nature of crime, which means that "it is to the mutual benefit of everyone if nations can work together." Mr Rodhouse quoted Europol's programming document, which considers the establishment of "an excellent operational partnership with the UK" as "one of the main goals of Europol's external relations". Another key factor is the historical legacy of the UK as a former member: "we worked very hard" such that "the UK has always been a leading member of Europol". Mr Rodhouse confirmed to us that "good interpersonal relationships" remain very important.[77] For all these reasons, "partner agencies regard us very highly from an operational sense."[78]

53. The Scottish Government advocates for a more formal approach. It argues that "a new way must be found or created which allows for our operational partners to discuss strategy, long-term trends and common challenges". It notes that the Partnership Council and the SCLEJC "were not intended to be, nor do they operate as, a forum where competent authorities can exchange ideas and expertise in order to create common solutions". Angela Constance MSP, Scottish Cabinet Secretary for Justice and Home Affairs, "urge[s] the UK Government to consider how the UK and its operational agencies could show leadership and share their expertise with EU counterparts in a strategic way".[79]

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[72] Q 20 (Steve Rodhouse)
[73] Written evidence from the Scottish Government (PBS0007)
[74] Written evidence from the Police Service of Scotland (PBS0009)
[75] Q 13 and Q 20 (both Steve Rodhouse)
[76] Q 20 (Steve Rodhouse)
[77] Because interpersonal relationships are important, we were concerned to read that COPFS Scotland sends a "trainee to Eurojust on a twelve-week rolling basis" as their sole member of the UK Liaison Prosecutor's team. See written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004).
[78] Q 20 (Steve Rodhouse)
[79] Written evidence from the Scottish Government (PBS0007)

54. Mutual cooperation with Europol is essential. We are pleased to note that cooperation has remained smooth overall, despite the UK's loss of influence on Europol's management and strategic direction and the UK's loss of access to certain data. We share the EU Security and Justice Sub-Committee's hope that the UK's relations with Europol develop further over time.

55. Is the Government satisfied with the operation of TCA arrangements addressing cooperation with Europol? With the forthcoming review of the TCA (including of Part Three) on the horizon, what aspects of the current arrangements establishing cooperation with Europol would the Government like to see reformed and/or developed further?

Appendix B—UK-EU cooperation on criminal justice

Surrender

56. **Introduction**— Under the TCA, following a suspicion of or a conviction for a criminal act punishable in State A by a custodial sentence for a maximum period of at least 12 months, the judicial authorities in State A can issue an arrest warrant for an individual to be executed by the authorities in State B.[80] This applies to surrenders between the UK and the Member states of the EU, including those between the UK and the Republic of Ireland.[81] This mechanism, informally known as the "TCA warrant" or "TaCA warrant", broadly replicates arrangements to which the UK was formerly party under the European Arrest Warrant (EAW) mechanism. The European Commission describes the EAW as "the most successful instrument of judicial cooperation in criminal matters in the Union".[82]

57. The EU Security and Justice Sub-Committee described TCA arrangements as "ambitious and unprecedented, for a non-EU, non-Schengen country, in establishing a streamlined process for the extradition of criminals and criminal suspects between the UK and EU States." They caveated that these were "untested arrangements" which, therefore, merited "continued parliamentary scrutiny".[83]

58. Two years on, we heard that "cooperation continues to work well, in the main"[84] and that the new system "has been effective due to the cooperative working relationship between the UK and [EU Member States]."[85] The Crown Prosecution Service for England and Wales and the National Police Chiefs' Council both gave positive examples of extradition requests issued by the UK that led to an arrest in an EU Member State and surrender to the UK within days.[86]

59. However, Joanne Jakymec, Head of International at the London and South-East Division of the CPS, noted that "for the Crown Prosecution Service to achieve that co-operation, we had to enhance our capabilities and engagement levels fully to be able to utilise the tools now available to us." She explained that "there has been an impact on Crown Prosecution Service resources and we have incurred additional costs to ensure operational effectiveness", mentioning in particular that "there is extra work

[80] TCA, Article 599, OJ L 149
[81] Court of Justice of the European Union (Grand Chamber), *Governor of Cloverhill Prison and Others*, C-479/21 PPU
[82] The Commission describes the European Arrest Warrant as a "simplified cross-border judicial surrender procedure—for the purpose of prosecution or executing a custodial sentence or detention order". The system has been in force since 1 January 2004 across all EU Member States and replaced lengthy 'political' extradition procedures that used to exist between EU countries. See: European Commission, 'European Arrest Warrant': https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en [accessed 18 March 2023]
[83] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[84] Q 6 (Joanne Jakymec)
[85] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[86] Q 6 (Joanne Jakymec) and Q 17 (Deputy Chief Constable Peter Ayling)

to be done on the administration and assurance processes" before issuing an extradition request. The Scottish Government agrees that "the move from the European Arrest Warrant to TCA-based surrender has increased the work necessary to exercise those functions".[87]

60. Elise Martin-Vignerte from the European Criminal Bar Association added that the processing of TCA warrants by EU Member States can be slower than the processing of European Arrest Warrants used to be. She explained that "for example, in Italy the new legislation provides for an EAW to be dealt with in 15 days while a TCA warrant takes 60 days."[88]

61. COPFS Scotland also reminded us that the "the UK are also no longer included in the special arrangements in place between Norway and Iceland and the EU", which are not covered by the TCA, such that "full extradition requests are required for the surrender of fugitives between the UK and either of those states."[89]

62. The Bar Council also noted that "in England and Wales, the authorities routinely violate the strict time-limits imposed for execution of Arrest warrants." They explain that, under the TCA, "a decision on surrender should normally be taken within sixty days with a 'backstop' of ninety days". In practice, these time-limits "are invariably exceeded" and "where a person contests his or her extradition, the timespan of a case readily exceeds one year, more than four-times the time limit agreed between the UK and EU."[90]

63. **Proportionality**—Cooperation on surrenders under the TCA is based on the principle of proportionality. This means that, when State A seeks the extradition of an individual from State B, judicial authorities in State B must test whether the request for surrender is proportionate. This test involves "taking into account the rights of the requested person and the interests of the victims, and having regard to the seriousness of the act, the likely penalty that would be imposed and the possibility of a State taking measures less coercive than the surrender of the requested person particularly with a view to avoiding unnecessarily long periods of pre-trial detention".[91]

64. This differs from the rules related to the European Arrest Warrants, under which proportionality was tested by State A (the issuing authorities) rather than State B (the receiving authorities). However, it arguably corresponds to the manner in which the UK implemented the Framework Decision establishing the EAW prior to the introduction of the TCA's arrangements. Following the entry into force of the Anti-Social Behaviour, Crime and Policing Act 2014, the NCA and judges were required to assess the proportionality of extradition requests made by foreign jurisdictions in "accusation" cases—namely cases "in which a person is sought for the purposes of

[87] Written evidence from the Scottish Government (PBS0007)
[88] Q 6 (Élise Martin-Vignerte). See also, written evidence from the Police Service of Scotland (PBS0009).
[89] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[90] Written evidence from the Bar Council for England and Wales (PBS0003). See TCA, Article 615, OJ L 149
[91] TCA, Article 597, OJ L 149

prosecution" rather than for the execution of a sentence.[92] It was in that sense that the Bar Council for England and Wales told us that the TCA "serves to codify in international law the approach that the UK had adopted" since 2014 in domestic legislation.[93]

65. For that reason, Joanne Jakymec explained that "the proportionality aspect of this operates very well and is not really any different to how it operated previously".[94] She explained that "the domestic judiciary is very skilled and experienced in dealing with proportionality" because "proportionality is contained within our domestic legislation for accused persons."[95]

66. In relation to requests for extradition from the UK, however, Rebecca Niblock drew our attention to some disproportionate requests from authorities in EU Member States seeking extraditions "for questioning", where "a cross-border arrest warrant such as the TCA one is a powerful, coercive measure that should not be used unless it really must be."[96] The Bar Council for England and Wales wrote that "it is not believed that any appropriate judge has availed him or herself of the mechanism" set out in the TCA to decline an extradition request from an EU Member State on proportionality grounds.[97]

67. Turning to UK requests for extradition from the EU, the Bar Council for England and Wales notes that "it remains to be seen the extent to which judicial authorities in the EU States will make use of the proportionality test when executing Arrest warrants issued by UK judicial authorities."[98] Where British authorities may have been accustomed to testing proportionality when surrendering someone, this is not the case for all EU Member States where the prosecuting and judicial authorities are used to operating the European Arrest Warrant mechanism. Elise Martin-Vignerte explained that "it seems that member states have continued their old practices, and proportionality is not really controlled by the courts". She was concerned, in particular, about a "lack of effective remedy in the interpretation of the TCA"—which could have increased compliance with the proportionality requirement—and about the risk of "diverging interpretations" of the TCA by various domestic courts—which could affect the interpretation of the proportionality test.[99]

68. **Nationality bar**—Under the TCA, any state may invoke "fundamental principles" of their "domestic legal order" to refuse to extradite one of their own nationals.[100] While the UK extradites its own nationals, the Crown Prosecution Service for England and Wales confirmed that 10 EU Member States (Croatia, Finland, France, Germany,

[92] Written evidence from the Bar Council for England and Wales (PBS0003)
[93] Written evidence from the Bar Council for England and Wales (PBS0003)
[94] Q 7 (Joanne Jakymec)
[95] Q 7 (Joanne Jakymec)
[96] Q 7 (Rebecca Niblock)
[97] Written evidence from the Bar Council for England and Wales (PBS0003)
[98] Written evidence from the Bar Council for England and Wales (PBS0003)
[99] Q 7 (Élise Martin-Vignerte)
[100] TCA, Article 603, OJ L 149

Greece, Latvia, Poland, Slovakia, Slovenia, and Sweden) stopped extraditing their own nationals to the UK. The CPS "regards a further three countries as having a nationality bar due to the conditions that they impose for the surrender of their own nationals to the UK", namely Austria, the Czech Republic, and Portugal.[101] In other words, 14 EU Member States do not apply a nationality bar: Belgium, Bulgaria, Cyprus, Denmark, Estonia, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Romania, and Spain.

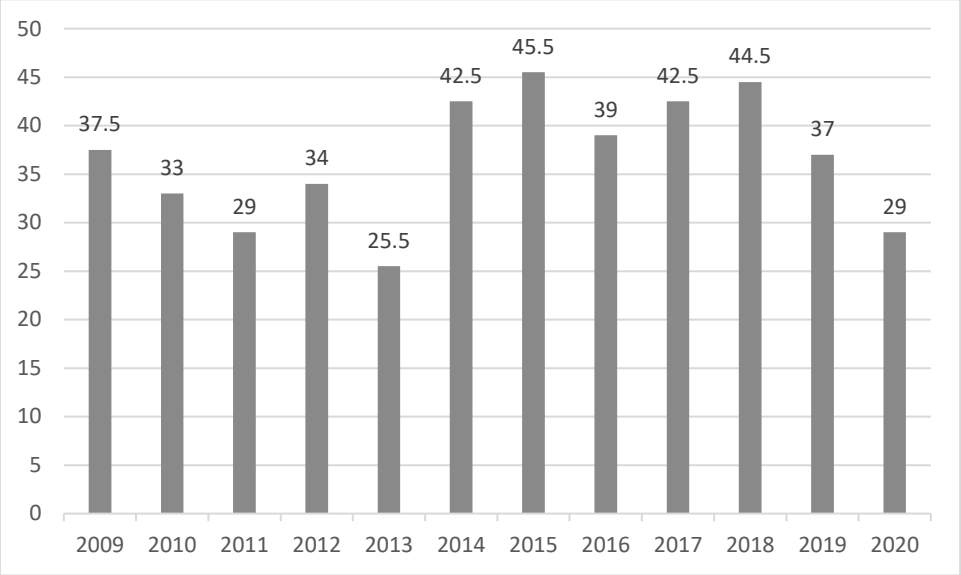
69. "There are real concerns that the absolute bars on surrender imposed by 10 EU member states could lead to impunity", the Scottish Government told us.[102] The Crown Prosecution Service for England and Wales agrees that "the nationality bar is perhaps the most challenging aspect of our exit from the EU", adding that "it has made our casework more complex, with less certainty of surrender, and created additional delay".[103]

70. When asked how many extradition requests that would have, in the past, resulted in a successful extradition were instead refused in 2021 and 2022 because of a nationality bar, both the CPS and the NCA suggested that this amounts to "roughly 10%" of cases.[104] Joanne Jakymec continued that "we have 350 TCA warrants live at present, so roughly 10% of those might be impacted".[105]

71. An alternative way of measuring the impact leads to a higher estimate. In 2019, the UK issued a European Arrest Warrant in respect of 157 individuals, 58 (37%) of whom were nationals of one of the 13 EU Member States that applied a nationality bar. This proportion has fluctuated between 25.5% and 45.5% between 2009 and 2020 (see figure 1), which suggests that the nationality bar may affect considerably more than 10% of cases. [106]

[101] Q 5 (Joanne Jakymec). See also written evidence from the Crown Prosecution Service for England and Wales (PBS0008).
[102] Written evidence from the Scottish Government (PBS0007)
[103] Q 5 (Joanne Jakymec)
[104] Q 5 (Joanne Jakymec). See also Q 18 (Steve Rodhouse).
[105] Q 5 (Joanne Jakymec)
[106] National Crime Agency, 2022, "Wanted by the UK – EAW-TACA statistics – calendar year 2021" spreadsheet, available from https://www.nationalcrimeagency.gov.uk/what-we-do/how-we-work/providing-specialist-capabilities-for-law-enforcement/fugitives-and-international-crime/extradition-arrangements-with-eu-countries [accessed 18 March 2023].

Figure 1. Proportion of European Arrest Warrants issued in respect of nationals of a country that stopped extraditing to the UK in the total of European Arrest Warrants issued by the UK (2009-2020).



Source: National Crime Agency, 2022, "Wanted by the UK – EAW-TACA statistics – calendar year 2021" spreadsheet, available from https://www.nationalcrimeagency.gov.uk/what-we-do/how-we-work/providing-specialist-capabilities-for-law-enforcement/fugitives-and-international-crime/extradition-arrangements-with-eu-countries [accessed 18 March 2023].

72. The Bar Council for England and Wales wondered about "the number of circumstances in which a prosecutor has not applied for an Arrest warrant since he or she knows that an EU State will invariably refuse execution". When asked whether the CPS was "giving up on certain cases" because of the nationality bar, Joanne Jakymec said that "we are absolutely not giving up on cases."[107] She suggested that there remained value in issuing a warrant against individuals protected by a nationality bar "in the event that the individual travels" to another country which, she argued, could result in their arrest in, and extradition from, that other country.[108]

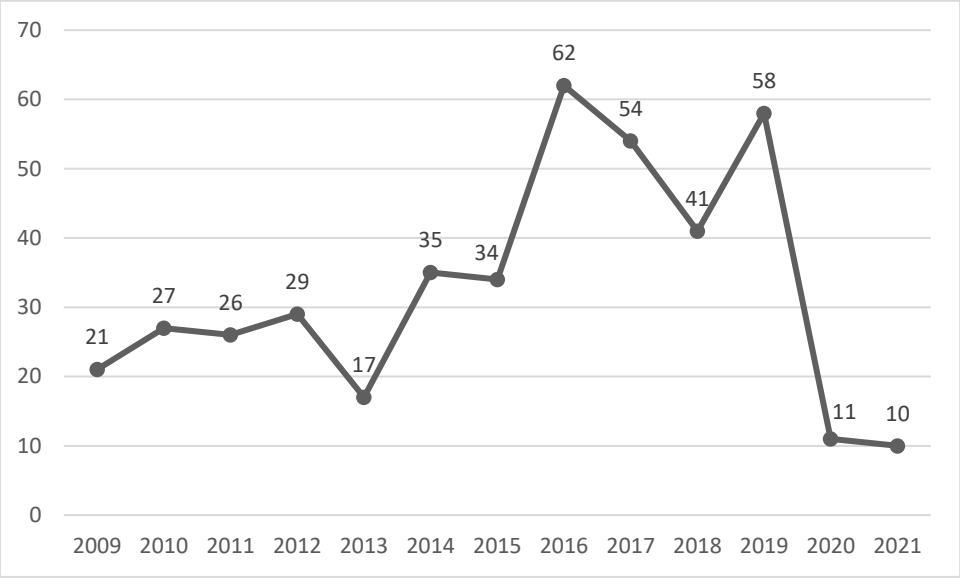
73. However, statistics show a drop in the number of arrest warrants issued in respect of individuals whose country of nationality apply a nationality bar. In 2021, the first year of implementation of the TCA (and, therefore, of the nationality bars), the UK issued only 10 arrest warrants against individuals whose country of nationality were enforcing a nationality bar. This is similar to the figure for 2020 (11 warrants), but lower than in any year of the previous decade (see figure 2).

74. These statistics alone are insufficient to conclude that the nationality bar leads to fewer arrest warrants being issued, though they point in that direction. They may capture other phenomena, such as the impact of the Covid-19 pandemic or court backlogs. For

[107] Q 5 (Joanne Jakymec)
[108] Q 5 (Joanne Jakymec). See also Q 18 (Steve Rodhouse).

instance, the local peak in the number of warrants issued in 2019 can be explained by the fact that, "in mid-2019 and 2020 the UK issued INTERPOL Red Notices and Diffusions in preparation for the end of the transition period", converting existing SIS II circulations.[109] However, these statistics indicate that continued close parliamentary scrutiny will be essential to assess this trend over time and understand the underlying causes.

Figure 2. Number of European Arrest Warrants and TCA warrants issued by the UK in respect of individuals whose country of nationality stopped extraditing to the UK (2009-2021).



Source: National Crime Agency, 2022, "Wanted by the UK – EAW-TACA statistics – calendar year 2021" spreadsheet, available from https://www.nationalcrimeagency.gov.uk/what-we-do/how-we-work/providing-specialist-capabilities-for-law-enforcement/fugitives-and-international-crime/extradition-arrangements-with-eu-countries [accessed 18 March 2023].

75. Witnesses set out three alternatives when a nationality bar prevents the surrender of a suspect: transfers of proceedings, transfers of sentences, and extradition from a third country if the individual travels. However, Joanne Jakymec explained that these options "are challenging and resource intensive" which "add further delay to us being able to progress to a criminal justice outcome."[110]

76. First, the TCA requires a State that declines to extradite to the UK on the basis of a nationality bar to "consider instituting proceedings against its own national which are commensurate with the subject matter of the Arrest warrant, having taken into

[109] Written evidence from the National Crime Agency (PBS0001). Interpol notices and diffusions are requests for international cooperation. Notices are issued by the Interpol General Secretariat at the request of a member country. Diffusions are circulated directly by a member country to some or all other member countries.
[110] Q 11 (Joanne Jakymec)

account the views of the issuing State".[111] This is known as a transfer of proceedings. The Crown Prosecution Service for England and Wales told us that "the transfer of proceedings is a complex and lengthy process, and whilst none have so far been successfully concluded, there are some live cases awaiting trial."[112]

77. The Crown Office and Procurator Fiscal Service Scotland told us that "to date Scotland has agreed to transfer one case to Poland and one to Germany".[113] COPFS Scotland notes that the TCA also provides that, in such circumstances, the prosecuting State "shall ensure that its competent authorities are able to take appropriate measures to assist the victims and witnesses" who live in a different country. COPFS Scotland explained that "support measures are likely to vary according to the individual State's approach", which "could have adverse implications for victims and witnesses". COPFS Scotland has accordingly asked its Victim Information and Advice officers to provide "the same levels of information and support as would be available to the victims and witnesses had the trial proceeded in Scotland."[114]

78. The Bar Council for England and Wales notes that "the measures that prosecutors in the UK have adopted so that an accused can be prosecuted abroad" were unclear because "the UK never signed the European Convention on the Transfer of Proceedings in Criminal Matters 1972". In particular, the Bar Council wondered about (i) the volume evidence transferred to an EU Member State to facilitate prosecution there (see "Mutual Legal Assistance" below), (ii) arrangements in place to protect confidential information that would not be disclosed under domestic law, (iii) arrangements for victims and witnesses required to take part in a foreign trial, and (iv) about the "type(s) of offence(s)" for which transfers of proceedings are being considered.

79. In cases where a nationality bar prevents the surrender of a suspect, British prosecuting authorities can also explore a transfer of sentences, whereby a sentence pronounced in the UK (typically in the presence of the offender) would be executed in the EU Member State. The Crown Prosecution Service for England and Wales, however, explained that "the transfer of a sentence to an EU Member state has limited application when considered as an alternative to extradition."[115] Transfers of sentences would operate on the basis of the 1983 Council of Europe Convention on the Transfer of Sentenced Persons and of its additional protocols, raising questions of public international law and which are "significantly more restrictive" than the corresponding mechanism that prevails among EU Member States.[116] In this context, the CPS is "working closely with His Majesty's Government to bolster this mechanism as an alternative to extradition".[117]

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[111] TCA, Article 603(3), OJ L 149
[112] Written evidence from the Crown Prosecution Service for England and Wales
[113] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[114] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004). See also, written evidence from the Scottish Government (PBS0007) and Q 5 (Joanne Jakymec).
[115] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)
[116] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)
[117] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)

80. The Crown Prosecution Service for England and Wales told us about a third alternative to secure justice when an individual is protected by a nationality bar: extradition from a third country if the individual travels (see above). The CPS reports that they have "successfully extradited from third countries two German and two Polish nationals, who had previously been protected in their home states" by the nationality bar, three of whom were extradited from other EU Member States.[118]

81. The CPS urged the Government to "continue engaging with EU member states to try to strengthen our ability to prosecute cross-border crime". They told us that the most efficient solution would be to see the nationality bars lifted. For instance, COPFS Scotland told us that "Poland has in recent months … indicated their intention to amend their domestic legislation to remove this bar, and this is expected imminently."[119] We understand that Poland has been taking steps towards lifting its nationality bar by passing relevant legislation, which came into force mid-July 2023.[120]

82. **SIS II and I-24/7**— Previously, when the UK was issuing a European Arrest Warrant, the CPS was also issuing "diffusion notices to accompany the warrant". The diffusion notice was fed into the SIS II database, instantaneously notifying authorities in all countries using SIS II. Joanne Jakymec told us that now, "following the issuance of a TaCA warrant", there is "a notice circulated via Interpol" using the I-24/7 database rather than SIS II.[121]

83. COPFS Scotland explained that this new mechanism "requires entries to be manually uploaded" onto domestic databases, which "has resulted in delays and other inefficiencies".[122] Joanne Jakymec confirmed: "it is clearly now more resource intensive for us to do that", explaining that "there are extra stages that prosecutors must go through now to complete that additional step."[123]

84. The new process is also less effective. Elise Martin-Vignerte explained that "because TCA warrants travel via Interpol … most countries require the TCA warrant to be endorsed by the court" before it reaches officers on the ground. She added that "further information is often sought from the UK central authority" on TCA warrants issued by the UK, which creates delays.[124]

85. **Provisional arrest**—The Bar Council for England and Wales explained that, previously, when EU Member States were issuing a European Arrest Warrant, the NCA would recognise it as a "Part 1 warrant" under the Extradition Act 2003. The

[118] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)
[119] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004). See also, Q 5 (Joanne Jakymec).
[120] Sejm of the Republic of Poland, Act of April 14, 2023 on the implementation of the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, as regards cooperation in criminal matters, 3027, OJ839.
[121] Q 3 (Joanne Jakymec)
[122] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[123] Q 3 (Joanne Jakymec)
[124] Q 4 (Élise Martin-Vignerte)

Bar Council argued that: "there is no reason in UK law why a [TCA warrant] issued on or after 1 January 2021 cannot be certified under Part 1" but noted that "as a matter of practice … the NCA has refused to certify any European arrest warrant" issued since the end of the transition period on 31 December 2020. They told us: "instead, officers request that the issuing judicial authority reissue the European arrest warrant under the TCA on an Arrest warrant *pro forma*".[125]

86. The Bar Council for England and Wales said that, in the absence of an arrest warrant certified by the NCA, police officers can only use "provisional arrest powers". The Bar Council elaborates:

> "Following provisional arrest, a person must be brought before the Westminster Magistrates' Court within forty-eight hours (excluding weekends and bank holidays etc) at which point the Part 1 warrant and Certificate must be produced. Upon an issuing judicial authority's application, there is power to extend this time by a further forty-eight hours where it '*could not reasonably comply*' with the time period, the proof of which falls on the issuing judicial authority which must be discharged on the balance of probabilities."[126]

87. The Bar Council shared anecdotal evidence of people who have been discharged following a provisional arrest, either because foreign judicial authorities did not re-issue their European Arrest Warrant as a TCA warrant within 48 hours, or because they do not provide an English translation of their warrant which the NCA can certify. They were concerned that this "may lead to delay and the possibility of impunity".[127]

88. TCA arrangements for the surrender of criminals and criminal suspects are ambitious and we were reassured that they are working well in practice. We record concerns that they incur additional costs and delays. It is also unclear whether the principle of proportionality introduced by the TCA is operating as the Government anticipated. Witnesses cited receiving requests from EU jurisdictions for surrender from the UK which, in their view, were not proportional. We also heard concerns about a lack of consistency in the application of the proportionality principle in the European context by the prosecuting and/or judicial authorities of EU Member States.

89. Within this context, the UK's new status as a third country outside the EU has come at a price. In accordance with the TCA, 13 EU Member States stopped extraditing their own nationals to the UK, preventing access to a criminal justice outcome in dozens of cases every year. Early signs of a decline in the number of warrants issued in respect of nationals of countries that no longer extradite are concerning. This trend and its impact on the

[125] Written evidence from the Bar Council for England and Wales (PBS0003)
[126] Written evidence from the Bar Council for England and Wales (PBS0003)
[127] Written evidence from the Bar Council for England and Wales (PBS0003)

UK's criminal justice system should be kept under continued close parliamentary scrutiny.

90. ***The Crown Prosecution Service for England and Wales told us that it wanted the Government to "continue engaging with EU member states to try to strengthen our ability to prosecute cross-border crime".[128] In replying to this letter, we ask that you set out what actions you have taken to address the CPS's concerns.***

91. ***13 countries have cited "fundamental principles" of their domestic legal orders as a basis for refusing to extradite their own nationals to the UK (Article 603(2) of the TCA). Which of them have relied upon legislative reasons (subject to change) for imposing the bar and which have invoked constitutional principles (subject to higher thresholds for change)? What steps has the Government taken to engage with those countries that impose a bar due to national legislation and, in the Government's view, how realistic is the prospect of persuading them to change their approach, following the Polish example?***

92. ***The Crown Prosecution Service for England and Wales estimates that "roughly 10%" of extradition cases are affected by the nationality bar. Our calculations suggest a higher estimate. What are the Government's views on these two estimates?***

93. ***What assessment has been made of the effectiveness of provisional arrest pending the certification of a TCA warrant by the NCA? How many people subject to a European Arrest Warrant have been provisionally arrested and subsequently discharged pending the certification of a TCA warrant by the NCA? Why does the NCA not certify European Arrest Warrants as Part 1 warrants under the Extradition Act 2003?***

94. ***We heard that time limits for the surrender of suspects are routinely exceeded in England and Wales. How does this compare with the situation in Northern Ireland and Scotland? What actions has the Government been taking to meet targets?***

Mutual Legal Assistance

95. Part Three of the TCA includes provisions that broadly replicate the European Investigative Order (EIO), a key instrument of Mutual Legal Assistance (MLA). The EIO is "a judicial decision issued in or validated by the judicial authority in one EU country to have investigative measures to gather or use evidence in criminal matters carried out in another EU country."[129]

96. The TCA makes provisions for the Specialised Committee on Law Enforcement and Judicial Cooperation to "establish a standard form for requests for mutual assistance"

[128] Q 5 (Joanne Jakymec)
[129] Eurojust, 'European Investigation Order' [accessed 21 March 2023]

between the UK and the EU.[130] COPFS Scotland told us that "the Specialised Committee has adopted a form for the provision for mutual legal assistance" and that it is "similar to the European Investigative Order (EIO)."[131] They added that "the form is not yet in use and in the intervening period assistance has been provided on the basis of a letter of request from the competent authority."[132] Joanne Jakymec was hopeful that, once in use, the form would "streamline the process."[133]

97. Meanwhile, Joanne Jakymec assured us that "it is business as usual" and that "we see good levels of cooperation".[134] She told us that, from the point of view of the Crown Prosecution Service for England and Wales, "[they] have not seen any perceivable difference regarding the effectiveness of the system", compared with the EIO system. She explained that this was partly thanks to "the support of our liaison prosecutors based in-country overseas who work with their counterparts on the ground to explain what is required" when submitting or responding to a request for mutual legal assistance.[135]

98. The Crown Prosecution Service for England and Wales added that there is an additional benefit to the TCA: Denmark and the Republic of Ireland, "who had never opted in to the EIO system", are now part of the framework for Mutual Legal Assistance provided for by the TCA.[136]

99. Discussing turnaround times, Joanne Jakymec explained that "generally, the total timeframe from receipt to execution of a request is 135 days".[137] She explained that this includes 45 days within which the requested state must consider whether to execute the request and, if applicable, 90 days for the execution of the request. This is only slightly longer than under the EIO system, which grants 30 days for a decision and 90 days for execution (120 days in total).[138] She added that, in practice, there are examples of very quick turnarounds.[139]

100. However, Elise Martin-Vignerte told us that "most of the provisions that were in the EIO can now be found within the TCA", noting that TCA provisions include fewer protections for suspected offenders than the EIO does.[140]

101. We welcome evidence that TCA provisions for Mutual Legal Assistance are operating smoothly. We note that, at the time of writing, the standard form prepared by the Specialised Committee on Law Enforcement and Judicial Cooperation is yet to be used in practice.

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[130] TCA, Article 635, OJ L 149
[131] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[132] Written evidence from Crown Office and Procurator Fiscal Service Scotland (PBS0004)
[133] Q 8 (Joanne Jakymec)
[134] Q 8 (Joanne Jakymec)
[135] Q 8 (Joanne Jakymec)
[136] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)
[137] Q 8 (Joanne Jakymec)
[138] Written evidence from the Crown Prosecution Service for England and Wales (PBS0008)
[139] Q 8 (Joanne Jakymec)
[140] Q 8 (Élise Martin-Vignerte)

102. When does the Government expect the standard form to be available for use in practice?

Appendix C—Termination and suspension

103. The EU and the UK can each terminate the TCA in its entirety with 12 months' notice.[141] Additionally, either Party may "at any moment" terminate Part Three of the TCA with nine months' notice.[142] Further provisions allow either party to terminate or suspend Part Three if the other party "denounces" the European Convention on Human Rights (ECHR) or if it judges that the other party exhibits a "serious and systemic" deficiency a) of "the protection of fundamental rights or the principles of the rule of law" or b) of "the protection of personal data".[143]

104. The EU Security and Justice Sub-Committee was supportive of these arrangements:

> "We welcome the provisions that … tie termination and/or suspension of aspects of the Agreement to either denunciation of the ECHR or deficiencies within either Party in the protection of fundamental rights. It is essential that cooperation between the UK and the EU of the kind facilitated by the Agreement is tied to respect for the rights embodied in the European Convention on Human Rights, and to respect for data protection rules."[144]

105. We heard that the policing sector values Part Three of the TCA, which it welcomed "with relief" when it was signed.[145] "Part Three of the TCA leads us to have access to some important facilities", Mr Rodhouse told us. "I would regard anything that would cause a loss of something such as passenger name records, which give us access to important data that allows us to plan operations and keep people safe, to be a significant loss of capability to UK law enforcement", he added.[146] DCC Ayling confirmed that "the practical experience for policing has been that we welcomed Part Three and make great use of it." Arrangements provided for in Part Three of the TCA "are being put to use on a day-to-day basis", he explained.[147]

Human rights

106. Part Three can be terminated immediately by either Party if the other denounces the European Convention on European Rights (ECHR).[148] Part Three can also be suspended at short notice[149] following a "serious and systemic" deficiency of "the protection of fundamental rights or the principles of the rule of law" by either of the

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[141] TCA, Article 779, OJ L 149
[142] TCA, Article 692, OJ L 149
[143] TCA, Articles 692 and 693, OJ L 149. "Relevant adequacy decision is defined within the Agreement in relation to the relevant EU law (the General Data Protection Regulation 2016/679 and Directive 2016/680) and UK law (the Data Protection Act 2018). The EU Commission adopted two adequacy decisions in respect of the UK on 28 June 2021.
[144] European Union Security and Justice Sub-Committee, *Beyond Brexit: policing, law enforcement and security* (Twenty-fifth report, Session 2019-21, HL Paper 250)
[145] Q 16 (Deputy Chief Constable Peter Ayling)
[146] Q 16 (Steve Rodhouse)
[147] Q 16 (Deputy Chief Constable Ayling)
[148] TCA, Article 692(1), OJ L 149
[149] Cooperation under the relevant Title (or Titles) within Part Three would "provisionally" cease on the first day of the third month following the date of notification, leaving the other Party free to suspend cooperation under all remaining Titles with three months' notice. See TCA, Article 693(5) and (6), OJ L 149

Parties.[150] As the Scottish Government put it, "the TCA provides that remaining party to the ECHR is the bedrock upon which law enforcement and judicial cooperation in criminal matters takes place."[151]

107. We heard that denouncing the ECHR would be "nothing less than catastrophic" and "absolutely devastating" for criminal justice cooperation.[152] Rebecca Niblock explained that "there is not an obvious mechanism to replace the TCA arrangements" and that "the fallback position would be the 1957 Council of Europe Extradition Convention".[153] The Bar Council for England and Wales argued that "it is no exaggeration to say that the UK's multilateral law enforcement and criminal cooperation capabilities would be set back thirty years to the time of the fall of the Berlin Wall."[154]

108. Elise Martin-Vignerte told us that leaving the ECHR while staying in the Council of Europe "would be an extremely difficult position to maintain", such that the UK would probably be unable to use the 1957 Convention.[155] She continued:

> "If the UK left the Council of Europe, as highlighted, there would be a loss of all the conventions on extradition and on mutual legal assistance. The primary concern in terms of extradition would be an offender's impunity. It would also bring extradition back to the diplomatic and political level, which was the case prior to the conventions, which put extradition at the judicial level."[156]

109. This would have an immediate impact. According to Rebecca Niblock, "the most obvious immediate consequence would be the cessation of extradition … from the 45 Council of Europe states, along with the loss of the ability to rely on co-operation in criminal matters". She also told us that this "would be an almost guaranteed impunity, for a time at least, whereby a person could come to the UK, commit an offence and jet off … if there were no extradition arrangements, they would not face justice."[157]

110. This would also have lasting consequences. We heard that "leaving the ECHR would have a very strong impact on the UK, which would be placed at an extremely high level of mistrust by other member states".[158] Rebecca Niblock agreed that "a secondary consequence, which would make the resumption of cross-border cooperation in criminal matters more difficult, would be the loss of mutual trust". She explained that such cooperation "depend[s] on the trust that one country can have in another country" and that "the European Convention on Human Rights has been key in establishing that trust".[159]

111. Cooperation could also be at risk if the UK was to renegotiate its relationship with the European Court of Human Rights (ECtHR). On 22 June 2022, a Bill of Rights Bill [Bill 117 2022-23] was introduced before the House of Commons. The Bill was intended

[150] TCA, Article 693(2), OJ L 149
[151] Written evidence from the Scottish Government (PBS0007)
[152] Written evidence from the Bar Council for England and Wales (PBS0003) and Q 9 (Rebecca Niblock)
[153] Q 9 (Rebecca Niblock)
[154] Written evidence from the Bar Council for England and Wales (PBS0003)
[155] Q 9 (Élise Martin-Vignerte)
[156] Q 9 (Élise Martin-Vignerte)
[157] Q 9 (Rebecca Niblock)
[158] Q 9 (Élise Martin-Vignerte)
[159] Q 9 (Rebecca Niblock)

to repeal and replace the 1998 Human Rights Act (HRA), which gives domestic effect to the provisions of the ECHR. The Bill "clarifies and re-balances the relationship between courts in the United Kingdom, the European Court of Human Rights and Parliament".[160] The Scottish Government told us that "we know the EU and its member states have concerns about the proposed reforms", and the Bar Council for England and Wales told us that the European Commission and EU Member States "are closely monitoring the proposed legislative amendments to the HRA, including any measure to alter the effect of the European Court of Human Rights' decisions or grant of interim measures."[161]

112. When we spoke to him in March, the then Lord Chancellor and Secretary of State for Justice, Rt. Hon. Dominic Raab MP, whose Department sponsored the Bill of Rights Bill, assured us that he was "very mindful of the TCA" and that the Government wanted to keep its "good working relationship" with EU partners in the JHA field, as established by the TCA. He added that the Government was "committed to remaining a state party" to the Convention but caveated that "we cannot rule out for ever and a day the possibility that we might need to revisit our membership".[162]

113. In his evidence to us, the then Lord Chancellor specifically referred to "issues in relation to illegal immigration interim measures", which he discussed with representatives of the ECtHR on the occasion of a visit to Strasbourg: "we want to talk those through, and that is why I went … That was not just a one-off meeting … I will continue to do it", he said at the time.[163] This came after the Home Secretary, Rt. Hon. Suella Braverman MP, was unable to certify, in line with Section 19(1)(b) of the Human Rights Act 1998, that the provisions of the Illegal Migration Bill are compatible with the principles of the ECHR.[164] Talking specifically about the operational challenges of tackling human trafficking across the English Channel, the National Crime Agency told us that "our membership of Europol, our access to I-24/7 notices and our bilateral information sharing", which are provided for in Part Three of the TCA, are "at the heart of the ability to respond" to such a challenge.[165]

114. On 27 June 2023, the new Lord Chancellor, Rt. Hon. Alex Chalk MP, told the House of Commons that the Government has "decided not to proceed with the Bill of Rights, but the Government remain committed to a human rights framework that is up to date, fit for purpose and works for the British people".[166]

Data protection

115. Part Three can also be suspended following a "serious and systemic" deficiency in "the protection of personal data" by either of the Parties, including where this has led to a

[160] Bill of Rights Bill [Bill 117 (2022-23)]
[161] Written evidence from the Scottish Government (PBS0007) and written evidence from the Bar Council for England and Wales (PBS0003)
[162] Oral evidence taken on 15 March 2023 (Session 2022-23), Q 2 (The Rt Hon Dominic Raab MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice)
[163] Oral evidence taken on 15 March 2023 (Session 2022-23), Q 2 (The Rt Hon Dominic Raab MP, Deputy Prime Minister, Lord Chancellor and Secretary of State for Justice)
[164] Illegal Migration Bill [Bill 262 (2022-23)]
[165] Q 22 (Steve Rodhouse)
[166] HC Deb, 27 June 2023, col 145 [Commons Chamber]

"relevant adequacy decision ceasing to apply."[167] These are decisions by which the EU recognises that the UK provides sufficient protection for data transferred from the EU to the UK such that the EU agrees to transfer such data. The European Commission adopted two data adequacy decisions, under the General Data Protection Regulation 2016/679 and the Law Enforcement Directive 2016/680, on 28 June 2021. These will need to be renewed after four years and could be withdrawn at any point in the meantime should the EU assess that data protection in the UK falls significantly below the EU's standards. The EU is constantly reviewing UK standards to that effect. "Failure to uphold current data protection standards could jeopardise law enforcement and judicial cooperation with our European partners that is essential for the safety of our citizens", the Scottish Government warned.[168]

116. Cooperation could be at risk as the UK is redefining its data protection legislation following its departure from the European Union. On 18 July 2020, a Data Protection and Digital Information Bill [Bill 143 2022-23] was introduced in the House of Commons. In November 2022, we welcomed a delegation from the European Parliament (LIBE) Committee on Civil Liberties, Justice and Home Affairs, whose members expressed their concerns that the Bill could put the EU's data adequacy decisions at threat, which would jeopardise UK-EU security cooperation under Part Three of the TCA. The Bill was withdrawn on 8 March 2023 and a Data Protection and Digital Information (No. 2) Bill was introduced on the same date [Bill 265 2022-23]. In this context, the Scottish Government told us that it "calls on the UK Government and UK Parliament to ensure that the UK adequacy decisions are protected and that any data protection reforms carefully consider the risk to those decisions."[169]

117. The EU and the UK can each terminate or suspend Part Three of the TCA (in whole or in part). This could happen if the UK was to leave the European Convention on Human Rights or otherwise exhibit "serious and systemic" deficiency in its protection of human rights and the principle of the rule of law. It could also happen if data protection in the UK was to fall below (agreed) EU standards.

118. Termination or suspension of Part Three of the TCA would have extremely serious consequences for UK-EU security cooperation, curtailing our ability to combat cross-border criminal activity. Leaving the European Convention on Human Rights would, in all probability, end the UK's membership of the Council of Europe. This, in turn, would cease the UK's participation in the 1957 European Convention on Extradition, making any extraditions between the UK and the 45 other members of the Council of Europe virtually impossible, resulting in the impunity of criminals.

[167] TCA, Article 693(2), (3), and (4), OJ L 149. "Relevant adequacy decision is defined within the Agreement in relation to the relevant EU law (the General Data Protection Regulation 2016/679 and Directive 2016/680) and UK law (the Data Protection Act 2018). The EU Commission adopted two adequacy decisions in respect of the UK on 28 June 2021.
[168] Written evidence from the Scottish Government (PBS0007)
[169] Written evidence from the Scottish Government (PBS0007)

119. What does the Home Office anticipate the consequences would be should Part Three of the TCA be terminated or suspended? How has this informed the Department's approach to the ECHR and Channel crossings?

120. What representation has the Home Office made to the Department for Science, Innovation and Technology and the Ministry of Justice on the consequences that the Data Protection and Digital Information (No. 2) Bill and the Bill of Rights Bill (when it was still being considered), respectively, could have on UK-EU security cooperation?

Appendix D—List of questions and conclusions

We set out our questions in italicised text and our conclusions in bold text in the previous three appendices. This appendix consists of a list of all these questions and conclusions. We would be grateful for a response to each of them in their numbered sequence, separately, without combining responses to more than one point.

The report of the EU Security and Justice Sub-Committee that we are following-up on also included a chapter on the UK's application to accede to the 2007 Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. While this is not the focus of this letter, we would also welcome a progress update on the UK's application in your response.

Prüm data

We welcome reassurances that the exchange of Prüm data continues to be broadly effective and about the positive contribution it makes to everyday policing in the UK. We note that the UK and Ireland have, for historical reasons, found pragmatic solutions to the sharing of Prüm data on the island of Ireland. We also note that the EU is reforming the Prüm mechanism and that it remains to be determined whether the UK will participate in the new mechanism. Like our witnesses, we favour continued participation. (Paragraph 8)

Facial imagery could be exchanged under the reformed Prüm mechanism. We remain supportive of the use of such data and of new technologies by the police and in the justice system but are concerned about the lack of transparency and safeguards that surround such use. We set out our conclusions and recommendations in our 2022 report *Technology rules? The advent of new technologies in the justice system*.[170] (Paragraph 9)

What assessment has been made of the resource implications of the new mechanism by which the UK exchanges Prüm data with the EU, compared with the previous mechanism (full membership)? (Paragraph 10)

What is the Government's view on the proposed reforms to the Prüm mechanism? Will the Government seek to participate in that new mechanism? (Paragraph 11)

The UK having successfully passed, in June 2022, an evaluation by the EU of the UK's handling of Prüm data, are further evaluations to be expected in the future? (Paragraph 12)

Passenger Name Records

What assessment has the Government made of TCA provisions for the exchange of PNR data? How effective has such exchange been in practice? (Paragraph 17)

[170] Justice and Home Affairs Committee, *Technology rules? The advent of new technologies in the justice system* (First report, Session 2021-22, HL Paper 180)

The UK is required to update its PNR processing systems by the end of the year to comply with TCA requirements. Will that deadline be met? If not, when can we expect the requirements to be met? (Paragraph 18)

How realistic is the suggestion that the exchange of PNR data could be extended to rail and sea travel? Would the Government consider pursuing that idea? (Paragraph 19)

Criminal records

We welcome ACRO's assessment that the exchange of criminal records between the UK and the EU has suffered from "no detrimental impact" under Part Three of the TCA.[171] We note a steep decline in the volume of outbound requests and a steep increase in the volume of inward requests. Parliament may wish to monitor these trends. (Paragraph 26)

What assessment has the Home Office made of the operations of the exchange of criminal records between the UK and the EU? How does the Government explain the decline in the volume of outbound requests and the increase in the volume of inward requests? What do these trends signify? (Paragraph 27)

Second-Generation Schengen Information System (SIS II)

We note that the UK's loss of access to SIS II represents a great decline in operational capacity for policing across the country. We welcome progress towards the instantaneous sharing of some data to officers on the ground and reassuring statements on the propensity of EU Member States to feed information into Interpol's I-24/7 database. (Paragraph 42)

Does the need for EU Member States to double-key incur any delays? For instance, do EU Member States typically feed information into Interpol's I-24/7 database at the same time as they feed information into SIS II? (Paragraph 43)

Not knowing whether information was double-keyed and whether information is shared promptly creates uncertainty for the police. What consequences does this uncertainty have? How is it mitigated? (Paragraph 44)

We are supportive of efforts to encourage EU Member States to keep double-keying and are looking forward to international agreements, as part of phase 2 of the development of I-LEAP, that will facilitate the exchange of a wide range of information between the EU and the UK. (Paragraph 45)

What progress has been made towards the completion of phase 1 of I-LEAP? Does it remain the Government's ambition to complete it by April 2024? (Paragraph 46)

What does the Government hope to achieve through multilateral international agreements as part of the further development of I-LEAP? When does the Government expect these negotiations to start and conclude? What explains the significant delay in the timeline for the completion of phase 2? (Paragraph 47)

[171] Written evidence from ACRO Criminal Records Office (PBS0002)

Cooperation with Europol

Mutual cooperation with Europol is essential. We are pleased to note that cooperation has remained smooth overall, despite the UK's loss of influence on Europol's management and strategic direction and the UK's loss of access to certain data. We share the EU Security and Justice Sub-Committee's hope that the UK's relations with Europol develop further over time. (Paragraph 54)

Is the Government satisfied with the operation of TCA arrangements addressing cooperation with Europol? With the forthcoming review of the TCA (including of Part Three) on the horizon, what aspects of the current arrangements establishing cooperation with Europol would the Government like to see reformed and/or developed further? (Paragraph 55)

Surrender

TCA arrangements for the surrender of criminals and criminal suspects are ambitious and we were reassured that they are working well in practice. We record concerns that they incur additional costs and delays. It is also unclear whether the principle of proportionality introduced by the TCA is operating as the Government anticipated. Witnesses cited receiving requests from EU jurisdictions for surrender from the UK which, in their view, were not proportional. We also heard concerns about a lack of consistency in the application of the proportionality principle in the European context by the prosecuting and/or judicial authorities of EU Member States. (Paragraph 88)

Within this context, the UK's new status as a third country outside the EU has come at a price. In accordance with the TCA, 13 EU Member States stopped extraditing their own nationals to the UK, preventing access to a criminal justice outcome in dozens of cases every year. Early signs of a decline in the number of warrants issued in respect of nationals of countries that no longer extradite are concerning. This trend and its impact on the UK's criminal justice system should be kept under continued close parliamentary scrutiny. (Paragraph 89)

The Crown Prosecution Service for England and Wales told us that it wanted the Government to "continue engaging with EU member states to try to strengthen our ability to prosecute cross-border crime".[172] In replying to this letter, we ask that you set out what actions you have taken to address the CPS's concerns. (Paragraph 90)

13 countries have cited "fundamental principles" of their domestic legal orders as a basis for refusing to extradite their own nationals to the UK (Article 603(2) of the TCA). Which of them have relied upon legislative reasons (subject to change) for imposing the bar and which have invoked constitutional principles (subject to higher thresholds for change)? What steps has the Government taken to engage with those countries that impose a bar due to national legislation and, in the Government's view, how realistic is the prospect of persuading them to change their approach, following the Polish example? (Paragraph 91)

[172] Q 5 (Joanne Jakymec)

The Crown Prosecution Service for England and Wales estimates that "roughly 10%" of extradition cases are affected by the nationality bar. Our calculations suggest a higher estimate. What are the Government's views on these two estimates? (Paragraph 92)

What assessment has been made of the effectiveness of provisional arrest pending the certification of a TCA warrant by the NCA? How many people subject to a European Arrest Warrant have been provisionally arrested and subsequently discharged pending the certification of a TCA warrant by the NCA? Why does the NCA not certify European Arrest Warrants as Part 1 warrants under the Extradition Act 2003? (Paragraph 93)

We heard that time limits for the surrender of suspects are routinely exceeded in England and Wales. How does this compare with the situation in Northern Ireland and Scotland? What actions has the Government been taking to meet targets? (Paragraph 94)

Mutual legal assistance

We welcome evidence that TCA provisions for Mutual Legal Assistance are operating smoothly. We note that, at the time of writing, the standard form prepared by the Specialised Committee on Law Enforcement and Judicial Cooperation is yet to be used in practice. (Paragraph 101)

When does the Government expect the standard form to be available for use in practice? (Paragraph 102)

Human rights and data protection

The EU and the UK can each terminate or suspend Part Three of the TCA (in whole or in part). This could happen if the UK was to leave the European Convention on Human Rights or otherwise exhibit "serious and systemic" deficiency in its protection of human rights and the principle of the rule of law. It could also happen if data protection in the UK was to fall below (agreed) EU standards. (Paragraph 117)

Termination or suspension of Part Three of the TCA would have extremely serious consequences for UK-EU security cooperation, curtailing our ability to combat cross-border criminal activity. Leaving the European Convention on Human Rights would, in all probability, end the UK's membership of the Council of Europe. This, in turn, would cease the UK's participation in the 1957 European Convention on Extradition, making any extraditions between the UK and the 45 other members of the Council of Europe virtually impossible, resulting in the impunity of criminals. (Paragraph 118)

What does the Home Office anticipate the consequences would be should Part Three of the TCA be terminated or suspended? How has this informed the Department's approach to the ECHR and Channel crossings? (Paragraph 119)

What representation has the Home Office made to the Department for Science, Innovation and Technology and the Ministry of Justice on the consequences that the

Data Protection and Digital Information (No. 2) Bill and the Bill of Rights Bill (when it was still being considered), respectively, could have on UK-EU security cooperation? (Paragraph 120)