

# CEPS and QMUL Report Outlines UK-EU Cooperation in Criminal Justice and Police Matters after Brexit

## Report

**Thomas Wahl**

The Task Force set up by the Centre for European Policy Studies (CEPS) – a Brussels-based think tank – and the School of Law at Queen Mary University of London (QMUL) published a [report that extensively examines the key issues, main options, and alternative models for EU-UK cooperation on issues related to security and justice after Brexit.](#)

The report – published in September 2018 - was written by *Sergio Carrera, Valsamis Mitsilegas, Marco Stefan, and Fabio Giuffrida*. It is the outcome of several discussions by the Task Force that was actively supported by *Peter Hustinx*, former EDPS, and *Michael Kennedy*, former President of Eurojust.

The report is divided into three parts:

- EU constitutional framework for UK participation in the AFSJ before and after Brexit;
- UK-EU cooperation in criminal justice and police matters after Brexit;
- Key findings and the way forward.

The report addresses several topics and draws the following main conclusions:

*EU-UK criminal justice and police cooperation after Brexit:*

- An international agreement between the UK and the EU will be subject to rules on the EU's external action in the field of criminal justice and police cooperation;
- The UK government's objective to create a new model of cooperation that more or less continues the current level necessitates the UK's compliance with key EU law standards.

*EU law benchmarks for criminal justice and police cooperation after Brexit:*

- To ensure trust, the UK must continue to participate in the ECHR;
- Any post-Brexit agreement should include a "freezing mechanism," i.e., both parties may suspend cooperation if human rights violations are ascertained;
- After Brexit, the UK needs to comply with more EU standards than to date, i.e., compliance is considered necessary with the EU *acquis* suspects' and victims' rights in criminal proceedings as well as on data protection and privacy standards.

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ISSN: 1862-6947

<https://euclid.eu>

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### *Instruments of mutual recognition: status quo and alternative options:*

- Especially as regards extradition, reverting to extra-EU instruments, e.g., those agreed on within the Council of Europe or the UN, would be inefficient;
- The EU-Norway and Iceland Agreement on Surrender could serve as a model to follow, as it would keep EU-UK extradition proceedings “judicialised;”
- It must, however, be questioned whether participation in the Schengen acquis is a prerequisite for certain extradition conditions, such as the surrender of own nationals;
- As far as mutual legal assistance (MLA) is concerned, a post-Brexit MLA agreement should go beyond existing arrangements between the EU and third countries.

### *Data protection and the exchange of data for law enforcement and criminal justice purposes:*

- The UK would be treated like a third country after Brexit, as a result of which its data protection standard would be assessed as “essentially equivalent” to that guaranteed by EU law read in light of the Charter;
- A “guillotine clause” may govern the future partnership, i.e., data exchange between law enforcement authorities would be suspended if the CJEU withdrew or declared invalid the adequacy decision;
- Some pieces of UK legislation may become “stumbling blocks” when affirming an equivalent level of protection of personal data and privacy guaranteed by EU law.

### *Post-Brexit access to EU databases:*

- As a third country and non-Schengen country, the UK’s participation in EU databases cannot be maintained after Brexit; this holds especially true for ECRIS, SIS, and EU-PNR; an exception is conceivable for the UK’s participation in the Prüm framework;
- The UK’s participation in the EU’s interoperability legislation is likely to be impossible.

### *UK participation in EU agencies after Brexit:*

- The UK will need “ad hoc agreements” to continue the exchange of personal data with Europol and Eurojust;
- There is no precedent granting third country access to Europol’s databases;
- A strong relationship with the European Public Prosecutor’s Office will be necessary.

### *Role of the CJEU in the future EU-UK security and justice partnership:*

- The case law of the CJEU will have a relevant impact on the UK after Brexit, as the Court will remain competent to ultimately and authoritatively interpret EU law;
- The CJEU may prevent entry into force of any EU-UK agreement on criminal justice and police cooperation.

The CEPS/QMUL report was published at nearly the same time as another report on the future UK-EU partnership in justice and home affairs. The latter was presented by the Institute for Government.

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The project is co-financed by the Union Anti-Fraud Programme (UAFP), managed by the European Anti-Fraud Office (OLAF).



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