POLICY INSIGHTS
Thinking ahead for Europe

No 2018/16, December 2018

Disarming a ticking bomb:

Can the Withdrawal Agreement ensure EU-UK judicial and police cooperation after Brexit?

Marco Stefan and Fabio Giuffrida

Summary

Maintaining strong cooperation in police and criminal justice matters after Brexit is a matter of priority for the EU and the UK. However, the departure of the country from the Union raises the question of whether current EU legislation in the field will still be able to apply to future EU-UK relationships in areas such as extradition, evidence-gathering, and information-sharing.

In November 2018, EU and UK negotiators reached a common position on the content of the Withdrawal Agreement, though a few procedural steps are required before its entry into force, notably the approval of the UK Parliament. The Agreement is based on the principle that the UK remains bound during the transition period by EU acts applicable to it upon its withdrawal. Hence, the country will continue to participate in EU agencies, mutual recognition instruments and information-sharing mechanisms until the end of the transition period. The adoption of the Agreement is thus an essential precondition for avoiding 'cliff-edge' scenarios where the UK, in the aftermath of Brexit, would be abruptly prevented from exchanging European Arrest Warrants with other member states or from participating in Europol or Eurojust.

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This paper was prepared for the SOURCE Network of Excellence, which is financed by the EU FP7 programme to create a robust and sustainable virtual centre of excellence capable of exploring and advancing societal issues in security research and development.

978-94-6138-710-3

Available for free downloading from the CEPS website (www.ceps.eu)

Nevertheless, the departure of the UK from the bloc will already change the status of this country vis-à-vis EU instruments and agencies from the very beginning of the transition period. From Brexit day on, the UK will not be able to take part in the management bodies of EU agencies nor to opt into new measures concerning the Area of Freedom, Security and Justice. The EU may invite the UK to cooperate in relation to such new measures, but only under the conditions set out for cooperation with third non-Schengen countries.

During the transition period, the essential benchmarks of EU fundamental rights and data protection standards must be respected in order to maintain the trust required for sustaining any form of cooperation between the parties following Brexit. Beyond the end of the transition period, EU and UK cooperation in the field of police and criminal justice will have to rely on a new legal basis. Any new agreement will need to be aligned with the rules governing EU relations with third countries outside Schengen.

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1. Introduction

The uncertain fate of the Brexit negotiations has left a wide range of stakeholders, including police and judicial authorities, wondering about the future use of the EU rules that currently govern daily cooperation with their counterparts across the Channel.

From 29 March 2019, the UK is due to become a third country vis-à-vis the EU. The extent to which the 'exiting country' will be able to maintain its relationship with the EU and its member states depends on the adoption and the content of the much-debated Withdrawal Agreement. This legally binding instrument provides the parties with a clear legal framework to apply during a transition period lasting, at least, until the end of 2020. Among a wide range of issues, the Agreement also regulates cooperation in the areas of security and justice.

The final text of the Agreement was published on 14 November 2018, together with an outline of the political declaration setting out the framework for the future relationship between the EU and the UK. The previous publicly available version of the draft Withdrawal Agreement dated back to March 2018. At that point in time, the negotiators had not agreed upon large parts of the text, including most of the provisions concerning judicial cooperation in criminal matters and police cooperation.[1] These provisions, which have remained mostly unchanged in the text published in mid-November, can now be found in Title V of the Agreement (Articles 62–65), while Title VII concerns data and information processed or obtained before the end of the transition period or on the basis of the Withdrawal Agreement (Articles 70–74).

On 25 November 2018, the European Council approved the Withdrawal Agreement and the outline of the political declaration.[2] The Council of the European Union still needs to authorise its signature and the European Parliament will have to give its consent. The Agreement must

[1] S. Carrera, V. Mitsilegas, M. Stefan and F. Giuffrida, "Criminal Justice and Police Cooperation between the EU and the UK after Brexit. Towards a principled and trust-based partnership", Report of a CEPS and QMUL Task Force, August 2018, available at www.ceps.eu/publications/criminal-justice-and-police-cooperation-between-eu-and-uk-after-brexit-towards pp. 16–19.

[2] See the Conclusions of the Special meeting of the European Council (Art. 50) (25 November 2018), available at www.consilium.europa.eu/en/press/press-releases/2018/11/25/european-council-art-50-conclusions-25-november-2018/.

also undergo the scrutiny of the UK Parliament, which already appears difficult, given the mixed messages in Westminster from both Leavers and Remainers about their voting intentions.

The adoption of the Withdrawal Agreement is necessary to avoid Brexit leading to an abrupt interruption of cooperation between the EU and the UK in areas such as extradition, gathering and exchange of evidence, and exchange of information between law enforcement authorities. On the other hand, the departure of the UK from the bloc will already change the status of this country vis-à-vis EU institutions, instruments and agencies from the very beginning of the transition period. At a time when the UK is attempting to disentangle itself from the EU legal framework, the decision to opt into new EU legislation, such as the proposal on interoperability of databases, as well as the conclusion of a new bilateral agreement with the US to ease the process of cross-border data-gathering for criminal justice purposes also pose a number of legal challenges.

This Policy Insight discusses the implications of the Agreement for EU-UK judicial and police cooperation *during* and *after* the transition period, building on the assumption that the Withdrawal Agreement will enter into force on 30 March 2019 (sections 2 and 3).[3] Section 4 will discuss some issues that may arise should the Agreement not be adopted, while section 5 concludes by summarising the main findings of the analysis.

2. The transition period: The UK's 'betwixt and between' status

The Withdrawal Agreement is based on the principle that, during the transition period (30 March 2019 - 31 December 2020), the UK remains bound by EU acts applicable to it upon its withdrawal, unless otherwise agreed.[4] This applies also to the measures concerning the Area of Freedom, Security and Justice (AFSJ) that already bind the UK. During the transition period, the country may also choose to participate in instruments amending, replacing or building upon such measures.

Between the end of March 2019 and December 2020, UK judicial and police authorities can thus continue to cooperate with their EU colleagues in accordance with the existing legislation, e.g. by exchanging instruments of mutual recognition, participating in Joint Investigation Teams (JITs), and organising and actively taking part in coordination meetings at Eurojust. The UK will remain plugged into existing EU Justice and Home Affairs databases such as the second generation Schengen Information System (SIS II), and can continue to rely on EU information-sharing mechanisms such as the exchange of Passenger Name Record (PNR) data in accordance with the PNR Directive. During the transition period, UK courts will also be able to refer requests for preliminary rulings to the Court of Justice.[5]

[3] Art. 185 of the Withdrawal Agreement.

[4] Art. 127(1) of the Withdrawal Agreement.

[5] Art. 86 of the Withdrawal Agreement.

By ensuring legal certainty in cooperation proceedings during the transition period, this solution would avoid 'cliff-edges'. Nonetheless, the *sui generis* status of a third country applying EU law will limit the UK's participation in AFSJ measures and bodies in two respects.

First, during the transition period, the UK will lose its right to nominate, appoint or elect members of the institutions, offices and agencies of the Union, as well as the right to participate in their decision-making and governance bodies.[6] Hence, while the UK can continue to rely on the support of Eurojust and Europol, it can neither have a say in steering the activities of these agencies nor in setting out their priorities. While this state of affairs would not necessarily have a negative impact on cooperation on the ground among competent authorities, it may be a loss at the strategic level, arguably mainly for the UK, which has played and still plays a prominent role within Eurojust and especially Europol. As an example of the fact that UK authorities highly value full membership of EU agencies, the UK Metropolitan Police highlighted that "one of the key priorities in the strategic assessment this year [2018] in Europol was firearms. It was not going to be in there until we influenced that and said, 'It is very, very important to the UK'".[7]

Second, the UK cannot opt into *new* AFSJ measures adopted during the transition period, although the EU may invite the UK "to cooperate in relation to new measures", "under the conditions set out for cooperation with third countries".[8] It seems reasonable to exclude a third country from the negotiations of, and participation in, new instruments of judicial and police cooperation. It is however interesting to note that, with Brexit looming large, the UK has decided to opt into a number of new EU instruments, such as the proposals on interoperability of databases that the Commission tabled in December 2017.[9]

One may wonder whether this decision is motivated by a pragmatic approach of opting into EU measures in case Brexit does not eventually happen, and/or by the desire of the UK to reap the benefits of the interconnection of databases before the end of the transition period, should such an interconnection be in place before 31 December 2020. At the same time, the UK's decision to opt into the interoperability regulation when the country is in the process of leaving the Union is problematic. Its participation in the interoperability legal framework would pose a number of legal and technical challenges, not least because during the transition period the UK could gain access to a wide range of sensitive information stored in databases with different links to Schengen.[10] The UK Government has decided to opt into the components of the

[6] Art. 7(1) of the Withdrawal Agreement.

[7] Uncorrected oral evidence of R. Martin, Deputy Assistant Commissioner, Metropolitan Police, to the Home Affairs Sub-Committee of the House of Lords' Select Committee on the European Union, "Brexit: The proposed UK–EU security treaty", 2 May 2018, Q63.

[8] Art. 127(5) of the Withdrawal Agreement.

[9] See more in Carrera, Mitsilegas, Stefan and Giuffrida, *op. cit.*, pp. 123–127.

[10] Concerns have already arisen as regards the UK's current use of SIS II. British authorities have allegedly copied the data contained in SIS II and handed it over not only to the UK border police force and other government offices, but apparently also to private contractors (including US companies) hired to run information systems (e.g., the "Warning Index") on behalf of the Home Office at different UK airports (N. Nielsen, "UK unlawfully copying data from EU police system", *EUobserver*, 28 May 2018, available at https://euobserver.com/justice/141919).

interoperability proposal concerning Eurodac and ECRIS-TCN,[11] in which the UK participates. It also decided not to opt out from the proposal to the extent it affects the Schengen *acquis* in which the UK already participates, which also include parts of SIS II.[12]

Furthermore, Article 8 of the Withdrawal Agreement requires the UK to be disconnected from any EU information system and database at the end of the transition period. Yet it is hard to imagine how the UK will disentangle itself from interconnected databases and, should the disconnection prove to be difficult in practice, one may wonder whether the interoperability of databases may have the collateral effect of providing the UK with sensitive information even beyond the transition period. The EU legislator working on the interoperability proposal needs to address these questions, which have been largely overlooked during the Brexit negotiations.

A third potential consequence of the UK being a third country during the transition period concerns the instrument of judicial cooperation that the UK and the EU seem to appreciate the most, i.e., the European Arrest Warrant (EAW). Article 185 of the Withdrawal Agreement symbolically provides that, *already during the transition period*, member states may decide not to extradite their own nationals to the UK. If this is the case, the UK may declare that it will not extradite its own nationals to those member states either. While the national bar does not belong to the UK legal tradition, this provision may be invoked by some countries that have traditionally been opposed to the extradition of their own nationals (e.g. Germany) and that only accepted to waive this rule within the context of the EU.

3. After the transition period: ongoing proceedings and new cases

Since EU law will continue to apply until the end of the transition period, the Withdrawal Agreement lays down some provisions that will regulate judicial and police cooperation proceedings that will be ongoing on 31 December 2020. In essence, these procedures will remain subject to EU law until their completion, if initiated before the end of the transition period. That is, if the request or order to execute (e.g. a European Investigation Order), or the judgment to recognise, is received by the competent authority before the end of the transition period.[13] As for the EAWs, its procedures will continue to follow EU rules if the person whose surrender is sought has been *arrested* before the end of the transition period.[14] Moreover,

[11] ECRIS-TCN will be the centralised system for the identification of member states holding conviction information on third country nationals and stateless persons (TCN) to supplement and support the European Criminal Records Information System (COM(2017) 344 final, 29.6.2017).

[12] The UK uses SIS II only for the purposes of police and criminal justice cooperation, but it has no access to immigration data (House of Lords, European Union Committee (2007), "Schengen Information System II (SIS II)", HL Paper 40).

[13] Art. 62(1) of the Withdrawal Agreement. EU law will continue to apply also if the request or judgment has been received, in the executing member state, by a judicial authority that has no competence to recognise or execute it, but which transmits the request or judgment *ex officio* to the competent judicial authority.

[14] Art. 62(1)(b) of the Withdrawal Agreement.

during these EAW proceedings, the Directive on the right to interpretation and translation and that on the right to information will continue to apply.[15]

Similar principles will apply to ongoing law enforcement and police cooperation proceedings, and to the procedures concerning the exchange of information: they will remain subject to EU law if initiated (i.e. the competent authority has received the request) before the end of the transition period.[16] Finally, UK authorities can continue to participate in JITs that have been established before the end of the transition period in accordance with the 2000 EU Convention on mutual legal assistance or with the 2002 Framework Decision on JITs.[17]

By further extending the application of EU law in ongoing cases even when the UK will be, for all intents and purposes, a third country (i.e. after the end of the transition period), these rules would allow an orderly conclusion of ongoing proceedings. The real question then concerns new cases, namely cases where cooperation between EU and UK authorities would need to start *after* 31 December 2020. In a previous study, we discussed in depth a number of different options.[18] At this stage, eight further remarks may be added to that analysis.

First, the continued adherence of the UK to the European Convention of Human Rights (ECHR) and its system of enforcement is a prerequisite of paramount importance for striking any kind of agreement on future judicial and police cooperation. During the negotiations, the Commission even suggested the inclusion of a "guillotine clause" in future EU-UK agreement(s) on security and criminal justice, to be activated if the UK was condemned by the Strasbourg Court for non-execution of a judgment in the area concerned. In the outline of the political declaration of November 2018, the Commission does not mention such a clause. Yet at the very beginning of this document, among the provisions on the "basis for cooperation" with the UK, it identifies "[s]hared values including the respect for human rights and fundamental freedoms, democratic principles, the rule of law (…) as essential prerequisites for the future relationship".[19] Immediately afterwards, the Commission also requires the reaffirmation of the UK's commitment to the ECHR, together with that of the Union and its member states to the Charter of Fundamental Rights.

These essential values underpin the principle of mutual trust, which lies at the foundation of EU cooperation in the field of criminal justice. Mutual trust not only allows, but also obliges EU member states to have confidence in each other's legal systems. It constitutes a (rebuttable) presumption that is only applicable among EU countries.[20] By ceasing to be a member state of

[15] Art. 65 of the Withdrawal Agreement.

[16] Art. 63 of the Withdrawal Agreement.

[17] Art. 62(2) of the Withdrawal Agreement.

[18] Carrera, Mitsilegas, Stefan and Giuffrida, *op. cit.*

[19] Outline of the political declaration setting out the framework for the future relationship between the European Union and the United Kingdom of Great Britain and Northern Ireland, as agreed at negotiators' level on 14 November 2018, p. 2.

[20] P. Bárd (2018), "The Effect of Brexit on European Arrest Warrants", CEPS Paper in Liberty and Security in Europe No. 2, April 2018.

the Union, the UK can no longer benefit from the presumption on which mutual recognition instruments such as the European Arrest Warrant and the European Investigation Order are based.

This leads to a second remark. While the UK Government called for a future partnership that would allow UK authorities to cooperate with their counterparts in member states on the basis of existing EU instruments, the EU position has always been rather different. In the outline of the political declaration, the Commission does not consider the UK option and instead highlights that, on the one hand, future cooperation with the UK should take into account its status as a *non-Schengen* country. On the other hand, it calls for the conclusion of swift and effective arrangements enabling — among others — the efficient extradition of suspects and convicted persons, without any reference to the EAW.[21]

Third, while as a member state the UK has benefited from the 'pick-and-choose' approach to the AFSJ, [22] future cooperation with the EU in the field of criminal justice may be contingent on the UK's compliance with relevant EU *acquis* – including the *acquis* on suspects and victims' rights in criminal proceedings. In other words, Brexit is likely to put the UK in the position of having to accept more EU law than it presently does as an EU member state.[23] Indeed, a third country that does not guarantee the same standards provided under EU law cannot cooperate with EU member states.

Fourth, future arrangements with the UK should also include "terms for the United Kingdom's cooperation via Europol and Eurojust", [24] but no further details accompany this generic statement. Previous research has shown that the UK may keep a relationship with Eurojust that could be partially similar to the current one and it may continue to rely on the support of this agency, albeit in a more limited fashion. For instance, the UK, which is the EU country that relies most on Eurojust's financial and logistical support for the establishment of joint investigation teams, will arguably not be in a position to formally request the setting-up of JITs financed by Eurojust. The impact of Brexit on the UK's future relationship with Europol is likely to be even more visible, as third countries in principle do not enjoy direct access to the agency's databases and cannot lead operational projects.[25]

Fifth, the EU and the UK will have to find an agreement that will allow them to continue to exchange information, including personal data. Data protection and the exchange of information will arguably represent crucial issues for the future of EU-UK criminal justice and

[21] The Commission nonetheless clarifies that these arrangements can include a number of options to speed up the extradition procedures, such as the possibility of waiving the requirement of double criminality and of extraditing own nationals, which are also two noteworthy features of the EAW Framework Decision.

[22] V. Mitsilegas (2017), "European Criminal Law after Brexit", *Criminal Law Forum*, Vol. 28, No. 2, p. 227.

[23] Ibid., pp. 249-250.

[24] Outline of the political declaration, cit., p. 6.

[25] Carrera, Mitsilegas, Stefan and Giuffrida, *op. cit.*, pp. 153–154.

police cooperation. The "[c]ommitment to a high level of personal data protection"[26] is the second of four points listed under the initial section of the outline of the political declaration — "basis for cooperation" with the UK – and it comes immediately after the above-mentioned remarks on human rights and the ECHR. The importance of data protection is then restated in the section that is devoted to the future EU-UK security partnership: the "adequate protection of personal data", together with "long-standing commitments to the fundamental rights of individuals", are defined "*essential prerequisites* for enabling the cooperation envisaged by the Parties".[27]

Sixth, the way in which such an adequate protection of personal data may be better ensured, from an EU perspective, is the adequacy mechanism. The outline of the political declaration posits that the exchange of personal data between the EU and the UK after the end of the transition period will require the adoption of an adequacy decision by the Commission. In other words, the Commission will have to scrutinise UK legislation and practices in order to assess whether they ensure an adequate level of data protection that is essentially equivalent to that ensured within the Union. The Commission aims to adopt such an adequacy decision by the end of 2020,[28] as this would allow smooth exchanges of data and information between the EU and the UK in the aftermath of the transition period. The scope of the adequacy scrutiny will extend to the entirety of the UK's legislation, including fields (such as national security and defence) which fall outside the remit of EU law.

Completing the adequacy assessment before the end of the transition period is likely to require significant efforts by the Commission, especially taking into account that the UK will be the first third country to be subject to such an assessment in the field of police and judicial cooperation. Previous research has already allowed the identification of a number of potential frictions between UK pieces of legislation, such as the Investigatory Powers Act and the Data Protection Act, and EU data protection and fundamental rights standards. UK international cooperation with other third countries, including for instance the proposed UK-US executive agreement under the framework of the US CLOUD Act, will also need to be carefully scrutinised to ensure consistency with EU law.[29] To date, serious doubts exist as to the compatibility of the CLOUD Act with EU data protection standards.[30] The adequacy process could be compromised by the absence of specific guarantees that the required levels of data protection will be ensured under a UK executive agreement with the US.

The Withdrawal Agreement contemplates the possibilities that the UK does not obtain an adequacy decision before the end of the transition period or that the adequacy decision ceases

[26] Outline of the political declaration, cit., p. 2

[27] Ibid., p. 5 (emphasis added).

[28] Ibid, p. 2.

[29] Carrera, Mitsilegas, Stefan and Giuffrida, *op. cit.*, pp. 36–46.

[30] M. Stefan and G. González Fuster (2018), "Cross-Border Access to Electronic Data through Judicial Cooperation in Criminal Matters: State of the art and latest development in the EU and the US", CEPS Paper in Liberty and Security in Europe No. 7, pp. 16-18.

to be applicable to the UK. In these cases, the Agreement provides that the data of "data subjects outside the UK" processed under EU law in the UK before the end of the transition period (or processed after the end of it on the basis of the Withdrawal Agreement) will still have to be protected in accordance with EU data protection law.[31]

Seventh, the final Withdrawal Agreement contains a kind of warning for the EU and its member states, which was not included in the draft of March 2018. Article 73 provides that "the Union shall not treat data and information obtained from the United Kingdom before the end of the transition period, or obtained after the end of the transition period on the basis of this Agreement, differently from data and information obtained from a Member State, on the sole ground of the United Kingdom having withdrawn from the Union". As these data and information would be exchanged in accordance with EU law, the exit of the UK from the EU does not justify as such their different treatment. This caveat somehow confirms that data protection matters may turn out to be rather controversial in future EU-UK relationships.

Finally, the Withdrawal Agreement envisages a number of exceptions to the rule on the termination of the UK's participation in EU databases and information-sharing mechanisms at the end of the transition period. For instance, it is proposed that the UK shall be entitled to use, for no longer than one year after the end of the transition period, the Secure Information Exchange Network Application (SIENA) for the exchange of information within the JITs and police cooperation proceedings that will be ongoing on 31 December 2020.[32] Similarly, if necessary to complete some ongoing judicial proceedings, Eurojust can transmit personal data to the UK, which shall also be entitled to use, for no longer than three months after the end of the transition period, the Communication Infrastructure of SIS II for the exchange of some limited information.[33] The UK will have to reimburse the Union for the actual costs incurred as a consequence of facilitating the UK's use of EU information-sharing mechanisms beyond the end of the transition period.[34] These rules try to balance the need to avoid abruptly disconnecting the UK from EU databases, which may be counterproductive in some instances, with that of ensuring the integrity of the legal frameworks of EU databases and information-exchange mechanisms.

Participation of third countries in many of these instruments is indeed very controversial and in principle is not admissible under EU law. Only member states participating in Schengen have access to SIS II, which facilitates the exchange of information on wanted or missing persons. As mentioned, the outline of the political agreement published in mid-November 2018 notes that the UK will be a non-Schengen third country. Likewise, only EU member states can use the European Criminal Record Information System (ECRIS). The outline of the political declaration therefore envisages that new avenues of cooperation should be found to regulate the exchange

[31] Art. 71(3) of the Withdrawal Agreement.

[32] Artt. 62(2) and 63(2) of the Withdrawal Agreement.

[33] Artt. 62(3) and 63(1)(e) of the Withdrawal Agreement.

[34] Artt. 62(2), 63(1)(e), and 63(2) of the Withdrawal Agreement.

of such information with the UK after the end of the transition period. It mentions that "further arrangements appropriate to the United Kingdom's future status for data exchange (…), such as exchange of information on wanted or missing persons and of criminal records" will be considered.

In our previous study, we argued that there might instead be some leeway to accommodate the UK's participation in the Prüm framework (exchange of DNA and fingerprints), as the latter is not linked to the Schengen *acquis*.[35] It is not clear whether this will be the case or not in the future. This information-exchange system is however addressed separately from SIS II and ECRIS in the outline of the political declaration, and the Commission explains that, upon the UK's continued commitment to the ECHR and its enforcement system, the parties may agree on "reciprocal arrangements for timely, effective and efficient exchanges of (…) DNA, fingerprints and vehicle registration data (Prüm)".

4. What if the Withdrawal Agreement is not approved?

If the Withdrawal Agreement is not approved and Brexit nonetheless occurs on 29 March 2019, the notorious 'cliff-edge' will become a reality on 'Brexit day'. In principle, the UK would leave the bloc without any transition rules and EU law should therefore cease to apply as of Brexit day. As a consequence, ongoing police and judicial cooperation proceedings could not, in principle, be handled in accordance with EU law any more. The practical consequences of this scenario are not easy to predict. In the absence of any *ad hoc* legislative intervention in the UK, one could for instance imagine that persons being detained in the frame of EAW procedures would have to be released, if their detention is not justified upon any other grounds. Likewise, money that has been frozen after the exchange of a freezing order could be returned to the previous owners.

To limit the damage arising from such a situation, requests for extradition or mutual legal assistance could be re-issued in accordance with pre-existing instruments that (most) EU member states and the UK have ratified, such as the 1957 Council of Europe Convention on Extradition or the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Matters. However, some member states may have repealed their legislation implementing these Conventions, which would thus need to be revived to cooperate with the UK in a no-deal scenario.

If the Withdrawal Agreement is not approved and there are no other transition measures, the UK would also cease to be part of EU bodies and agencies and would lose their support until new agreements are concluded. Exchange of (personal) data between the agencies and the UK could still take place in exceptional circumstances and on a case-by-case basis, as happens with any other third country. Likewise, as of Brexit day, the UK could not be connected any longer to EU databases. However, to compensate for the exclusion of the UK from EU databases, (EU and UK) police authorities may continue to exchange information in an informal way and

[35] Carrera, Mitsilegas, Stefan and Giuffrida, *op. cit.*, p. 152.

without clear legal frameworks regulating similar exchanges. These 'under the radar' avenues of cooperation do not bode well for the protection of fundamental rights.

Conclusions

The conclusion of the Withdrawal Agreement is essential to avoid a 'cliff-edge' situation where the UK exits EU instruments and bodies of judicial and police cooperation without any transition provisions. The entry into force of this Agreement would avoid the abrupt ending of the UK's membership of the EU, and grant the competent authorities a clear legal framework to continue to cooperate until at least the end of 2020. According to Article 132(1) of the Withdrawal Agreement, the transition period can also be extended up to a later (yet to be defined) date.

During the transition period, the influence of the UK on EU criminal justice and police cooperation instruments and bodies is likely to decrease, as the country will neither be allowed to participate in governance and management bodies of EU agencies nor to opt into new legislation. Considering the key role played so far by the UK in the development of EU criminal law, this would entail a loss at the strategic level for both sides.

The approval of the Withdrawal Agreement is also necessary to give the UK and the EU some time to work out the shape and content of their future judicial and police cooperation. It is not yet clear what EU-UK relationships in the field will look like beyond the end of the transition period, although the benchmarks for such relationships have already been laid down in the outline of the political agreement. The respect for fundamental rights and a commitment to a high level of personal data protection will be crucial to ensure smooth and efficient cooperation after December 2020.

Data protection issues could represent sticking points in future negotiations between the parties. In December 2017, the UK opted into the Commission's proposals on interoperability of databases. Albeit largely neglected during the negotiations with the UK, the challenges raised by the participation of a future third country in interconnected databases with different links to Schengen should be carefully handled by the EU legislator, especially bearing in mind that the UK is to be disconnected from any EU information system and database at the end of the transition period. Any future interoperability legislation should include specific provisions ensuring that the specific benchmarks delineating third countries' participation in the different databases currently concerned by the proposals are respected.

The Commission is likely to undertake an adequacy assessment of UK legislation and practices concerning the treatment and exchange of information, including personal data. In that respect, a careful examination of the UK-US executive agreement in the process of being concluded under the CLOUD Act is needed. An adequacy decision can only be adopted if it is clearly ascertained that UK internal and external legal and operational system will ensure levels of data protection which are essentially equivalent to those granted under EU law, read in light of the Charter.

In sum, a clear and high-quality legal framework should regulate future EU–UK criminal justice and police cooperation, in order to maintain the efficiency and consistency of the current system. This framework should be based on trust and shared values, including the respect for the rule of law and, above all, for human rights and fundamental freedoms, notably those connected with the protection of personal data.

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