POLICE COOPERATION OF POLAND AND GREAT BRITAIN IN SCOPE OF BREXIT

On 31 January 2020 at 24.00, the transitional period for the United Kingdom to leave the European Union has expired. The process known as Brexit came to an end and was preceded by a consensus on 24 December 2020 on the content of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. The agreement, which has become a matter of public interest throughout Europe, mainly in terms of trade and economic relations, regulates in Chapter Three the state of relations between law enforcements and administration of justice. It represents the conclusion of a process started in the United Kingdom on 23 June 2016 in a nationwide referendum.

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2 The UK formally left the European Union on 1 February 2020.

It is worth mentioning that – agreed on 24 December 2020 – the Trade and Economic Cooperation Agreement is currently subject to the ratification procedure. However, due to the lack of time to complete the ratification procedure, the agreement has been provisionally applied since 1 January 2021, as agreed unanimously by the 27 member states that make up the EU Council.

The aim of this article is to analyse and then assess the effectiveness of the instruments of mutual cooperation which, after Brexit, are available to for the British law enforcement agencies in terms of protecting state security and combating cross-border crime. Moreover, the article attempts to assess the impact of Brexit on the state of Polish-British police cooperation after the United Kingdom left the EU structures.

At the outset, it should be emphasised that the referendum question was formulated in a very simple way, without referring to the individual instruments of mutual cooperation, including security cooperation. The survey question was; Should the United Kingdom remain a member of the European Union or leave the European Union? The majority of those who took part in the referendum (51.89%) were in favour of the United Kingdom leaving the European Union.

In context of the answers to the question asked in this way, it is difficult to address the motives that guided voters in the referendum to take the decision to leave the European Union. The results of an opinion poll conducted in May 2016 come to the rescue here⁴. Respondents were asked about their voting intentions in the upcoming referendum. They were also asked to identify the main factors in the interaction between the European Union and the UK that would be important to voters while answering the key question of whether or not the UK would retain its EU membership status. The three most important factors, according to respondents, were as follows: the impact on the UK economy (33% of indications), the number of immigrants coming to the UK (28% of indications) and the UK’s ability for self-determination in terms of the laws passed (15% of indications). Opposite to the least important issues influencing respondents’ decision to stay or leave the EU was the impact of the decision on British national security (6% of indications). This factor was placed on a par with freedom of movement within the EU and the UK’s status/position on the international stage (both 6% of indications). The low percentage of indications clearly illustrates the same level of public awareness of the loss of police and justice cooperation tools. However, it does not appear that the negligible public awareness in this area went hand in hand with the same perceptions of the UK’s security problem by policymakers and law enforcement officials.

After the referendum was held in October 2016, the Secretary of State responsible for the UK’s exit from the European Union announced that

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maintaining strong security cooperation with the EU would be one of the four key aspects of future negotiations. This position was undoubtedly the result of the historical circumstances of developing a common policy in the area of freedom, security and justice, as well as the UK’s participation in this process.

It is worth emphasising the role of the United Kingdom in the European arena as an advocate of creating structures for cooperation in the area of security and justice. One might even say that it was the United Kingdom as one of the forerunners of the present legal solutions in the area of freedom, security and justice of the European Communities. It was on the initiative of the British Minister of Foreign Affairs James Callaghan that in December 1975 at a meeting in Rome the idea of creating TREVI working group - to fight terrorism, radicalism, extremism and organised crime - was accepted. The proposal was adopted on 29 June 1976 in Luxembourg at a meeting of Home Affairs Ministers, where the group’s statutes were accepted and four working groups were set up. The operating of this informal forum came to an end with the entry into force of the Maastricht Treaty\(^5\) and the establishment of a formal cooperation and decision-making procedure in the justice and security area.

It should be noted that in the period between the creation of the TREVI Group and the entry into force the Maastricht Treaty (excluding the United Kingdom), the Schengen Agreement\(^6\) was signed. It was providing the gradual abolition of controls at common borders and delivering a common visa policy. In relation to the United Kingdom, the Treaty of Amsterdam (which entered into force in 1999) was of particular importance. Apart from setting up the area of freedom, security and justice, it implemented the Schengen acquis into the UE’s acquis communautaire. The United Kingdom and Ireland negotiated the implementation of a protocol to the Treaty of Amsterdam\(^7\) enabling them to control their participation in the area of freedom, security and justice through the application opt out clauses. Similarly, with regard to the Schengen acquis – the UK and Ireland chose not to sign an additional protocol in this area, however they were granted the right to apply for some Schengen’s acquis instruments. The separate position of the United Kingdom was reiterated in the Treaty of Lisbon\(^8\), which included an additional protocol in this area\(^9\). This Protocol further legitimised the UK’s right to opt out of the arrangements in Title V of the Treaty. The UK was given the right to decide by 31 May 2014 whether to be bound by and benefit from the 130 measures and arrangements for police and judicial cooperation that existed in the EU acquis before the entry into force of the Lisbon Treaty. A consequence of this was the position of the UK Government, which in July 2013 decided to identify

35 areas in which leading role of the European Commission and the jurisprudential power of the Court of Justice of the EU was accepted.

Referring to the decision-making process, in terms of the UK’s exit from the European Union, it means in practice abandoning those 35 areas of police and criminal cooperation which were identified by UK Home Secretary Theresa May as key to: stopping the influx of foreign-language criminal groups into the UK, identifying threats from “foreign fighters” coming from Syrian territory, preventing British criminals from hiding abroad, preventing foreign language criminals from hiding in the UK, deporting foreign national criminals from prisons in the UK. These points were made by Theresa May in the House of Commons in November 2014. She has raised the negative effects of Brexit on the area of security and cooperation in criminal matters.10

In addition, the House of Lords report was published at the turn of 2016/2017.11 The hearing of representatives of the UK government and representatives of security and law enforcement agencies and services in the UK was conducted. Representatives of key security institutions in the UK unequivocally pointed the need to maintain or develop new solutions in the area of police and judicial cooperation in criminal matters. Such instruments included cooperation within agencies: Europol and Eurojust, access to the second generation Schengen Information System, use of the European Arrest Warrant, access to the European Criminal Records Information System ECRIS12, use of Prûm’s tools (automated exchange of DNA data, dactyloscopic data and vehicle registration data)13 and use

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13  Convention between the Kingdom of Belgium, the Federal Republic of Germany, the Kingdom of Spain, the French Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands and the Republic of Austria on the strengthening of cross-border cooperation, particularly in combating terrorism, cross-border crime and illegal migration, Prûm, 27 May 2005.

of passenger name record (PNR) data. The aforementioned list should include the European Investigation Order, solutions for confiscating and recovering criminal assets and above all – the ability of exchanging intelligence and criminal information.

The last point is a priority at a time of unrestricted movement of people, lack of border controls and the international nature of modern crimes, especially organised ones. It is also crucial in the context of identifying and combating terrorist threats, extremism and radicalism.

It is worth emphasising that the process of developing tools for police cooperation, especially with regard to exchange of criminal and intelligence information, has been evolutionary and long-term, involving not only the need to adapt the legal systems of EU Member States, but also huge financial outlays. At this stage, the process of exchanging intelligence and criminal information takes place via dedicated channels of information exchange, i.e. the Interpol I-24/7 communication system, Europol’s Secure Information Exchange Network Application (SIENA), the second generation Schengen Information System (SIS II), communication between SIRENE bureaux, as well as the channel of liaison officers accredited in the countries involved in the cooperation. The use of the indicated channels for information exchange created a very important element of cooperation between law enforcement authorities of the United Kingdom and other EU Member States (including Poland).

To illustrate the UK’s participation in these solutions, an example may be used, which is currently widely commented on in the British media in connection with the loss of access to SIS II in the perspective of Brexit. The cost of implementing solutions enabling the UK to access the Schengen Information System was approximately GBP 39 million, while annual operating costs were estimated at GBP 4 million. The usage of SIS II by the British side resulted in daily queries of approximately 1.65 million. In this context, it is also worth illustrating Polish-British cooperation in the exchange of criminal and intelligence information. The essence of this cooperation refers to a large population of Poles living in Great Britain, which according to official data oscillates around 900,000 people. Unofficial sources point the population as 1.5 million which makes Poles the

largest national minority in the UK. Among 1250 European Arrest Warrants executed in 2019 - 405 concerned warrants issued by Polish judicial authorities. This is the largest proportion of EAW detainees based on the criteria of the issuing country.

In addition, the number of third-country nationals serving custodial sentences in 2019 in the UK’s prisons was oscillated around 9,000 people. Within this population 9% (835 people) were of Polish nationality. The more numerous nationality group was Albanians, whose number in prisons in the UK was 999. The above mentioned situation undoubtedly determines the Polish-British cooperation in the scope of demand for exchange of intelligence information. Apart from automated exchange which took place as a result of queries addressed by both sides via SIS II and tools dedicated to automated exchange of DNA data, dactyloscopic data and vehicle registration data - direct bilateral communication in this area was conducted with the use of the other, earlier indicated channels. The following data provided by the Police Headquarters relates to bilateral exchange of criminal information in 2019 between Poland and the UK.

<table>
<thead>
<tr>
<th>Type of channel</th>
<th>Number of cases (correspondence) outgoing/referred by Poland to the UK</th>
<th>Number of cases (correspondence) incoming/received by Poland from the UK</th>
</tr>
</thead>
<tbody>
<tr>
<td>SIRENE</td>
<td>6038</td>
<td>8844</td>
</tr>
<tr>
<td>INTERPOL</td>
<td>1646</td>
<td>1698</td>
</tr>
<tr>
<td>EUROPOL</td>
<td>666</td>
<td>no data available</td>
</tr>
<tr>
<td>POLISH POLICE LIAISON OFFICER</td>
<td>120</td>
<td>159</td>
</tr>
<tr>
<td>NEXUS*</td>
<td>44</td>
<td>21</td>
</tr>
<tr>
<td>EMBASSY OF THE REPUBLIC OF POLAND IN LONDON</td>
<td>16</td>
<td>2</td>
</tr>
</tbody>
</table>

A joint project between the Polish Police and the Metropolitan Police Service. The project concerns the secondment of Polish Police officers to MET Police in order to support the performance of tasks related to combating crime in the field of human trafficking and searching for persons

Source: Author’s own compilation based on data from The National Headquarters of Polish Police


21 Response dated 7.04.2020 from the Office of the Chief of Police to the author’s request for public information.
Complementary to the above statistics is the report\textsuperscript{22} prepared by the British ACRO- Criminal Records Office for 2019. It illustrates Polish-British cooperation in criminal matters from a slightly different angle. It should be mentioned that the British law enforcements in case of a crime committed by a third-country national in the UK, in the first instance reach for information on convictions in the country of origin. The exchange of such information takes place outside the police channels of criminal information exchange. It is based on communication between the UK-CRIS (Criminal Record Information System) and the Polish National Criminal Register.

The below presented diagram allows for comparison of data related to population of the Polish nationals in the United Kingdom and the British nationals in Poland. The diagram also refers to statistical data on persons detained and serving prison sentences in both countries.

### Diagram 1

**General data for 2019 on population, detainees and individuals serving a sentence of imprisonment**

- **Number of Poles residing in the UK in 2019:** 827,000
- **Number of British people residing in Poland in 2019:** 2200
- **Number of Poles detained in the UK in 2019. (only on the basis of EAW):** 405
- **Number of British people detained in Poland in 2019:** 63
- **Number of Poles serving prison sentences in the UK in 2019:** 835
- **Number of British peopleserving prison sentences in Poland in 2019:** 0

*Source: Author’s own compilation based on data from The Central Board of Prison Service*

The following diagram illustrates the scale of exchange of criminal record data between Poland and the UK in 2019. It complements the previous arguments.

**Diagram 2**

*Conviction exchange data between Poland and Great Britain in 2019*

- **Number of enquiries made by the UK (ACRO) to Poland**: 23022
- **Number of notifications from the UK (ACRO) to Poland concerning Poles validly sentenced in the UK**: 8113
- **Number of enquiries from the UK (ACRO) for ongoing investigations**: 17097
- **Number of enquiries from Poland to Great Britain (ACRO)**: 1780
- **Number of notifications from Poland to the United Kingdom (ACRO) concerning British nationals with final sentences in Poland**: 245
- **Number of enquiries from Poland for the purpose of conducting investigations**: 467


The subject of this article in the following part will be a general discussion of the legal consequences for the UK leaving EU in scope of bilateral Polish and British police cooperation. At this point it is worth pointing out that apart from the current EU and Schengen acquis Poland took the initiative to sign a bilateral government agreement on combating organised crime. The United Kingdom was sceptical about this initiative, pointing to sufficient regulations adopted by the European Union.

**The Schengen and SIS II acquis**

The consequences of the UK losing access to SIS were foreseen by experts and judicial representatives in the UK.
Richard Martin, Deputy Chief Constable of the Metropolitan Police in London, Head of the International Crime Coordination Centre and Plenipotentiary for Police Co-operation after Brexit, pointed out in a hearing in the House of Lords that without access to the SIS, Police would not be able to carry out as many checks as before. Moreover information sharing would be slower and less efficient. He emphasised in his speech that access to SIS provides every officer with the ability to check a person, a vehicle on police national databases and simultaneously on SIS II. He underlined that loosing access to SIS will affect operational capabilities of the British Police.

A similar view was expressed by Rob Wainwright, former head of Europol. He indicated at the House of Lords that access to the SIS gives British law enforcements the possibility of rapid checks on criminals and terrorists. That brings significant operational benefits. He illustrated his point by describing the hypothetical case of a sex offender from an EU member state travelling in Europe. The man is registered in the SIS of his home country and is not known to German or French law enforcements, where he also does not encounter border controls. When he appears at the Dover border crossing between France and the UK, with access to the SIS, the UK Border Force is able to identify him as a dangerous criminal. Failure to do so will result in very negative consequences when UK border authorities, unknowingly allow a dangerous criminal to enter UK’s territory.

The loss of access to international police cooperation tools (including access to the SIS) was also commented on by representatives of the UK secret services. Lord Evans of Werdale, former director of MI5. He pointed out that one of the basic tasks for the special services is to eliminate the threats posed by those involved in terrorist activities and those planning terrorist attacks. In order to effectively prevent these threats, special services must rely on the police and border force to the extent that they conduct international information exchange.

Since 1 January 2021, the United Kingdom has been excluded from the Schengen Information System. As a result - the British SIS alerts are no longer visible in Polish systems, and the United Kingdom has no access to the Polish SIS alerts.

The cooperation between the two parties must therefore be based on the principles which prevailed prior to the UK’s inclusion as an SIS user, i.e. the system of alerts and notifications used by Interpol - the so-called ‘notices’ (published in respect of persons) and searches of the Interpol network and its databases via the ASF - Automated Search Faciliti.
information on objects; documents, vehicles). Obviously, it is difficult to replace SIS alerts comprehensively with the Interpol Alert System.

This will be possible in a very limited way and will not ensure full functionality specific for the SIS. Polish-British cooperation with regard to persons wanted for arrest and extradition, previously based on the Article 26\textsuperscript{27} of Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II)\textsuperscript{28}, will now be based on the Interpol Red Note. Polish legislation defines red note as self-contained basis for the arrest of a person under the Article 605a of the Act of 6 June 1997 on the Code of Criminal Procedure\textsuperscript{29}. The British legislation requires prior certification of such a note, obtaining diffusion from the issuing state, and above all, a warrant issued by a competent court.

Existing SIS alerts on missing persons, who need to be placed under protection or persons whose whereabouts need to be established, carried out by States Parties (based on the Article 32\textsuperscript{30} Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System) should be implemented on the basis of the Interpol yellow note after Brexit. There is some doubt about the alternative to the existing alerts under Article 34\textsuperscript{31} of

\textsuperscript{27} Article 26 (1) Data on persons wanted for arrest for surrender purposes on the basis of a European Arrest Warrant or wanted for arrest for extradition purposes shall be entered at the request of the judicial authority of the issuing Member State.


\textsuperscript{29} Article 605a 1 Detention of a prosecuted person may also take place on the basis of the information contained in the database of the of the International Criminal Police Organisation or the Schengen Information System. The provisions of articles 244-246 and article 248 shall apply.

\textsuperscript{30} Article 32 1. Data on missing persons who need to be placed under protection and/or whose whereabouts need to be ascertained shall be entered in SIS II at the request of the competent authority of the Member State issuing the alert. 2. The following categories of missing persons may be entered: a) missing persons who need to be placed under protection, (i) for their own protection, (ii) in order to prevent threats, b) missing persons who do not need to be placed under protection. 3. Paragraph 2(a) shall apply only to persons who must be interned following a decision by a competent authority. 4. Paragraphs 1, 2 and 3 shall apply in particular to minors. 5. Member States shall ensure that the data entered in SIS II indicate which of the categories mentioned in paragraph 2 the missing person falls into.

\textsuperscript{31} Article 34 For the purposes of communicating their place of residence or domicile Member States shall, at the request of a competent authority, enter in SIS II data on: (a) witnesses; (b) persons summoned or persons sought to be summoned to appear before the judicial authorities in connection with criminal proceedings in order to account for acts for which they are being prosecuted; (c) persons who are to be served with a criminal judgment or other documents in connection with criminal proceedings in order to account for acts for which they are being prosecuted; (d) persons who are to be served with a summons to report in order to serve a penalty involving deprivation of liberty.
the Decision regarding persons required for trial purposes. This doubt arises from the fact that the Interpol note system does not provide specific alerts for procedural purposes. Alternatively, an Interpol Blue Note could be used to obtain information on a person, establish whereabouts or establish identity in connection with proceedings. However, the nature of this alert does not fully reflect the functionality and purpose of SIS alerts under Article 34. The Interpol Blue Note may in some ways be a response to alerts under Article 36\(^\text{32}\) of Council Decision 2007/533/JHA, which relates to discreet or specific checks. In order to better reflect the intention of the alerts in the SIS under Article 36, it would seem appropriate to compile two alerts - the blue alert and the green alert - which are intended to warn the authorities of other states about persons who may be a threat to public security or who, on the basis of the information obtained or their previous criminal activities, may commit a criminal offence abroad.

Functionality of SIS II in terms of implementing alerts based on Article 38\(^\text{33}\) of Council Decision 2007/533/JHA, seems to be irreplaceable and

\(^{32}\) Article 36 1. Data on persons or vehicles, boats, aircrafts and containers shall be entered in accordance with the national law of the Member State issuing the alert, for the purposes of discreet checks or specific checks in accordance with Article 37(4). 2. Such an alert may be issued for the purposes of prosecuting criminal offences and for the prevention of threats to public security: (a) where there is clear indication that a person intends to commit or is committing a serious criminal offence, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA; or (b) where an overall assessment of a person, in particular on the basis of past criminal offences, gives reason to suppose that that person will also commit serious criminal offences in the future, such as the offences referred to in Article 2(2) of the Framework Decision 2002/584/JHA. 3. In addition, an alert may be issued in accordance with national law, at the request of the authorities responsible for national security, where there is concrete indication that the information referred to in Article 37(1) is necessary in order to prevent a serious threat by the person concerned or other serious threats to internal or external national security. The Member State issuing the alert pursuant to this paragraph shall inform the other Member States thereof. Each Member State shall determineto which authorities this information shall be transmitted. 4. Alerts on vehicles, boats, aircrafts and containers may be issued where there is a clear indication that they are connected with the serious criminal offences referred to in paragraph 2 or the serious threats referred to in paragraph 3.

\(^{33}\) Article 38 1. Data on objects sought for the purposes of seizure or use as evidence in criminal proceedings shall be entered in SIS II. 2. The following categories of readily identifiable objects shall be entered: (a) motor vehicles with a cylinder capacity exceeding 50cc, boats and aircrafts; (b) trailers with an unladen weight exceeding 750 kg, caravans, industrial equipment, outboard engines and containers; (c) firearms; (d) blank official documents which have been stolen, misappropriated or lost; (e) issued identity papers such as passports, identity cards, driving licenses, residence permits and travel documents which have been stolen, misappropriated, lost or invalidated; (f) vehicle registration certificates and vehicle number plates which have been stolen, misappropriated, lost or invalidated; (g) banknotes (registered notes); (h) securities and means of payment
a matter of importance. On the basis of the solutions provided by Inter-
pol, it is not possible to replicate the exact functionality of SIS. There
is no single database equivalent to the alerts issued under this article.
Therefore, it seems necessary, in Polish-British cooperation, to perform
individual checks in separate, dedicated – 18 Interpol databases\(^{34}\). Police
officers have the possibility to carry out checks on the following Interpol
databases:
— Nominal Database (ND),
— Fingerprints Database (FD),
— DNA Genetic Profiles (DNA Gateway),
— Stolen and Lost Travel Documents (SLTD Database),
— Stolen Administrative Documents (SAD Database),
— Stolen Motor Vehicles (SMV),
— Works of Arts Database (WoA),
— Interpol Child Abuse Image Database (ICAID),
— The International Child Sexual Exploitation Database (ICSED),
— The Counterfeit Payment Cards Data-base (CPCD)\(^{35}\).

Obviously not all databases will correspond to range of Article 38 of
Council Decision 2007/533/JHA

Moreover, not all Interpol notes will be used to replace SIS II func-
tionality, as there are no equivalents in the provisions of the Decision. This
will be the case for the Black Note, which is issued for the identification of
unknown corpses and and human remains, a violet note – to warn about
the modus operandi of perpetrators of criminal offences, objects or devices
used to commit criminal offences or to obtain information about criminal
acts, and an orange note – to warn of an event, person, object, conduct
or modus operandi that are likely to pose an immediate threat to public
security and cause serious harm to persons or property in the near future.

Regardless the alerts and notifications of SIS II and attempts to replace
them by a system based on Interpol solutions, it is worth drawing atten-
tion to the legal and factual problem related to cooperation in the field of
cross-border observation. Until Brexit the Polish-British police cooperation
in this area was based on Article 40 of the Convention implementing the
Schengen Agreement of 14 June 1985\(^{36}\). British exit from the European
Union and dropping Schengen acquis indicate the necessity to restore the

such as cheques, creditcards, bonds, stocks and shares which have been stolen,
missappropriated, lost or invalidated.

\(^{34}\) Interpol, Every search of our 18 databases is a potential break in a case for
police worldwide, https://www.interpol.int/How-we-work/Databases/Our-18-da-
tabases.

\(^{35}\) Safjański T, Legal, organisational and technical determinants of Poland’s
participation in international cooperation under Interpol, \textit{Internal Security Re-
view} 14/16, p. 117.


However, a formal obstacle for this solution is the reservation made by Poland\textsuperscript{38} (during the ratification process) as regards retaining the right not to execute requests for cross-border observation under Article 17.

**Criminal information exchange**

Except automatic information exchange under the Schengen acquis, the provisions of Council Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union were crucial for exchange of operational and intelligence information before the United Kingdom left the European Union\textsuperscript{39}. This area relates to Part III, Title IV of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. This Title relates to cooperation on operational information exchange. In principle, the provisions of the Agreement refer to the domestic law of the United Kingdom and individual EU Member States. According to this, there is possibility of exchanging operational information for:

— preventing, investigating, detecting and prosecuting criminal offences,
— the enforcement of criminal sanctions,
— the protection against and prevention of threats to public security,
— preventing and combating money laundering and the financing of terrorism.

Before the above agreement was signed the domestic law of the United Kingdom allowed and still allows for the exchange of criminal and intelligence information with third countries, regardless of the EU acquis\textsuperscript{40}.

From the perspective of the Polish legal system, such regulations have been included in the provisions of the Act of 16 September 2011 on Exchange of Information with Law Enforcement Agencies of the Member States of the European Union, Third Countries, European Union Agencies and

\textsuperscript{37}  Dz.U. 2004, No. 139, item 1476.
International Organisations\(^{41}\). The amendment of the above-mentioned legal act concerns the exchange of criminal and operational information between authorised Polish entities and their counterparts not only in EU countries, but also in third countries, as the United Kingdom should be considered after leaving the EU. This legal construction enables Polish law enforcement agencies to exchange criminal information bilaterally with their British counterparts – despite the exclusion of the application of the EU acquis.

Irrespective of the above, certain grounds for bilateral exchange of criminal and intelligence information on organised crime are provided by the provisions of the *UN Convention Against Transnational Organised Crime of 15 November 2000*\(^{42}\).

Undoubtedly, the most suitable solution would be to include the subjective and objective scope of this exchange, as well as technical aspects and channels used in this process, within the framework of a bilateral Polish-British intergovernmental agreement on police cooperation. Designing it at the stage of negotiations between the United Kingdom and the European Commission was impossible for political and formal reasons, but now it seems to be most required.

**Europol cooperation**

The report produced by the House of Lords at the turn of 2016/2017 defines cooperation with Europol as an extreme priority. At the same time, it was highlighted that in the event of the UK leaving the EU, an agreement with Europol (similar to the ones that other third countries have) would be clearly insufficient from the perspective of the UK’s interests. At the time, there was a position indicating that the UK Government would be obliged to enter into such an operational agreement with Europol as no third country has to date. Within the aforementioned report, Bill Huges – former director of SOCA (Serious Organised Crime Unit) pointed out that the EU is well aware that the UK uses around 40% of the resources of the system used to exchange information SIENA (Secure Information Exchange Network Application). He also highlighted that the UK is the second largest contributor to Europol’s databases and the coordinator of four or five key projects under EMPACT (European Multidisciplinary Platform against Criminal Threats)\(^{43}\).

The above-mentioned intentions of the British government have only been achieved to a certain extent, as the UK has been granted a status at Europol same as third countries. The principles and scope of this cooperation are defined in Part III, Title V of the *Agreement on Trade and Economic*

\(^{41}\) Dz.U. 2020, item 158.

\(^{42}\) Dz.U., 2005, No. 18, item 158.

Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. This agreement allows for multilateral cooperation between the UK (as a third country) and the EU Member States. The cooperation established by this Title relates to the forms of crime which fall within the competence of Europol\textsuperscript{44}, including related criminal offences. It may in particular refer to the exchange of personal data and may include:

— the exchange of information such as expertise;
— general situation reports;
— results of strategic analysis;
— information on criminal investigations;
— information on crime prevention methods;
— participation in training;
— providing advice and support in individual criminal investigations, as well as operational cooperation.

An exception to this is the possibility of processing personal data relating to victims of crime, witnesses or other persons who may provide information on crime and persons under the age of eighteen, unless this is absolutely necessary and proportionate in individual cases to prevent or combat crime.

At the same time, it is worth pointing out that the intention of the UK Government to conclude an agreement in a form which is not specific to third countries (\textit{i.e.} providing for a broader framework of cooperation) was, in a way, achieved by introducing a clause in the mutual agreement. This solution allows for working and administrative arrangements aimed at supplementing and implementing the provisions of the agreement.

It is also worth emphasising that the agreement allows the United Kingdom to maintain a network of liaison officers at Europol, with a reciprocal right for Europol to place liaison officers in the United Kingdom. This arrangement also gives the UK indirect access to the SIENA information exchange system. This does not of course mean common usage of this

channel of communication between Member States and the UK, but it does allow it to be used to a limited and necessary extent, via liaison officers and the UK contact point in the Hague. In addition, the UK’s new status (in relation to Europol) means that there is no direct or indirect access to Europol’s databases - the EIS (Europol Information System).

European Arrest Warrant and extradition

The European Arrest Warrant - in scope of the statistics presented at the outset - has been of particular importance to Polish-British police and justice cooperation. Its importance and the benefits of speed and simplification of previous extradition procedures were recognised by the UK government at the stage of taking the decision to maintain this solution in 2014. Extensive discussion was also related to the search for alternatives for this solution and the possibility of returning to the provisions of the European Convention on Extradition drawn on 13th of December 1957, Additional Protocol to that Convention, done at Strasbourg on 15 October 1975, and Second Additional Protocol to that Convention, done at Strasbourg on 17 March 1978. At that stage, the British Home Secretary Theresa May stressed that the provisions of the Convention had one major disadvantage – namely the length of extradition procedures, which could undermine public confidence in the authorities. She also pointed to a more pressing problem arising from abandoning the European Arrest Warrant, namely the possibility that some of 22 States might refuse to surrender their nationals on the basis of the provisions of the Convention. At this stage, the possibility of adopting intermediate solutions (similar to those on which Norway and Iceland have regulated the extradition process in their relationship with the EU) was also raised. Such a solution was presented to the House of Lords at the turn of 2016/2017 and considered optimal, as an alternative in the case of dropping the European Arrest Warrant. It is also worth noting that the House of Lords, consulted The Law Society of Scotland while preparing the report on the effects of Brexit. This Society has formulated three main differences between the solutions specific to the European Arrest Warrant and the provisions of the European Convention on Extradition of 1957.

In the opinion of this association:
— the European Arrest Warrant can be described as an operation between the competent authorities of two States, while limiting the role of the enforcement process. By comparison, under the provisions of the Convention, extradition applications must be addressed through diplomatic channels with the need to obtain the approval of the competent Secretary of State at several stages of the process;

45 Dz.U., 1994, No. 70, item 307.
46 House of Lords, European Union Committee, Brexit: future UK-EU security and police cooperation, op.cit., p.34.
— the EAW procedure provides a time frame for the various stages of the extradition process, whereas the 1957 Convention does not provide for such detailed arrangements;
— Article 6 of the 1957 Convention provides for the possibility to refuse extradition of own national, while the EAW-based solutions remove these restrictions, on the concept of European Union citizenship.\(^{47}\)

As already mentioned, the rules and scope of cooperation on extradition procedure between the United Kingdom and EU Member States after Brexit are defined in Part III, Title VII of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. The provisions of the agreement allow for issuing an arrest warrant in relation to the acts that are punishable under the law of the issuing State by a custodial sentence or detention order for a maximum period of at least 12 months, or where a sentence has been passed or a detention order has been made for a minimum period of four months.

The provisions of this Title allow for direct cooperation between the judicial authorities of the States Parties, introduce restrictions on the possibility to refuse surrender, as well as time limits for the execution of procedures. In principle, surrender may be refused where there is a risk of violation of fundamental rights, where the extradition is disproportionate/unsuitable to the situation of the detainee or where, as a result of a lengthy extradition procedure, the detainee’s period of imprisonment would be disproportionate to the offence charged. Of course, the general rules on extradition between the UK, and EU Member States will be based on the principles set out in the provisions of the 1957 Convention discussed above.

It should also be emphasised, as described in the part devoted to SIS II, that the communication within the scope of exchange of information about wanted persons (between Great Britain and member states) will be based on Interpol – with the use of the Red Note institution. It is therefore important to note two formal and technical problems with the way in which the UK implements searches using the Interpol channel. Firstly, searches carried out in the UK on the basis of the Interpol Red Note would require widespread automated access for police officers to the Interpol database in order to be carried out effectively. The British police national database PNC (Police National Computer), the equivalent of the Polish KSIP (National Police Information System) does not have a direct connection with the Interpol databases. This means that a UK police officer carrying out checks on a identified/arrested person, will not receive any feedback that he/she is dealing with an internationally wanted person on the basis of an Interpol Red Notice. Such checks could be carried out through the duty officer or through a unit dedicated to international cooperation – the equivalent of the Polish International Police Cooperation Bureau at the National Police Headquarters. This reduces the effectiveness of conducting

\(^{47}\) *Ibidem*, p. 36.
international searches. Secondly, in contrast to the Polish legislation – the British regulations do not recognise the Interpol Red Note as a self-contained basis for the arrest of a wanted person. Subsequently, it is necessary to certify this note by the National Crime Agency, which is usually connected with sending to the Polish party information on the need to send a red diffusion addressed to Great Britain. Moreover Poland is required to provide other available information concerning the wanted person. The next stage of this process (on the British side) is obtaining a court order enabling the detention of the wanted person. This procedure may be bypassed if there is a risk that the wanted person will abscond or if the situation is urgent. Then, the British police may apply the so-called “provisional arrest”, detain the wanted person and subsequently complete the formal deficiencies (obtain NCA certification and a court arrest warrant).

Notwithstanding the above, it should also be stressed that the effect of the withdrawal of the United Kingdom from the application of the European Arrest Warrant - in bilateral relations with Poland – may be in some cases the lack of possibility for Poland to surrender its own citizens wanted internationally by the United Kingdom. This restriction results directly from Article 55(1) of the Constitution of the Republic of Poland of 2 April 1997. Unless the conditions set out in paragraphs 2 or 3 are met, such extradition will be legally inadmissible. In this context, the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland contains regulations which impose an obligation on the States Parties to consider bringing an independent prosecution for the offence constituting the basis for the extradition request.

**PNR - (Passenger Name Record) – Passenger Name Record data**

In April 2016, the European Union adopted a Directive obliging air carriers to transmit flight data of a passenger entering or leaving the EU territory to the Member States. However, this was not regular data such as name, date of birth, nationality and passport number, which carriers were already obliged to provide under the provisions of the Council Directive of 29 April 2004 on the obligation of carriers to communicate passenger data. PNR data include a broader set of information such as how the reservation was made, for whom and by whom the reservation was actually made, contact details of the reservation holder, travel itinerary.

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At the stage of deciding to leave the EU, the ability to obtain this data was assessed by UK experts as crucial to the security of the UK. Hellen Ball, the national counter-terrorism coordinator, pointed out that information contained in the PNR, combined with the powers of the UK Border Force, is an effective tool in preventing the entry into the UK of terrorists, persons who may pose a threat, and most importantly, can serve to protect potential victims.\(^{51}\)

The aspects related to the sharing, processing and retention of Passenger Name Record (PNR) data are laid down in Part III, Title III of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland. An analysis of the Title III provisions can be concluded in a way that the United Kingdom will maintain access to PNR data unchanged. It also maintains the possibility for direct cooperation between the UK services and their counterparts in EU Member States in scope of exchange of PNR data.

The provisions of the agreement introduce the possibility for the UK to retain PNR data for a maximum period of five years. This is analogous to the provisions of the Directive. At the same time, the UK has been given the option of retaining the data after passengers have left the country. The United Kingdom was required to identify objective evidence on the basis of which it may be concluded that certain passengers pose a threat in terms of the terrorism and serious crime. Apart from that, under the provisions of the agreement, UK may avoid the obligation to delete data in a transitional period. This should be necessary to implement technical solutions in the area of personal data protection.

The above-mentioned derogation is the introduction of a guarantee mechanism requiring the United Kingdom to submit report to the Special Committee on Law Enforcement Cooperation. This reports shall come from an independent administrative authority and include an opinion from the United Kingdom supervisory authority, on the effective safeguards provided in the agreement. It shall also contain an assessment of the United Kingdom related to persistence of the special circumstances justifying temporarily longer retention.

**PRUM – Exchange of DNA data, fingerprints and vehicle registration data**

The Prum Treaty, signed in 2005, laid the basis for strengthening cross-border cooperation between the states on the exchange of DNA profile data, fingerprint data and vehicle registration data. In 2008, two

\(^{51}\) House of Lords, European Union Committee, Brexit: future UK-EU security and police cooperation, p. 28.

Council Decisions\textsuperscript{53} implemented the Prum acquis into the EU legal system. The provisions of these Decisions impose an obligation for the Member States to enable the reciprocal search of their databases - the DNA profile database (answer required within 15 minutes), fingerprint database (answer required within 24 hours), vehicle database (answer required within 10 seconds). The UK originally choose not to transpose the legislation indicated. In 2015, a government debate took place in the UK. It was on the adoption of the Prum acquis. A practical test of the functionality and effectiveness of the system was then carried out on a pilot basis involving a test comparison of the 2513 DNA profiles collected in the UK database with DNA profiles collected in the databases of Germany, France, the Netherlands and Spain. This test resulted in 118 positive matches, indicating to the UK government that participation in the Prum mechanisms would generate new evidence to detect serious crime and provide an opportunity to obtain operational information about cross-border criminal activity\textsuperscript{54}. This underpinned the recommendation made by the House of Lords to the UK Government in its report\textsuperscript{55}. This recommendation was related to the UK’s participation in the legal order defined by the Council Decisions. In particular according to the automated exchange of data on DNA profiles and fingerprints. In fact, the decision in this area in the United Kingdom coincided with the discussion on leaving the European Union. This subject was one of the key ones to be regulated in the exit agreement. It is regulated in the provisions of Part III, Title II of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. These provisions maintain the status quo, which allows for the exchange of data (including automated searches of national databases) on DNA profiles and fingerprints between EU Member States and the UK.

The provisions of the agreement oblige the parties to make all categories of data available to other countries competent law enforcement authorities for search. This must include the same conditions as apply to searches and comparisons made by domestic competent law enforcement authorities. States shall provide further available personal data and other


\textsuperscript{55} Ibidem, p. 18.
information, under the same conditions as they would be provided to internal authorities.

The provisions of the agreement set up a verification mechanism for the UK to check that it has complied with the conditions for the provision of data described above. For this purpose, an evaluation visit and a pilot run are carried out. On the basis of an overall evaluation report, the European Union will set a date from which Member States will be able to transfer personal data to the UK. Pending the outcome of the evaluation, Member States may supply the United Kingdom with personal data up to the time indicated by the European Union but no longer than nine months from the date of entry of this Agreement into force.

It can be concluded that the cooperation between Poland and the United Kingdom in the area of data exchange (including automated data exchange) of DNA profiles, fingerprints and vehicle registration data will continue uninterrupted under the same conditions.

**European Investigation Order - legal assistance in criminal matters**

The European Investigation Order (EIO)\(^{56}\), as a quicker and more efficient tool dedicated to cooperation in cross-border investigations, has been designed to replace a number of existing legal instruments. Especially the *European Convention on Mutual Assistance in Criminal Matters, signed in Strasbourg on 20 April 1959*, and the *Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, done in Brussels on 29 May 2000*\(^{57}\). The European Investigation Order enables appropriate authorities to commission procedural acts and obtain evidence on the territory of another EU Member State. As a rule, the EIO must be accepted (with a small number of exceptions) in the country to which it is addressed and further executed without any other formalities.

Professor Steven Peers of the University of Essex has argued at the House of Lords that the EAW is the main tool for the transfer of evidence between EU Member States. He claimed that if the UK were to abandon this form of cooperation, there would be a risk that UK’s requests for evidence would always be put at the back of the queue. The priority would be given to cooperation on the basis of the EAW, where time limits are set up\(^{58}\).

The United Kingdom’s leaving from the European Union posed the risk of a return to solutions based on the provisions of the *European Convention on Mutual Assistance in Criminal Matters* and its additional protocols

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\(^{57}\) Dz.U., 2007, No. 135, item 950.

\(^{58}\) House of Lords, European Union Committee, Brexit: future UK-EU security and police cooperation, p. 40.
dated 1978 and 2001. As a consequence, the processing of a request for legal assistance could prove slow and ineffective.

The main weaknesses of abandoning the EIO and basing the processing of legal aid applications for legal aid on the above provisions may include:
— the channel of transmission of the request;
— the scope of facts giving rise to cooperation;
— number of grounds for refusal;
— lack of time limits;
— the possibility for Member States to make reservations and declarations\(^{59}\).

Issues concerning the execution of requests for legal assistance between the EU Member States and the United Kingdom are regulated by the provisions of Part III, Title VIII of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community, and the United Kingdom of Great Britain and Northern Ireland. In principle, the provisions of the Agreement base cooperation in this area on the provisions of the European Convention on Mutual Assistance in Criminal Matters and its additional protocols.

The agreement eliminates certain imperfections of the convention provisions by introducing, deadlines for taking a decision on the execution of a request for legal aid. The obligation to inform the requesting State of the decision to execute the request sits with the requested State. It should be executed no later than 45 days after the receipt of the request. The provisions of the agreement also introduce a maximum deadline for the execution of a request for legal assistance. It should take place no later than 90 days after the decision referred to above is taken.

This creates a more effective framework for the implementation of legal aid than one based on the Convention provisions. Despite leaving the European Union, the United Kingdom has retained the right to initiate and participate in joint investigation teams (JIT - Joint Investigation Teams)\(^{60}\), which also positively influences the possibilities to share information for evidential purposes.

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**Exchange of information on criminal records - European Criminal Records Information System (ECRIS)**

The exchange of information on convictions between EU Member States is an important complementary element in the implementation of criminal policy. When an EU Member State convicts a national of another

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Member State, it is obliged to inform that State of this fact via the ECRIS network. Member States are also obliged to respond to enquiries about a person’s previous criminal record for the purposes of conducting criminal proceedings. ECRIS may also be used for other purposes, such as assessing criminal record for employment or immigration purposes. Stephen Rodhosue, Assistant Chief Constable of the Metropolitan Police Service of London, in a hearing before the House of Lords, highlighted that ECRIS provides a means of obtaining rapid information about a person in police custody in the UK. It enables to make decisions about the risk that such a person may pose to UK security. He also pointed out that in 2015, requests from the UK to other Member States enabled the disclosure of 178 cases where a person had been convicted of the offence of rape and 177 cases where a person had been convicted of murder. This information was able to be transposed into the UK’s police database and provide intelligence for officers across the country. Stephen Rodhouse warned that if this information was unavailable it would cause a real security risk.

The exchange of criminal record information is addressed in the provisions of Part III, Title IX of the Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland. In principle, there has been no practical change in this area as regards the possibility of transferring data on convictions between the United Kingdom and the EU Member States (including Poland).

Summary

Concluding, it should be emphasised that the withdrawal of the UK from the EU has brought a number of consequences for bilateral Polish-British police and justice cooperation. The most unfavourable changes result from dropping the Schengen acquis by the United Kingdom – is disconnection from the second generation Schengen Information System. This is also closely related to the abandonment of solutions based on the European Arrest Warrant and may significantly affect the effectiveness of conducting international fugitive cases and the lengthiness of the extradition process. Undoubtedly, an adverse effect of Brexit on mutual Polish-British cooperation is also the United Kingdom’s inability to use Europol’s databases and ceasing to feed them with its own entries. A handicap is also the British lack of access to an effective, secure channel


62 House of Lords, European Union Committee, Brexit: future UK-EU security and police cooperation, op.cit., p. 27.
of exchanging criminal information which is SIENA. Some difficulties may also be seen in the procedure for executing requests for legal aid in the context of the UK abandoning mechanisms based on the European Investigation Order. This will significantly affect the range of the requests for evidence, the greater formalisation of the procedure and its time-consumption. Of course, in terms of cooperation, both the British and the European Commission side have sought to offset the negative effects of the United Kingdom leaving the European Union.

The Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland has retained a number of important mechanisms for effective police cooperation between EU Member States and the United Kingdom. It maintained the solutions for the exchange of covert information, the automated exchange of information on DNA profiles, fingerprints and vehicle registration data, and possibility of exchanging PNR information and information on criminal records. It has also made positive modifications to police and justice cooperation tools, where the UK would have to use less effective cooperation tools. This relates to introducing timeframes for the execution of requests for legal assistance based on the provisions of the 1959 European Convention on Mutual Assistance in Criminal Matters, and by maintaining UK’s liaison officers at Europol, allowing the exchange of criminal information with that organisation.

Despite the efforts undertaken and the modification of the existing cooperation mechanisms - aimed at mitigating the effects of Brexit - the accurate statement was made by the former head of the Serious Organised Crime Agency (SOCA) - Bill Hughes. He indicated that the United Kingdom is the main and leading partner in the framework of police cooperation among the EU Member States, and the process of leaving the EU structures will cause this state of affairs to change63.

It is worth emphasising that cross-border law enforcement cooperation - which includes police, customs, secret services and other law enforcement agencies, mainly concerns the most serious threats such as terrorism, organised crime, human trafficking, money laundering, drug trafficking or cybercrime. From 1 January 2021 the UK has been treated as a third country by the EU. Although, as mentioned in the article, the Trade and Cooperation Agreement between the European Union and the United Kingdom provides upgrades of the tools of police and judicial cooperation, it is a matter of practise to verify these as sufficient.

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63 Ibidem, p. 10.
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**Keywords:** tools for international police cooperation, cross-border crime, Brexit, internal security in the EU, Polish-British police cooperation

**Summary:** Leaving the UE by the UK has brought a number of consequences for bilateral Polish-British police and justice cooperation. The subject of the article was to present legal regulations, which provide the basis for international cooperation for British law enforcement agencies. The author analyzed and then evaluated the effectiveness of instruments of mutual cooperation. The article focuses also on the assessment of Brexit consequences and its possible impact on the Polish-British police cooperation. It is worth emphasising that cross-border law enforcement cooperation - which includes police, customs, secret services and other law enforcement agencies, mainly concerns the most serious threats such as terrorism, organised crime, human trafficking, money laundering, drug trafficking or cybercrime. The article shows that the most unfavourable changes result from dropping the Schengen acquis by the United Kingdom - is disconnection from the second generation Schengen Information System. The article includes also information about The Agreement on Trade and Economic Cooperation between the European Union and the European Atomic Energy Community and the United Kingdom of Great Britain and Northern Ireland, which has retained a number of important mechanisms for effective police cooperation between EU Member States and the United Kingdom. But although, as mentioned in the article, the Trade and Cooperation Agreement between the European Union and the United Kingdom provides upgrades of the tools of police and judicial cooperation, it is a matter of practise to verify these as sufficient.