

Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community

PART THREE

**SEPARATION PROVISIONS**

*TITLE V*

***ONGOING POLICE AND JUDICIAL COOPERATION IN CRIMINAL MATTERS***

*Article 62*

**Ongoing judicial cooperation proceedings in criminal matters**

1 In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

- a the Convention, established by the Council in accordance with Article 34 of the Treaty on European Union on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>(1)</sup>, and the Protocol established by the Council in accordance with Article 34 of the Treaty on European Union to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union<sup>(2)</sup>, shall apply in respect of mutual legal assistance requests received under the respective instrument before the end of the transition period by the central authority or judicial authority;
- b Council Framework Decision 2002/584/JHA<sup>(3)</sup> shall apply in respect of European arrest warrants where the requested person was arrested before the end of the transition period for the purposes of the execution of a European arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person is to remain in detention or be provisionally released;
- c Council Framework Decision 2003/577/JHA<sup>(4)</sup> shall apply in respect of freezing orders received before the end of the transition period by the central authority or the competent judicial authority for execution, or by a judicial authority in the executing State with no jurisdiction to recognise or execute a freezing order, but which transmits the freezing order *ex officio* to the competent judicial authority for execution;
- d Council Framework Decision 2005/214/JHA<sup>(5)</sup> shall apply in respect of decisions received before the end of the transition period by the central authority or the competent authority in the executing State, or by an authority of the executing State with no jurisdiction to recognise or execute a decision, but which transmits the decision *ex officio* to the competent authority for execution;
- e Council Framework Decision 2006/783/JHA<sup>(6)</sup> shall apply in respect of confiscation orders received before the end of the transition period by the central authority or the competent authority of the executing State, or by an authority in the executing State with no jurisdiction to recognise or execute a confiscation order, but which transmits the confiscation order *ex officio* to the competent authority for execution;
- f Council Framework Decision 2008/909/JHA<sup>(7)</sup> shall apply:

- (i) in respect of judgments received before the end of the transition period by the competent authority of the executing State, or by an authority of the executing State with no competence to recognise and enforce a judgment, but which transmits the judgment *ex officio* to the competent authority for execution;
- (ii) for the purposes of Article 4(6) or Article 5(3) of Framework Decision 2002/584/JHA, where that Framework Decision is applicable by virtue of point (b) of this paragraph;
- g Council Framework Decision 2008/675/JHA<sup>(8)</sup> shall apply in respect of new criminal proceedings within the meaning of Article 3 of that Framework Decision that are initiated before the end of the transition period;
- h Council Framework Decision 2009/315/JHA<sup>(9)</sup> shall apply in respect of requests for information on conviction received before the end of the transition period by the central authority; however, after the end of the transition period, replies to such requests shall not be transmitted through the European Criminal Records Information System established pursuant to the Council Decision 2009/316/JHA<sup>(10)</sup>;
- i Council Framework Decision 2009/829/JHA<sup>(11)</sup> shall apply in respect of decisions on supervision measures received before the end of the transition period by the central authority or the competent authority in the executing State, or by an authority of the executing State with no competence to recognise a decision, but which forwards it *ex officio* to the competent authority for execution;
- j Article 10(3) of Directive 2011/93/EU of the European Parliament and the Council<sup>(12)</sup> shall apply in respect of requests for information received before the end of the transition period by the central authority; however, after the end of the transition period, replies to such requests shall not be transmitted through the European Criminal Records Information System established pursuant to Decision 2009/316/JHA;
- k Directive 2011/99/EU of the European Parliament and of the Council<sup>(13)</sup> shall apply in respect of European protection orders received before the end of the transition period by the central authority or the competent authority of the executing State, or by an authority of the executing State with no competence to recognise a European protection order, but which forwards it *ex officio* to the competent authority for execution;
- l Directive 2014/41/EU of the European Parliament and of the Council<sup>(14)</sup> shall apply in respect of European Investigation Orders received before the end of the transition period by the central authority or the executing authority, or by an authority in the executing State with no competence to recognise or execute a European Investigation Order which forwards it *ex officio* to the executing authority for execution.

2 The competent authorities of the United Kingdom may continue to participate in the joint investigation teams in which they were participating before the end of the transition period, where those investigation teams were set up either in accordance with Article 13 of the Convention established by the Council in accordance with Article 34 of the Treaty on European Union, on Mutual Assistance in Criminal Matters between the Member States of the European Union or in accordance with Council Framework Decision 2002/465/JHA<sup>(15)</sup>.

By way of derogation from Article 8 of this Agreement, the United Kingdom 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) to the extent strictly necessary for the purpose of exchanging information within the joint investigation teams referred to in the first subparagraph of this paragraph. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of SIENA. The Union shall communicate the amount of those costs to the United Kingdom by 31 March 2021. In the event that the

communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

3 Eurojust may, upon a request by the United Kingdom, subject to compliance with point (a) of Article 26a(7) and Article 27 of Council Decision 2002/187/JHA<sup>(16)</sup>, provide information, including personal data, from its Case Management system, if necessary to complete the ongoing procedures referred to in points (a), (b) (c), (e) and (l) of paragraph 1 of this Article or the activities of the joint investigation teams referred to in paragraph 2 of this Article. The United Kingdom's competent authorities may, upon request, provide Eurojust with information in their possession if necessary to complete the ongoing procedures referred to in points (a), (b), (c), (e) and (l) of paragraph 1 of this Article or the activities of the joint investigation teams referred to in paragraph 2 of this Article. Where expenses of any extraordinary nature arise out of the application of this paragraph, the Joint Committee shall determine the manner in which such expenses are to be addressed.

### *Article 63*

#### **Ongoing law enforcement cooperation proceedings, police cooperation and exchange of information**

1 In the United Kingdom, as well as in the Member States in situations involving the United Kingdom, the following acts shall apply as follows:

- a Articles 39 and 40 of the Convention implementing the Schengen Agreement of 14 June 1985 ("Schengen Implementing Convention")<sup>(17)</sup>, in conjunction with Articles 42 and 43 thereof, shall apply in respect of:
  - (i) requests in accordance with Article 39 of the Schengen Implementing Convention that are received before the end of the transition period by the central body responsible in the Contracting Party for international police cooperation or by competent authorities of the requested Party, or by requested police authorities which do not have the power to deal with the request, but which forward the request to the competent authorities;
  - (ii) requests for assistance in accordance with Article 40(1) of the Schengen Implementing Convention that are received before the end of the transition period by an authority designated by a Contracting Party;
  - (iii) cross-border surveillance that is carried out without prior authorisation in accordance with Article 40(2) of the Schengen Implementing Convention, where that surveillance started before the end of the transition period;
- b the Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations<sup>(18)</sup> shall apply in respect of:
  - (i) requests for information that are received before the end of the transition period by the requested authority;
  - (ii) requests for surveillance that are received before the end of the transition period by the requested authority;

- (iii) requests for enquiries that are received before the end of the transition period by the requested authority;
- (iv) requests for notification that are received before the end of the transition period by the requested authority;
- (v) requests for authorisation of cross-border surveillance or for entrusting observation to the officers of the Member State in whose territory observation is carried out that are received before the end of the transition period by an authority designated by the requested Member State that is empowered to grant the requested authorisation or to pass on the request;
- (vi) cross-border surveillance that is carried out without prior authorisation in accordance with Article 40(2) of the Schengen Implementing Convention, where that surveillance started before the end of the transition period;
- (vii) requests to carry out controlled delivery that are received before the end of the transition period by the requested authority;
- (viii) requests to authorise covert investigations that are received before the end of the transition period by the requested authority;
- (ix) joint special investigation teams that are set up pursuant to Article 24 of that Convention before the end of the transition period;
- c Council Decision 2000/642/JHA<sup>(19)</sup> shall apply in respect of requests that are received before the end of the transition period by the requested Financial Intelligence Unit;
- d Council Framework Decision 2006/960/JHA<sup>(20)</sup> shall apply in respect of requests that are received before the end of the transition period by the requested competent law enforcement authority;
- e Council Decision 2007/533/JHA<sup>(21)</sup> shall apply in respect of the exchange of supplementary information where there was a hit before the end of the transition period on an alert issued in the Schengen Information System, provided its provisions apply to the United Kingdom on the last day of the transition period. By way of derogation from Article 8 of this Agreement, the United Kingdom shall be entitled to use, for no longer than 3 months after the end of the transition period, the Communication Infrastructure as referred to in Article 8(1) of Decision 2007/533/JHA to the extent strictly necessary for the purpose of exchanging such supplementary information. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of the Communication Infrastructure. The Union shall communicate to the United Kingdom the amount of those costs by 31 March 2021. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed;
- f Council Decision 2007/845/JHA<sup>(22)</sup> shall apply in respect of requests received before the end of the transition period by an Asset Recovery Office;
- g Directive (EU) 2016/681 of the European Parliament and of the Council<sup>(23)</sup> shall apply in respect of requests received by the passenger information unit in accordance with Articles 9 and 10 of that Directive before the end of the transition period.

2 By way of derogation from Article 8, the United Kingdom 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) to the extent strictly necessary to complete the ongoing procedures referred to in points (c), (d), (f) and (g) of paragraph 1 of this Article. The United Kingdom shall reimburse the Union for the actual costs incurred by the Union as a consequence of facilitating the United Kingdom's use of SIENA. The Union shall communicate to the United Kingdom the amount of those costs by 31 March 2021. In the event that the communicated amount of the actual costs incurred considerably diverges from the best estimates amount that was communicated by the Union to the United Kingdom before the signature of this Agreement, the United Kingdom shall pay without delay to the Union the best estimates amount and the Joint Committee shall determine the manner in which the difference between the actual costs incurred and the best estimates amount is to be addressed.

#### *Article 64*

##### **Confirmation of receipt or arrest**

1 The competent issuing or requesting authority may request an acknowledgement of the receipt of a judicial decision or request referred to in points (a), (c) to (e), (f)(i) and (h) to (l) of Article 62(1) and points (a)(i) and (ii), points (b)(i) to (v) and (vii), (viii) and (ix), and points (c), (d), (f) and (g) of Article 63(1) within 10 days after the end of the transition period where it has doubts as to whether such a judicial decision or request was received by the executing or requested authority before the end of the transition period.

2 In the cases referred to in point (b) of Article 62(1), where the competent issuing judicial authority has doubts as to whether the requested person was arrested pursuant to Article 11 of Framework Decision 2002/584/JHA before the end of the transition period, it may request from the competent executing judicial authority a confirmation of the arrest within 10 days after the end of the transition period.

3 Unless confirmation has already been provided pursuant to the applicable provisions of Union law, the executing or requested authority referred to in paragraphs 1 and 2 shall reply to a request for confirmation of receipt or arrest within 10 days after receiving the request.

#### *Article 65*

##### **Other applicable Union acts**

Directive 2010/64/EU of the European Parliament and of the Council<sup>(24)</sup> and Directive 2012/13/EU of the European Parliament and of the Council<sup>(25)</sup> shall apply in respect of the proceedings referred to in point (b) of Article 62(1) of this Agreement.

- (1) [OJ C 197, 12.7.2000, p. 3.](#)
- (2) [OJ C 326, 21.11.2001, p. 2.](#)
- (3) Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States ([OJ L 190, 18.7.2002, p. 1.](#))
- (4) Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence ([OJ L 196, 2.8.2003, p. 45.](#))
- (5) Council Framework Decision 2005/214/JHA of 24 February 2005 on the application of the principle of mutual recognition to financial penalties ([OJ L 76, 22.3.2005, p. 16.](#))
- (6) Council Framework Decision 2006/783/JHA of 7 October 2006 on the application of the principle of mutual recognition to confiscation orders ([OJ L 328, 24.11.2006, p. 54.](#))
- (7) Council Framework Decision 2008/909/JHA of 27 November 2008 on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union ([OJ L 327, 5.12.2008, p. 27.](#))
- (8) Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the Member States of the European Union in the course of new criminal proceedings ([OJ L 220, 15.8.2008, p. 32.](#))
- (9) Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between Member States ([OJ L 93, 7.4.2009, p. 23.](#))
- (10) Council Decision 2009/316/JHA of 6 April 2009 on the establishment of the European Criminal Records Information System (ECRIS) in application of Article 11 of Framework Decision 2009/315/JHA ([OJ L 93, 7.4.2009, p. 33.](#))
- (11) Council Framework Decision 2009/829/JHA of 23 October 2009 on the application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention ([OJ L 294, 11.11.2009, p. 20.](#))
- (12) Directive 2011/93/EU of the European Parliament and the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA ([OJ L 335, 17.12.2011, p. 1.](#))
- (13) Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order ([OJ L 338, 21.12.2011, p. 2.](#))
- (14) Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters ([OJ L 130, 1.5.2014, p. 1.](#))
- (15) Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams ([OJ L 162, 20.6.2002, p. 1.](#))
- (16) Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime ([OJ L 63, 6.3.2002, p. 1.](#))
- (17) Convention implementing the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the gradual abolition of checks at their common borders ([OJ L 239, 22.9.2000, p. 19.](#))
- (18) [OJ C 24, 23.1.1998, p. 2.](#)
- (19) Council Decision 2000/642/JHA of 17 October 2000 concerning arrangements for cooperation between financial intelligence units of the Member States in respect of exchanging information ([OJ L 271, 24.10.2000, p. 4.](#))
- (20) 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 ([OJ L 386, 29.12.2006, p. 89.](#))
- (21) Council Decision 2007/533/JHA of 12 June 2007 on the establishment, operation and use of the second generation Schengen Information System (SIS II) ([OJ L 205, 7.8.2007, p. 63.](#))

- (22) Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime ([OJ L 332, 18.12.2007, p. 103](#)).
- (23) Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime ([OJ L 119, 4.5.2016, p. 132](#)).
- (24) Directive 2010/64/EU of the European Parliament and of the Council of 20 October 2010 on the right to interpretation and translation in criminal proceedings ([OJ L 280, 26.10.2010, p. 1](#)).
- (25) Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012 on the right to information in criminal proceedings ([OJ L 142, 1.6.2012, p. 1](#)).