



west midlands  
police and crime  
commissioner

AGENDA ITEM 10

## STRATEGIC POLICING AND CRIME BOARD 4 April 2017

### Policing and Brexit

#### PURPOSE OF REPORT

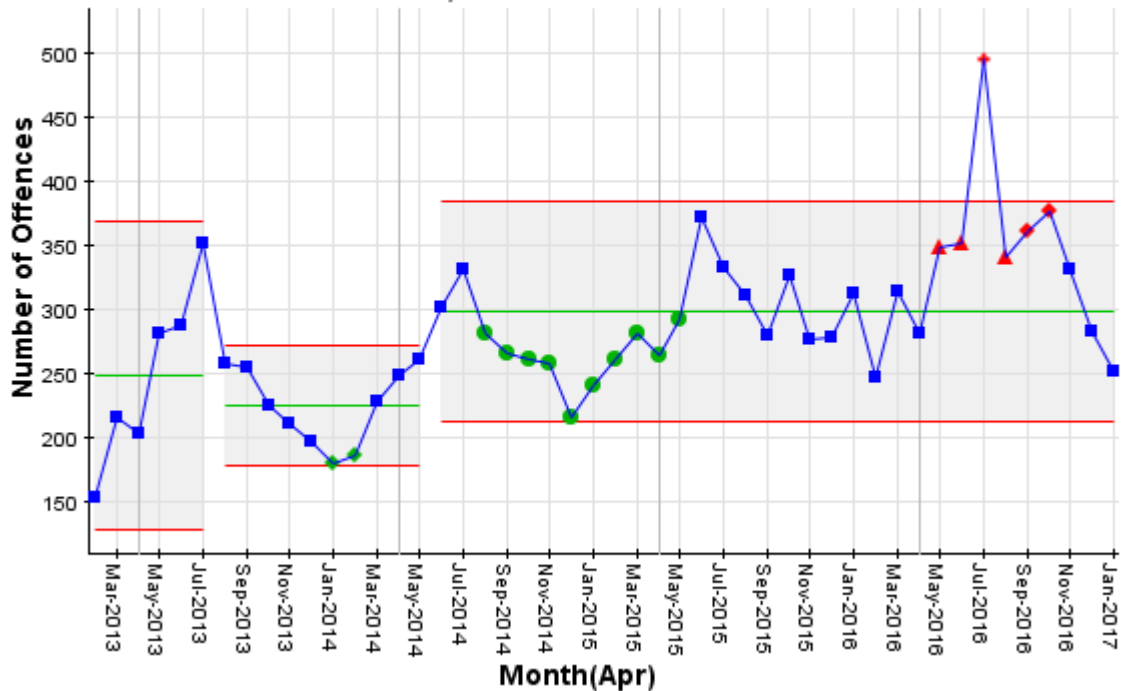
1. The purpose of this report is to brief the Strategic Policing and Crime Board on the principal issues relating to policing arising from the decision to invoke Article 50 of the Lisbon Treaty on 29 March 2017 and thereby, within two years, withdraw from the European Union (EU).

#### BACKGROUND

2. Notwithstanding the implications of the eventual UK withdrawal from the EU (which is the main topic of this report), the EU referendum on 23 June 2016 and the associated campaign had an identifiable and very specific implication for policing.
3. There was a significant spike in recorded hate crime to a level above the usual pattern of variation (“hate crimes” are those where the perpetrator’s perceived awareness of the characteristics of the victim are a motivating factor). Thus, as the chart below shows, while recorded hate crime shows a seasonal fluctuation, signal events such as the murder of Lee Rigby in May 2013, and the EU referendum in 2016, both correlate with “spikes” in recorded hate crime. It is to be noted that the incidence of hate crimes is assumed by many commentators to be under-recorded:

## Recorded Crime - Month : Hate \* Force

Data Updated: 2017-02-27 04:00:01



### OVERSIGHT AND ANALYSIS OF THE CONSEQUENCES FOR POLICING ARISING FROM BREXIT

4. The Government's White Paper on Brexit was published in February 2017, [The United Kingdom's exit from, and new partnership with, the European Union](#). It includes a chapter called, "Cooperating in the fight against crime and terrorism".
5. UK use of, and access to, the powers and structures associated with the Justice and Home Affairs (JHA) strand of the EU that are of main importance for policing. Since the 2016 referendum, the Metropolitan Police, National Police Chiefs Council and the National Crime Agency have been working with the Home Office to identify the JHA areas likely to be affected, the consequences of UK withdrawal, and develop mitigations.
6. It is not just policing bodies and the Home Office examining these issues. The Parliamentary Home Affairs Committee launched its review of "EU policing and security issues" in later 2016, taking evidence from the Director of Europol, the Deputy Director General of the National Crime Agency, a representative from the National Police Chiefs Council and the EU Commissioner for Security Union, among others. Further information on the inquiry is [here](#).

### INTELLIGENCE SHARING

7. There are well developed and extensive sharing arrangements between the intelligence agencies of EU member states. These bilateral and multilateral arrangements are out with the EU statutory framework and are unlikely to be affected.

## **GENERAL CONTEXT – EU STATUTORY FRAMEWORK AND JURISPRUDENCE**

8. EU legislation and regulation, whether for JHA or any other policy area, exists within the context of the statutory and judicial framework of the EU as a whole. Thus the issue areas identified within this report sit within a broader statutory context, and current operational practice may be dependent on recourse to other EU-framed statute that is not necessarily directly related to JHA. The extent to which the UK will cease to be part of this broader EU statutory foundation will form part of the Brexit negotiations. For example, JHA and other powers can often include rights of appeal, potentially up to the European Court of Justice (ECJ). If the UK were to be no longer bound by ECJ rulings then there could be a natural justice argument that the UK cannot gain access to the JHA powers available to EU members, because UK citizens would not have access to the processes that an EU citizen would have. Furthermore, there are also JHA powers that are based on wider EU legislation. The extent to which UK statutory frameworks post-Brexit are compatible with EU derived statute will need to be understood. For example, UK regulations requiring retention of bulk communications data have been found to be incompatible with EU statute<sup>1</sup>. The agreement of “data protection adequacy agreements” could be required assuring that shared data would be handled in compliance with EU standards.

## **SCHENGEN INFORMATION SYSTEM**

9. The Schengen Information System ("SIS2") is a database of law enforcement intelligence information from across the EU. It allows UK Police National Computer (PNC) searches to access EU-wide records. There are currently over 70 million records on SIS2, generally at the higher, more serious level of criminality (these are known as “alerts”). The database includes missing person notices, information on wanted criminals, records of stolen goods and vehicles, authorised outstanding European Arrest Warrants (EAWs), details of travelling sex offenders, and terrorism related persons-of-interest.
10. Since SIS2 went live in the UK on its introduction on 13 April 2015 and up to 30 June 2016, UK law enforcement has loaded 429,724 alerts into SIS2, over 270,000 of which relate to missing people. To date there have been about 6000 intelligence hits in the EU derived from UK alerts, and 6000 hits in the UK derived from alerts created by other EU countries. A total of 2000 arrests and extraditions have arisen from SIS2 intelligence, with numbers arising year on year. 150 people wanted in UK have been arrested in the EU as a result of SIS2 intelligence alerts.

## **EUROPEAN ARREST WARRANT**

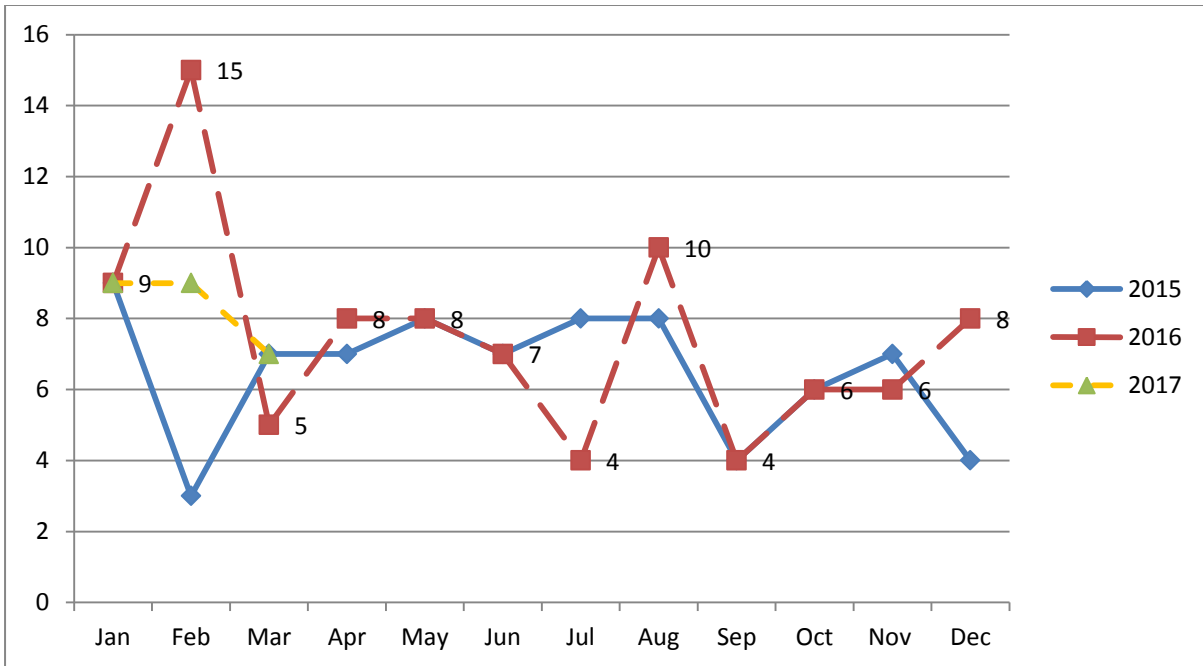
11. There are currently 35,000 authorised EAWs. The UK has used EAWs to target fugitives in Spain (a recent operation led to 80 arrests of UK citizens there). EAWs require a proportionality test, both for the applying nation and, when an individual is arrested and considered by a court, in the country where they are captured. A court in the EU country where the arrest took place assesses the proportionality of the EAW using common EU guidelines before authorising extradition, which

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<sup>1</sup> On 21 December 2016, the ECJ, considering a case concerning the Data Retention and Investigatory Powers Act 2014 (DRIPA), concluded that compatibility with the Charter of Fundamental Rights of the European Union precludes “national legislation which, for the purpose of fighting crime, provides for general and indiscriminate retention of all traffic and location data of all subscribers and registered users relating to all means of electronic communication”. While DRIPA has now lapsed, it has been replaced with the Investigatory Powers Act 2016, which includes broadly similar provisions.

usually takes place within a fortnight. EAWs remove the executive branch of government from extradition requests, making them much quicker than more typical processes.

12. In 2015/16 2,102 individuals were arrested in the UK on a European Arrest Warrant. Compared to 2014/15, this represents an increase of over 25% (25.54%) in the number of arrests under an EAW of foreign nationals in the UK. This increase was largely due to the successful introduction of SIS II in early 2015/16, which results in all EAWs being available to UK law enforcement via the Police National Computer. EAW extraditions from West Midlands Police to EU states are recorded in the chart below.



13. If the UK left the EAW mechanism, a new extradition process would be required. New domestic UK extradition legislation would be necessary. Options include bilateral or multilateral agreements, or reversion to the previous European Convention on Extradition 1957. The new process or processes would have to be in place at point of Brexit or there would not be a mechanism via which fugitives abroad could be returned to the UK, or fugitives in the UK extradited for trial abroad

14. There is no precedent for a country outside the EU being inside the EAW mechanism. Norway and Iceland have been negotiating possible involvement in the EAW mechanism since 2005, but neither has an operational system. The EAW sits within an EU judicial context - i.e. with appeal to the European Court of Justice - which does not exist for individuals in countries outside the EU. "Mutual recognition of judicial competence" is required.

## EUROPOL

15. New Europol regulations were agreed on 11 May 2016, and a UK decision on whether to accept these was postponed pending the outcome of the Brexit referendum. On 14 November 2016, Policing Minister Brandon Lewis confirmed that the UK would seek to "opt-in" to these new regulations – thus seeking to continue UK membership of Europol. In a letter to the Chair of the Home Affairs Committee, Mr Lewis writes, "Opting in will maintain operational continuity for UK

law enforcement ahead of the UK exiting the EU, ensuring our Liaison Bureau at Europol is maintained, and that law enforcement agencies can continue to access Europol systems and intelligence. This decision is without prejudice to discussions on the UK's future relationship with Europol when outside the EU". The UK's request to "opt-in" to the new Europol regulations is currently under consideration by the European Commission, with a decision expected before the new regulations are enacted on 1 May 2017.

16. UK active engagement with Europol dates back to 2008, when the UK agreed to become a full partner.
17. No non-EU states are full members of Europol and thus, for example, do not currently lead any of Europol's operational projects. Subject to the unanimous agreement of all member states, third parties can join those operational projects, but they do not lead them. Non-EU states are not currently members of Europol's management board. Approximately half of the current 13 operational Europol projects are currently led, or co-led, by the UK, including those concerned with cybercrime and migrant smuggling.
18. Europol has a number of different kinds of participation, some being bespoke to individual countries (such as that being negotiated with Denmark). Other examples include "operational 3rd party membership", and "strategic partner" membership. The last includes countries such as Turkey and Russia, and does not include operational intelligence sharing. However, even for non-members with access to operational intelligence (such as the United States), that access is via a centralised request process rather than default, direct access to intelligence systems.
19. In broad summary, Europol has two functions. First, it maintains a strategic intelligence and analysis function that generates "European Security Committee Action Plans". These are intelligence products that offer analysis, intelligence collection and collation on key threats, facilitate national intelligence sharing, and form that basis of collaborative operational planning.
20. Second, it hosts multi-agency liaison bureaux, based in The Hague. 17 UK staff from a range of policing and security agencies are co-located with opposite numbers from member states, working tactically (i.e. in real time and in response to dynamic threats) and strategically to share information. There are 13 work strands known in as "Multi-disciplinary platforms against crime threats". The UK leads 4 of these, and co-leads a further three, and is a member of all 13. These "platforms" in 2016 organised and co-ordinated 205 operational activities across the EU, including pan-EU "weeks of action". 27% of this operational activity is led by the UK, and 75% of this operational activity has a UK footprint. The liaison bureaux have been particularly important in developing multi-lateral responses and investigations associated with human trafficking and modern slavery. Europol data-sharing is based in the "SIENA" intelligence database, that allows participants to upload (but still control access to) intelligence information.
21. Europol in 2013 created an EU cybercrime cell, of which the UK is part, called "EC3". EC3 is supported by an operational arm called the Joint Cybercrime Action Taskforce ("J-CAT") that investigates largescale cybercrime affecting multiple EU states.
22. Data from the National Crime Agency points to UK reliance on Europol. In the calendar year 2015, the UK sent and received over 37,000 messages through

Europol channels. Around half of these related to UK high priority threats (Child Sexual Exploitation and Abuse, Firearms, Cybercrime and Organised Immigration Crime). The UK is the second highest contributor (behind Germany) to Europol Focal Points (subject focused analysis groups within Analytical Work File - Organised Crime). The UK is the highest contributor of information in relation to Firearms, CSEA (Child Sexual Exploitation and Abuse), Money Laundering, Cyber and Modern Slavery, and the second highest contributor to the Organised Immigration Crime Focal Point (again behind Germany).

## **EUROPEAN CRIMINAL RECORDS INFORMATION SYSTEM**

23. ECRIS, a secure information sharing system (of which the ACPO Criminal Records Office (ACRO) is part), shares EU criminal convictions information between member states. Member states can obtain criminal record information for people detained in each other's countries. In 2015/16, ACRO managed 173,000 enquiries, and most were handled via ECRIS. This information is also used for vetting and DBS (Disclosure and Barring Service) purposes.

## **PASSENGER NAME RECORDS**

24. A new EU directive passed in 2016 introduced compulsory retention of air passenger data ("Passenger Name Records") that can be made available to law enforcement organisations in member states. This includes information about the full travel itinerary (including start and destination points, even if outside the EU), ticket purchase information, telephone numbers associated with a ticket, seat information, and travel party information (i.e. who travelled with who). Collection and sharing of PNRs by member states is not yet in force; they will have two years to enact the directive.

## **PRÛM AGREEMENT ("PRÛM")**

25. Prüm creates a shared EU database of biometric information. It is an online database that will allow, when fully operational in early 2018, real-time comparison of biometric data (e.g. DNA profiles and fingerprints). A search of the pilot database (with data from the UK, Spain and Germany) typically takes under 15 seconds, as opposed to the existing Interpol biometrics comparison service, which requires the consent of the law enforcement agency receiving the request, and therefore can take weeks to process rather than seconds.

## **CROSS BORDER SURVEILLANCE**

26. Article 40 of the Schengen Agreement allows for law enforcement agencies in member states to apply in real-time for authorisation to undertake cross-border surveillance operations, and widens the range of instances where pre-authorisation is not required.

## **JOINT INVESTIGATION TEAMS**

27. Under the auspices of EuroJust, Joint Investigation Teams work using combined investigative authorisations and are thus able to operate in multiple EU jurisdictions. The JIT statutory framework allows for non-EU states to be members of JITs, albeit on a reduced statutory footing. The UK is currently involved in 31 JITs.

## **NORTHERN IRELAND BORDER**

28. Once the UK leaves the EU, Eire will be in the Schengen area and the UK will not. The Northern Ireland / Eire border is currently open and its future – including how it is policed – will form part of the Brexit negotiations.

## **OTHER ISSUES**

29. Processes for the deportation of foreign national criminals who have committed offences in the UK are configured in part to ensure compliance with EU requirements. After Brexit, these processes would be within the gift of the UK government.
30. Standards of acceptable travel documentation are also set by EU requirements and could be reviewed. More generally, if access to systems like SIS2 were preserved, the UK would be able to consider its approaches to border control. This could include the controls on the importation of cargo.

## **CONCLUSION**

31. There are a range of processes and organisations associated with the JHA strand of the EU. The UK is an active participant and user of these and the UK's departure from the EU will require consideration of the nature of our engagement. It is possible that interim agreements will be used to continue UK participation in these processes and organisations.

Jonathan Jardine  
Chief Executive

Dave Thompson  
Chief Constable