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Loss of access to SIS II: UK policing perspectives

1. Introduction

Following the EU exit referendum on 23rd June 2016, the exact conditions of the UK's withdrawal from the EU were negotiated against a tense backdrop of domestic instability, characterised by political division and public protest. During this period, the Brexit debate understandably dominated the media, with commentators frequently referring to the risks associated with any loss of access to the Schengen Information System (SISII) by UK law enforcement agencies.¹ A 2016 report from the House of Lords Home Affairs Sub-Committee reported that *'Britain will be less safe after leaving the EU unless integral EU security arrangements and law enforcement databases are retained or adequately replaced'*.²

The potential inability of British police officers to access the Schengen Information System (SIS II) and other law enforcement databases was signalled as a significant threat to public safety and representative of the need for a comprehensive post-exit security agreement between the UK and the EU. Given that few of the British public had heard of SIS II before the Brexit debate, it quickly entered public consciousness as an important policing tool that would leave us all less safe, if lost. This view was not exclusively held within the UK, as some politicians within the EU also publicly warned of the security threat represented by the UK's future exclusion from law enforcement systems such as SISII. In 2018, Horst Seehofer, the German Interior Minister broke ranks from other EU politicians and declared that *'it is obvious that the UK will no longer be a member of the union after its withdrawal but that must not lead to less security for our citizens'*. Mr Seehofer went on to insist that the *'full security partnership with the UK must encompass the entire EU security architecture'*.³

Despite the numerous calls for the UK to retain access to SISII after EU exit, the final settlement agreement confirmed that that access to the SISII database would be lost following formal exit and at the conclusion of the agreed implementation period. Notwithstanding the many mutual operational benefits of continued UK access to SISII, the EU *'resolutely adhered to the view that access to the benefits of EU membership (such as SIS II) was restricted to members of the EU'*.⁴ While this view may well have been politically motivated and designed to maintain the integrity of the EU project, by 2018, reports of UK mismanagement of SISII were beginning to circulate.⁵ On that basis, it is possible to speculate that the EU may have felt disinclined to

¹ Bulman, M. (2016) UK risks being left 'less safe' after Brexit, peers warn, The Independent. Available at: <https://www.independent.co.uk/news/uk/home-news/brexit-uk-less-safe-security-lords-report-policing-a7478241.html> (Accessed: 3 April 2023).

² House of Lords (2016) Brexit: future UK-EU security and police cooperation. House of Lords: House of Lords.

³ Chazan, G. and Barker, A. (2018) 'EU rigidity on Brexit putting lives at risk, says German minister', FT.com [Preprint]. Available at: <https://www.proquest.com/docview/2071761212/citation/5B49EC62CC474A5DPQ/1> (Accessed: 3 April 2023).

⁴ Pearson, J. (2021) Policing capabilities lessened after Brexit, UK in a Changing Europe. Available at: <https://ukandeu.ac.uk/policing-capabilities-lessened-after-brexit/>.

⁵ Neilson, N. Available at: (2018) <https://euobserver.com/rule-of-law/141919>

make a special case for UK retention of SISII, based on previous failures to rigidly adhere to the rules governing usage of the system by member states.

What was also less readily understood by the general public, was that British access to SISII was still a relatively new development, and that UK law enforcement agencies were already working hard to mitigate the risks of a ‘no deal’ Brexit by ensuring that contingency arrangements were in place. It could be argued that the response of UK policing to the potential loss of access to EU policing tools such as SISII was both comprehensive and decisive in nature. This chapter will assess the operational effectiveness of the UK response to that loss and will additionally examine and explore the operational features of SISII and the ongoing consequences of its loss.

2. Background

The Schengen Information System (SIS) was initially conceived in 1995 as an alert-based system, allowing law enforcement agencies across Europe to collaborate quickly and easily following the abolition of internal borders between some countries within the EU. It has been described as *‘one of the most important large-scale databases used for immigration and border controls in the European Union’*.⁶ However, of equal if not greater importance than border control, was the ability of member states to use SIS and other EU databases to conduct *‘real-time data sharing between law enforcement agencies.’*⁷

In 2013, a second-generation version of the system (SISII) was launched with a range of enhanced functionalities such as the possibility of adding fingerprints and photographs to alerts. UK policing agencies were not early adopters of the SISII database, only connecting in 2015, twenty years after its first introduction. An alert, entered in SIS by one country, becomes available in real time in all other countries that use SIS. This helped to facilitate law enforcement, immigration and border control and as the UK had opted out of the common travel area called the Schengen zone, the UK could only ever participate in the law enforcement aspects of SISII.⁸

While SIS only included seven EU member states as database users upon its initial launch in 1995, it steadily expanded to the extent that at the point of the UK’s exit from the EU in 2020, SISII users included all EU member states (other than Ireland and Cyprus) together with four other countries who were not EU member states, but were members of the Schengen Common Travel Zone. Since that time, Ireland has now become a SISII user and plans are in place for Cyprus to also join the system. During 2019 (which provided the last full year of statistics prior to Brexit) UK law enforcement agencies accessed SISII a total of 571,697,394

⁶ Parkin, J. (2011) ‘The Difficult Road to the Schengen Information System II: The legacy of “laboratories” and the cost for fundamental rights and the rule of law’. Centre for European Policy Studies. Available at: https://www.ceps.eu/wp-content/uploads/2011/04/SIS_II_paper_liberty_security_formatted1.pdf.

⁷ Ditcham, K. (2020) ‘Brexit Day. Available at: <https://www.rusi.org/news-and-comment/rusi-news/brexit-day-rusi-experts-look-ahead>

⁸ Home Office (2015) ‘Second generation Schengen Information System (SISII)’. Gov.uk. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421540/SII_General_Information_document.pdf

times making them the third largest user of the system behind only Spain and France.⁹ With 9% of all SISII transactions made by UK law enforcement agencies, British police forces were enthusiastic and important users of the system.

The huge amount of SISII transactions regularly undertaken by UK policing agencies, can be largely explained by the database's substantial integration with the Police National Computer ("PNC"). The practical consequence of this integration was to cause every person checked by police officers within the UK, to be also simultaneously checked against the SISII database. In many cases, the police officer conducting the checks had not sought SISII checks to be made or was even aware that they had been conducted. However, the SISII database did provide a safety net which ensured that British police officers would be made aware of fugitives or missing persons, stolen property and vehicles as well as important items of intelligence should they relate to the inquiry being conducted. The National Police Chiefs' Council ("NPCC") took the view that access to SISII was essential for mainstream policing, noting that *'the ability to understand whether somebody is wanted in another country, whether they are missing, whether the vehicle they are driving is stolen and so on. It is critical in allowing officers on the street to make decisions (for instance in relation to custody) to safeguard the welfare of people across the country'*.¹⁰

Despite the considerable benefits for both EU and UK policing agencies of access to a mutual intelligence sharing mechanism like SISII, access to the database was viewed by the EU as one of the blue-ribbon benefits of EU membership, and to enjoy the benefits of membership (argued the EU), you had to be a full member, or associate member of the club. On that basis, the UK's access to SISII was removed following EU exit and at the conclusion of the transition period on 31 December 2020. Senior figures within UK policing subsequently confirmed that *'the loss of SISII would have a major operational impact and would lead to forces circulating far fewer persons and objects'*.¹¹

3. Operational Consequences

SISII is an alert-based system that allows policing agencies to circulate the details of persons, vehicles, property and specific items of intelligence to colleagues in countries across Europe. Prior to the loss of access to SISII, its operational benefits were openly acknowledged by senior

⁹ EU (2020) 'SIS II – 2019 Statistics'. European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice. Available at: <https://www.eulisa.europa.eu/Publications/Reports/SIS%20II%20-%202019%20-%20Statistics.pdf>.

¹⁰ Armond, D. and Rodhouse, S. (2016) Corrected oral evidence: Brexit: Future UK-EU Security and Policing Co-operation. House of Lords: Available at: <https://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairs-subcommittee/brexit-future-ukeu-security-and-policing-cooperation/oral/41072.html>.

¹¹ Hewitt, M. (2020) 'NPCC Letter to Yvette Cooper'. Available at: <https://committees.parliament.uk/publications/3466/documents/33316/default/>.
Home Office (2015) 'Second generation Schengen Information System (SISII)'. Gov.uk. Available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421540/SII_General_Information_document.pdf.

officers within UK policing, describing it as '*an absolute game-changer*'¹² and stating that '*it allows our officers to immediately see in front of them if somebody is wanted, if there is stolen property or if somebody needs to be arrested and extradited*'¹³ In order to assess the impact of the loss of SISII upon operational policing, we will examine in turn, the most widely used and useful alerts (or articles as they are known within SISII).

Wanted Persons

An Article 26 alert allows the circulation of fugitives from justice (wanted persons) who are suspected of having committed a crime and are being actively sought by a policing agency. The circulation of a wanted person on SISII is invariably accompanied by the creation of a European Arrest Warrant (EAW) which allows the arrest, detention and speedy extradition of that person if located within another member state's jurisdiction. In practical terms, if a British police officer (pre-Brexit) had conducted a PNC check on a person, SISII would have been simultaneously checked. If that person was circulated as wanted from any other SISII user country, the officer would have been able to immediately arrest and detain that person. The operational functionality afforded to officers by this feature is extremely useful when attempting to locate fugitives and due to the integrated nature of the PNC and SISII, creation of a wanted person domestically within the UK, would automatically generate a Europe wide SISII Article 26 alert. Equally importantly, should British fugitives flee the UK and travel to Europe, a SISII circulation could result in their detection and arrest. An example of this was provided in the case of a male wanted for the double murder of an elderly couple in the UK, whose vehicle was located at Dover. This led police to believe that the male had travelled to Europe and following a SISII circulation of the wanted person, the suspect was located in Luxembourg a few days later.¹⁴

Missing Persons

SISII additionally allows the circulation of missing persons using an Article 32 alert, which can greatly assist policing agencies in tracing often vulnerable persons across Europe's open internal borders. Given that human trafficking is an increasingly prevalent crime within Europe, circulations of this nature are an important feature of modern policing. A further useful application of this alert concerns cases of international child abduction which make up the second largest category of missing children within the EU.¹⁵ These incidents often feature

¹² Hewitt, M. (2020) 'NPCC Letter to Yvette Cooper'. Available at:

<https://committees.parliament.uk/publications/3466/documents/33316/default/>.

Home Office (2015) 'Second generation Schengen Information System (SISII)'. Gov.uk. Available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/421540/SISII_General_Information_document.pdf.

¹³ Martin, R. (2020) Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU, HC 203. House of Commons: House of Commons. Available at:

<https://committees.parliament.uk/oralevidence/694/pdf/>.

¹⁴ Saunders, A. (2016) Brexit: future UK-EU security and police cooperation. Available at:

<https://publications.parliament.uk/pa/ld201617/ldselect/lddeucom/77/77.pdf>.

¹⁵ Missing Children Europe (2023) International Child Abduction, Missing Children Europe. Available at:

<https://missingchildreneurope.eu/international-child-abduction/>.

parents of different nationalities, where one parent attempts to travel to their home country with their child, often in contravention of court orders and the wishes of the other parent.

Sought for judicial purposes

Circulations under Article 34 tend to involve witnesses or suspects whose location is sought as part of an ongoing criminal investigation or judicial proceedings. Typically, a suspect in the early stages of an investigation, might abscond before a police force has collated sufficient evidence to justify an arrest or initial interview. In order to properly proceed with the investigation, it might become necessary to speak with the suspect and an Article 34 alert would be created in an attempt to establish their location. Similarly, witnesses who having initially cooperated with an investigation, might subsequently disengage with the judicial process and abscond themselves. Once again, an Article 34 alert would be the most appropriate method of attempting to determine their location.

Discrete checks

Article 36 alerts are created by investigating agencies who wish to collate intelligence on the movements of organised criminals without making them aware of an ongoing policing interest in their activities. An example of how this might work in practical terms, would be if the police in the Netherlands created an alert involving a Dutch drug dealer. Should this person then travel to southern Spain to arrange the importation of controlled drugs, an Article 36 alert would allow the requesting agency in the Netherlands to be supplied with information which might include travel details, hotel check-in information, vehicles and details of travelling companions and other associates. All this information would be provided to the requesting agency without the suspect being made aware of any police interest in them or their movements. Clearly, alerts of this nature are extremely useful to investigating agencies when attempting to develop the intelligence picture around organised crime groups.

Vehicles

Circulations using Article 36(2) alerts are important in allowing police officers to quickly identify stolen vehicles that have been transported across international borders. The benefits of a system which can quickly identify vehicles stolen from anywhere within the EU are obvious and are particularly useful within continental Europe, given the nature of the border free Schengen Area.

Objects

An Article 38 alert allows policing agencies to circulate details of lost or stolen objects in order that they might be subsequently located if found elsewhere within the EU. These objects typically include items such as firearms or passports and may also relate to items that are sought for evidential purposes.

Borders

SISII allows law enforcement agencies employed in border control duties, to immediately be able to determine if alerts relating to a potential entrant to the country, indicate that they represent a threat to the safety and security of the nation. With such clear operational

benefits, the border represents another area where the loss of SISII was keenly felt. Shellaker et al have shown that *'the loss of the EAW and SIS II is significant, as police officers at UK borders will not be able to know if they are missing offenders'*.¹⁶

4. Mitigation Strategies

As early as 2017, the National Crime Agency (NCA) and the National Police Chiefs' Council (NPCC) began planning for the potential loss of access to European policing tools following EU exit. Unusually, the police services of both Scotland and Northern Ireland agreed to collaborate with the NPCC to provide a UK wide solution, which illustrates the gravity with which the situation was viewed by police leaders. A joint NPCC / NCA team of international policing experts was quickly formed to work on the project, and they were supported in their work by the Home Office. .

Despite its huge operational value, due to various political and legal considerations, continued UK access to SISII was quickly identified as one of the least likely EU policing tools to be retained. If SISII access was indeed lost, the UK recognised that the Interpol i24/7 database would provide the only viable system of international circulations and alerts that would be available to UK officers. However, the wholesale adoption of i24/7 as a replacement for SISII was not without practical difficulties as a number of obstacles presented themselves. Although also an alert-based database system, the Interpol i24/7 system lacks much of the functionality and ease of use associated with SISII. This view was identified and publicly articulated by senior NPCC figures who stated that, *'if we lost SIS II, we would rely on the Interpol database. The Interpol database has some capability that is similar. It does not have all the capability that SIS has'*.¹⁷

A further significant issue was the lack of integration between the Police National Computer (PNC) and i24/7. Where the seamless integration of SISII and the PNC had allowed officers to automatically check both UK and EU wide systems simultaneously, this was not possible with i24/7. Similarly, the creation of a wanted or missing person on PNC which would automatically create the appropriate alert on SISII, was not possible with i24/7. In practical terms, the long-awaited introduction of a new version of PNC, meant that the UK government was unwilling to commit significant funds to upgrade the existing IT architecture within PNC, to allow automatic integration with i24/7. Although work to semi-automate some Interpol circulations was undertaken prior to Brexit, the IT solutions that were put in place were relatively primitive and failed to fully replace SISII functionality. *'Interpol is not linked to national systems and ...*

¹⁶ Shellaker, M., Tong, S. and Swallow, P. (2023) 'UK-EU law enforcement cooperation post-Brexit: A UK law enforcement practitioner perspective', *Criminology & criminal justice* [Preprint]. Available at: <https://doi.org/10.1177/17488958231162520>.

¹⁷ Martin, R. (2020) *Oral evidence: Progress of the negotiations on the UK's Future Relationship with the EU*, HC 203. House of Commons: House of Commons. Available at: <https://committees.parliament.uk/oralevidence/694/pdf/>.

*it will be slower and lack the capability of SISII. Because of the differences between SISII and Interpol, forces will circulate far fewer persons and objects’.*¹⁸

Prior to 2017, the Interpol i24/7 system was chronically underused by UK police forces who had quickly become reliant on SISII as their principal tool for international circulations and alerts. Some forces had conducted little, or no i24/7 activity in recent years. In response, the NPCC established the International Crime Coordination Centre (ICCC) in March 2019 funded by the Home Office. The ICCC was established with a mandate to ‘*support and advise UK policing to better use international instruments, especially through the UK’s withdrawal from the EU*’.¹⁹

During 2019, one of the immediate priorities for the newly created ICCC was to address the persistent underuse of the Interpol i24/7 system by police forces. As the main contingency system for loss of access to SISII, the need to increase both the number of i24/7 users and system transactions, was urgent. In real terms at that time, some forces held very few i24/7 user licences, and those that did exist were usually located within specialist units such as Force Intelligence Bureaus. The practical implications of this arrangement were that an officer requiring an urgent out of hours i24/7 check on a suspect, was unlikely to be able to obtain one. Using a comprehensive communication campaign during 2019, the ICCC began to make policing aware of the potential changes to operational capability that Brexit might bring. The ICCC network of regional spocs was then able to work with forces to significantly increase the amount of trained i24/7 users and to make sure that 24-hour coverage was provided to operational officers by ensuring that force control room and custody staff were also trained to conduct i24/7 checks. Ultimately, this work resulted in around 6,000 additional i24/7 user licences being issued to staff within UK police forces and a significant increase in police usage of Interpol systems.²⁰

A further challenge facing forces lay in the lack of integration between the PNC and the i24/7 system. This resulted in alerts and circulations having to be created firstly on PNC by operational officers, then a form completed which contained the relevant details, which was forwarded to the NCA’s International Crime Bureau, where the information was checked, and finally created on i24/7 by NCA staff. Unsurprisingly, this process was described as ‘clunky’ and ‘more bureaucratic, slower and complex’.²¹ Given these problems, the ICCC also began work to alleviate some of the more bureaucratic parts of the process and subsequently had some success in partially automating alerts by using ‘smart forms’ that negated some of the double

¹⁸ Hewitt, M. (2020) ‘NPCC Letter to Yvette Cooper’. Available at: <https://committees.parliament.uk/publications/3466/documents/33316/default/>.

¹⁹ ICCC (2019) ‘Authorised Professional Practice - International Investigation’. College of Policing. Available at: <https://www.college.police.uk/app/investigation/international>.

²⁰ Ayling, P. and Rodhouse, S. (2023) *Uncorrected oral evidence: Post-Brexit UK-EU security cooperation*. House of Lords: Gov.UK. Available at: <https://committees.parliament.uk/oralevidence/12848/pdf/>.

²¹ France, A. (2020) ‘Catching criminals “may take longer under no-deal Brexit”, says senior Met officer Richard Martin’, *Evening Standard*, 19 December. Available at: <https://www.standard.co.uk/news/crime/richard-martin-police-criminals-nodeal-brexit-b384510.html>.

keying of data that was required under the existing system. However, senior police leaders were keen to point out to politicians that the loss of SISII and its replacement with Interpol alerts, was far from satisfactory.²²

The Interpol i24/7 system itself does have some similarities with SISII in that they are both alerts-based systems that can be used for the circulation of persons and objects. For example, the SISII Article 32 Missing Persons alert is equivalent to an Interpol Yellow (Missing Persons) Notice. However, despite the considerable efforts of UK policing to ensure that the Interpol i24/7 system provided a workable replacement for SISII, a further issue existed which threatened to undermine operational capability. Following the loss of access to SISII, British policing was heavily committed to ensuring that the Interpol system was used for all UK alerts and circulations. To be effective, this arrangement also depends upon a degree of reciprocity from police forces in each EU country. For i24/7 to be a truly effective replacement for SISII, the UK is dependent upon EU countries creating their alerts and circulations on both SISII (which they have full access to), and on i24/7. Faced with the same double keying issues as the UK, in many cases EU countries chose not to expend time and energy in populating i24/7 as comprehensively as SISII. To address this issue, the UK expended considerable effort in attempting to persuade EU policing agencies to increase their use of i24/7 alerts and to encourage them to undertake this 'double-keying process'²³²⁴.

Despite these efforts, the operational consequence of this inconsistency of approach is that a European criminal who might be circulated as wanted throughout the EU on SISII, could travel to the UK undetected, if not also circulated as wanted on an Interpol Red (Wanted Person) Notice. Invariably, this has caused a degree of '*operational blindness*' which could mean that '*British police officers are now unable to determine whether or not a foreign national might in fact be a dangerous offender that represents a threat to British communities. Of course, this highly unsatisfactory arrangement is a two-way street, and European policing agencies will be similarly unsighted on whether dangerous British offenders are at large in continental Europe*'.²⁵

The final issue confronting UK police officers when seeking to replace SISII with the i24/7 system concerns the arrest of wanted persons. While the circulation of a wanted person using an Article 26 SISII alert is inevitably accompanied by a European Arrest Warrant (EAW) which allows that person's immediate arrest, in UK law an Interpol Red Notice does not provide officers the same power. On that basis, an officer checking a foreign national might (if indeed an Interpol check is requested) be informed that a Red Notice exists for that person and be told that they are a fugitive, wanted in another country. Unless the officer has grounds for an

²² Hewitt, M. (2020) 'NPCC Letter to Yvette Cooper'. Available at: <https://committees.parliament.uk/publications/3466/documents/33316/default/>.

²³ Ayling above (n23)

²⁴ Ayling above (n23).

²⁵ Pearson above (n4)

immediate arrest on suspicion of a crime committed in the UK, they would be obliged to allow that person to go on their way as there is no mechanism in law for officers to arrest on a Red Notice unless in possession of a warrant issued by a British court. This was addressed prior to Brexit in emergency legislation which introduced a power to arrest on the basis of a red notice.²⁶

5. Measuring the loss of SISII

Measurement of the true impact of the loss of SISII is complicated by a number of factors including a lack of empirical data and the disruptive effect of the Covid-19 pandemic restrictions on free movement. Crime statistics show that the police in England and Wales recorded a 13% fall in total recorded crime between 2020 and 2021, while offences involving theft fell by 32% with a 10% reduction in sexual offending.²⁷ Therefore, it is unlikely that the true impact of the loss of European policing tools during the immediate post-EU exit period will ever be known. Consequently, we must look to the experiences of practitioners to add context to any discussion of the impact of the loss of SISII.

Research conducted with police officers in the months following loss of access to SISII illustrates some of the views of practitioners and the operational challenges they face. Shellaker et al reports that officers consistently described their inability to properly identify foreign criminals entering the country without access to SISII, with one officer stating *'we now have individuals crossing the border, and we haven't got a clue who they are: it's ridiculous.'*²⁸ Further concerns were expressed about the inability of police officers to properly understand and control the threat represented by foreign national offenders once they have entered the country. *'So, they could be in this country doing whatever they want, and we wouldn't even know where they are.'*²⁹ These views are a powerful indicator of the levels of dissatisfaction felt by operational officers when questioned about post-Brexit reductions in operational capability.

More recent interviews conducted by Davies and Farrand-Carrapico have identified that although the UK introduced a power to arrest on the basis of red notices circulated via i24/7 in practice there is a reluctance to arrest on this basis and officers prefer to wait until an Arrest Warrant issued under the TCA (known as a TACA warrant) is certified by the UKCA. This can lead to delay or even loss of an opportunity to arrest a wanted person. Although many states are double keying alerts onto i24/7 as requested by the UK, a TACA warrant is only issued if there is a known connection to the UK. If a person is wanted in the UK an alert will be issued but as Member State police databases don't automatically link to i24/7 this is much less likely to be picked up than if an EAW was circulated via SISII.³⁰ The UK will only issue a TACA warrant

²⁶ Shellaker above (n16)

²⁷ Home Office. (2021). Crime Outcomes in England and Wales 2020-2021. Available at: <https://www.gov.uk/government/statistics/crime-outcomes-in-england-and-wales-2020-to-2021/crime-outcomes-in-england-and-wales-2020-to-2021>

²⁸ Shellaker above (n16)

²⁹ Shellaker above (n16)

³⁰ Davies, Farrand-Carrapico, Police and Judicial Cooperation Post Brexit (Scottish Parliament 2024)

if the location of the wanted person is known. The ability to circulate speculative warrants as was the case with the EAW has been lost. Although we are yet to know the statistical implications of these changes, for some time senior officers have acknowledged that there is a ‘significant loss of capability in terms of access to data, which is automated and integrated within our systems’.³¹

As well as the loss of access to previous SISII capabilities, the UK is now forced to observe from the sidelines future enhancements to the SISII operating platform. These involve significantly increased amounts of biometric data being made available to law enforcement agencies including photographs, fingerprints, palm prints and DNA. Developments such as these will enable EU countries to share more information than ever before and enhance the capabilities of their law enforcement agencies to circulate preventative alerts aimed at protecting vulnerable persons and disrupting terrorist activity. The UK will not benefit from these developments.

6. Potential solutions

UK law enforcement agencies remain hopeful that future revisions to Part 3 of the TCA might yet be negotiated with the EU. A mechanism exists within the TCA that allows its provisions to be reviewed on a five yearly basis³², including those relating to law enforcement and security. There is no doubt that law enforcement professionals both within the EU and the UK would welcome reconsideration of UK access to SISII. *‘Given the wider security environment, the strong shared interests in tackling what are largely shared threats, and the engagement of security and law enforcement professionals in finding ways to make the projected arrangements work, we must hope they will provide the basis for building cooperation in the future.’*³³ However, the chances of the UK quickly negotiating post-Brexit access to SISII appear to be diminishing, with most commentators accepting that a further extended period of exclusion is likely.³⁴

There is a recognition within UK policing, that strengthening existing bilateral agreements with EU member states might assist in bridging some of the operational gaps caused by the loss of SISII. It is already the case that the TCA contains a *‘legal basis for exchanging security alerts bilaterally’*³⁵. Police officers understand that close collaboration on matters related to transnational criminality is highly desirable and that strengthening bi-lateral working

³¹ Shellaker above (n16)

³² Coleman, C. and Newson, N. (2021) *UK-EU Trade and Cooperation Agreement*, House of Lords Library. Available at: <https://lordslibrary.parliament.uk/uk-eu-trade-and-cooperation-agreement/> (Accessed: 10 May 2023).

³³ King, J. and Scarlet, J. (2021) *The Future of UK–EU Security Cooperation*, *The Future of UK–EU Security Cooperation*. Available at: <https://www.rusi.orghttps://www.rusi.org> (Accessed: 10 May 2023).

³⁴ Syal, R. and editor, R.S.H. affairs (2023) ‘UK police and Border Force to remain locked out of EU database of criminals’, *The Guardian*, 1 March. Available at: <https://www.theguardian.com/politics/2023/mar/01/uk-police-and-border-force-to-remain-locked-out-of-eu-database-of-criminals> (Accessed: 2 April 2023).

³⁵ King, J. and Scarlet, J. (2021) *The Future of UK–EU Security Cooperation*, *The Future of UK–EU Security Cooperation*. Available at: <https://www.rusi.orghttps://www.rusi.org> (Accessed: 10 May 2023)

arrangements provides a quick win for the UK and the EU. The ICCC quickly identified following its launch, that the foreign law enforcement community (FLEC) in London, which includes numerous EU police officers seconded to their various embassies, could prove useful. Mechanisms such as the FLEC and Europol (to which the UK retained access as a third country) are extremely useful in allowing UK officers to liaise and exchange information with EU agencies during dynamic crime and security investigations.³⁶ The 2022 bilateral agreement between the UK and Portugal provides evidence of a willingness among some EU member states to further develop the working relationship with the UK beyond the terms of the TCA.³⁷ Agreements such as these provide some cause for optimism that future bi-lateral agreements with EU partners on the exchange of data and other information may well serve to further enhance operational capability.

The development of new technologies and data-sharing mechanisms with EU partners provides another opportunity to address the loss of access to SISII. The UK has invested heavily in the development of a new IT system called the International Law Enforcement Alerts Platform (I-LEAP). The I-LEAP programme has two phases, the first of which is enhancement of functionality and connectivity between UK policing and Interpol IT systems. It is anticipated that I-LEAP will allow forces to automate the creation and circulation of alerts and go some way to addressing the ongoing lack of direct connectivity between UK systems and Interpol. It is anticipated that all UK police forces will have connected to the I-LEAP system by April 2024 resulting in real time connectivity which is currently missing.³⁸

The second phase of the I-LEAP project is an attempt to replicate much of the functionality of SISII by concluding an EU-wide multi-lateral information sharing agreement. It is anticipated that upon delivery of the project, the UK and EU countries will be able to share real-time alerts that have been described as ‘*a return to a SIS II-type functionality*’.³⁹ The UK government also intends negotiating separate bi-lateral agreements with selected partner countries. It is likely that partner countries will include ‘5-Eyes’ partners such as Australia, New Zealand and Canada. However, despite the rosy optimism of senior officers who have declared that ‘*phase 2 of I-LEAP will be a real stride forward and will mean we are back to where we were in a position of SIS II*’⁴⁰, it is unlikely that phase 2 of the I-LEAP programme will be delivered before 2027 and even this is optimistic as there is currently no buy in from the EU.

Despite the clear operational difficulties for UK police officers represented by the loss of access to SISII and other EU policing tools, some improvements have flowed from the Brexit process. The creation of the ICCC, using temporary Brexit funding from HM Treasury, was

³⁶ Ayling above (n23).

³⁷ Prime Minister’s Office. (2022) *UK–Portugal Joint Declaration on Bilateral Cooperation*: Available at: UK–Portugal Joint Declaration on Bilateral Cooperation - GOV.UK (www.gov.uk)

³⁸ Ayling above (n23).

³⁹ Ayling above (n23).

⁴⁰ Ayling above (n23)

initially conceived as a no-deal Brexit mitigation measure. However, it has served to considerably raise the profile of both international criminality and the use of i24/7 among frontline officers. Additional developments such as the establishment of the National Extradition Unit and national programmes of training to frontline officers helped to burnish the reputation of the ICC. Subsequently, UK law enforcement recognised the value of a central unit dedicated to international enquiries that could act as a national resource to officers. In 2023, the functions of ICC were absorbed into the National Crime Agency (NCA) and re-launched as the Joint International Crime Centre (JICC). This change established the JICC as a fully funded unit with a permanent cadre of skilled staff who are able to develop interpersonal relationships with EU officers to aid international policing cooperation.

7. Conclusion

While UK law enforcement agencies, supported by the Home Office, made considerable efforts to mitigate the operational risks represented by Brexit, there is no doubt that the loss of SISII has caused a significant loss of capability. The creation of the ICC together with greater use of the Interpol i24/7 system has allowed policing to ‘make do and mend’ while attempting to develop longer term solutions to bridge the SISII capability gap. However, for frontline officers, *‘the practical consequence of this situation is that British police officers are now unable to determine’* in many cases *‘whether or not a foreign national might in fact be a dangerous offender that represents a threat to British communities.’*⁴¹ Post-Brexit, the operational reality for officers is reliance on sub-optimal SISII replacements while the UK remains locked out of a system that would mitigate risk to communities within both the UK and continental Europe.

The future does hold the promise of significant improvements and the delivery of Phase 1 of I-LEAP system will greatly enhance the effectiveness of Interpol’s i24/7 as an operational system within the UK. Phase 2 of I-LEAP may solve many of the operational problems caused by the loss of SISII, but this will only happen with the agreement of the EU. Until that time, operational officers will continue to be confronted by risk, and attempt to manage it using less sophisticated systems than those previously available. Ultimately, the inability of politicians to reach agreement on the UK’s continued access to SISII has eroded the ability of police officers in both the EU and the UK, to ensure the safety and security of their citizens.

⁴¹ Pearson above (n4)