

Audrey Nicoll MSP
Convener
Criminal Justice Committee
The Scottish Parliament
Edinburgh
EH99 1SP

28 August 2025

Dear Convener,

Priorities for the Scottish Criminal Justice System in the forthcoming review of the Trade and Cooperation Agreement between the United Kingdom and the European Union

Thank you for your letter of 28 May regarding the research work undertaken by members of the Scottish Parliament Academic Fellowship on behalf of the Criminal Justice Committee. I am replying on behalf of the Home Secretary.

It is helpful to understand the Committee's priorities for law enforcement and criminal justice cooperation with the EU, as we enter a new phase of UK-EU relations. I am also grateful for the positive engagement we have had thus far with the Scottish Government, and operational counterparts, to ensure we had a UK-wide position going into the UK-EU Summit on 19 May.

The outcome of that Summit was a commitment to a new strategic partnership to work with the EU to protect the public and increase the safety and security of UK and EU citizens. This included a shared ambition to explore how we could work more closely together on enhanced arrangements for data exchange, co-operation via EU agencies such as Europol and the EU Drugs Agency, and to enhance our judicial co-operation to ensure that justice is delivered to criminals across borders. This is an important first step in building on and enhancing Part Three of the Trade and Co-operation Agreement (TCA), and delivering a safer, more secure UK. The commitments agreed are set out in a Common Understanding which is available here: [UK-EU Summit - Common Understanding \(HTML\) - GOV.UK](#)

I fully recognise the importance of ensuring that the UK's approach to criminal justice cooperation with the EU reflects the needs of all parts of the UK. The UK Government is committed to working closely with the Devolved Governments, including the Scottish Government, to ensure that their perspectives are integrated into the UK wide position. I am keen that we continue our close partnership with the

Devolved Governments and their operational partners into the next phase of delivery.

I am aware that Lord Ponsonby has responded on some matters you have raised, as they fall within the Ministry of Justice remit, such as transfer of custodial sentences, transfer of pre-trial bail, and transfer of probation supervision. Turning to the specific issues in your letter that fall to the Home Office:

- 1) *The UK is not yet sharing vehicle registration data with EU Member States. Is the UK developing its technical capabilities so that it can evaluate and begin to share vehicle registration data with EU Member States, as already provided for in the TCA?*

As agreed in the Common Understanding, the UK and EU “*acknowledge the requirement in the Trade and Cooperation Agreement to set up automated searching of vehicle registration data*”. The UK is developing its technical capabilities to enable vehicle registration data sharing under the TCA and the pre-connection evaluation procedures with the EU are underway. We have worked closely with the Devolved Governments to deliver this functionality and prepare for the EU evaluation, and will continue to do so.

- 2) *Losing access to SIS II means that wanted notices must be circulated through the Interpol i24/7 database which makes it less likely that wanted people are identified and arrested as officers in the EU do not have direct access to i24/7. However, if a TCA warrant issued by the UK could be circulated on SISII this problem would be ameliorated. It is accepted that the UK cannot have direct access to SISII, but this would not prevent introducing a mechanism for TCA warrants issued by the UK to be circulated on SISII via Europol. Will the UK Government look to mitigate the risk of law enforcement in EU Member States not accessing Interpol 24/7 in the same way they do the Schengen Information System II?*

Following the UK's disconnection from the Schengen Information System (SIS), the UK returned to using INTERPOL for systematic exchanges of alerts with law enforcement agencies in the EU. All EU Member States are member countries of INTERPOL and have direct access to INTERPOL databases and i-24/7; the extent to which INTERPOL databases are searched or integrated with their national systems is determined by their respective competent authorities.

Alerts concerning individuals wanted for arrest, for surrender or extradition purposes, and the transmission of warrants, are recognised as an important tool for police and judicial cooperation. We assess that current arrangements in place via INTERPOL enable the UK and EU Member States to appropriately notify and flag to respective law enforcement agencies individuals that are sought and subject to an extradition warrant.

At the May 2025 UK-EU Summit, we were pleased to agree a package which enables further work to be undertaken with the EU seeking to strengthen our law enforcement cooperation, including through discussions on new data exchange capabilities.

- 3) *Judges in some EU member States will only issue a TCA warrant if there is 'clear connection' to the UK. The same requirement was not needed to issue a European Arrest Warrant (EAW). Amendment to the TCA could provide a clearer legal basis for the issuing of a TCA warrant at the same time as an EAW is issued removing the need for a clear connection to the UK. Will the UK Government look to address this?*

The warrant-based extradition arrangements we operate under the TCA are critical in ensuring offenders do not escape punishment by crossing borders. As part of our package of Summit commitments, we have agreed with the EU that we will work together to “*explore opportunities to enhance the timeliness, efficiency and effectiveness of the provisions of Title VII of Part Three of the Trade and Cooperation Agreement*”. This includes the acceptable warrant forms under the TCA and their possible usage.

- 4) *The EU plans to make key databases interoperable and therefore centralised. This may mean the UK could lose access to vital data currently provided for in the Trade and Cooperation Agreement. Continued access to biometric and air passenger data when Prüm and PNR become centralised and interoperable databases is vital to the safety of the UK. The UK must reach an agreement on its own internal position, so it is prepared to open discussions on this issue with the EU as early as possible, as provided for in the Trade and Cooperation Agreement. Can you provide us with a view on the UK Government's position on access to EU databases into the future?*

The Common Understanding agreed with the EU outlines that “*the European Commission and the United Kingdom will explore ways to reinforce mutual and reciprocal exchanges of data on fingerprints, DNA, and criminal records of third country nationals*”. We will continue to work closely with operational partners and the Devolved Governments on exchanges of this data as we progress delivery of the Common Understanding, and in particular as we have more information on how the new EU technology, such as the Prüm centralised router, will work.

The TCA provides an EU legal basis for operators of flights between the EU and the UK to transfer Passenger Name Record (PNR) data to the UK when required to do so under UK law. This enables PNR data to continue to be used to prevent, detect, investigate and prosecute terrorist offences and serious crimes and, additionally as a result of the TCA, to protect the public, including from significant public health risks. The development by the EU Member States of technical infrastructure to centralise their acquisition of PNR data from aircraft operators doing business in the EU has no implications for the UK. The UK will continue to acquire PNR data directly from aircraft operators doing business in the UK, including from those operators based in the EU.

- 5) *Although the UK opted in to ECRIS-TCN before leaving the EU this is not provided for in the Trade and Cooperation Agreement. Will the UK seek to negotiate access to the ECRIS-TCN system, so UK law enforcement has a complete picture of the criminal record of any third country national who has spent time in the EU before entering the UK?*

The UK and EU have strong arrangements in place through the TCA to exchange criminal records of UK nationals and EU citizens. The Common Understanding commits that we will work with the EU to “reinforce mutual and reciprocal exchanges of data on fingerprints, DNA, and criminal records of third country nationals” to help maintain public security and safeguard the vulnerable. While access to ECRIS-TCN is not currently provided for in the TCA, the UK is actively engaging with the EU to explore options for exchanging this data in light of the Common Understanding. We are aligned with EU objectives and will continue to make the case for reciprocal cooperation, recognising the operational importance of this capability for safeguarding and law enforcement.

- 6) *The UK has lost access to the European Investigation Order. Our research indicated that further improvements to the provisions on sharing of evidence are needed. Cooperation needs to be more closely aligned to the European Investigation Order than currently provided for, as reliance on Mutual Legal Assistance is outdated and slow. Will the UK Government look to address this?*

We acknowledge that current MLA processes can be improved to better meet the needs of modern cross-border cooperation and we will work to ensure improvements reflect operational realities across the UK, including in Scotland.

At the 2024 Specialised Committee, we agreed to pursue technical discussions to improve the operation of the TCA concerning Mutual Legal Assistance and Asset Freezing and Confiscation. The May 2025 Common Understanding builds on this by committing to “intensify technical work in the Specialised Committee on Law Enforcement and Judicial Cooperation with the aim to further streamline the cooperation on mutual legal assistance” and leading to better security, justice and public safety outcomes for our citizens.

- 7) *Although the UK opted in to the EU’s e-evidence package before leaving the EU this is not provided for in the Trade and Cooperation Agreement. Will the UK Government seek to negotiate an agreement on access to electronic evidence (e-evidence) now the EU has finalised its own internal rules and already opened negotiations with the USA?*

The UK did not opt into the EU’s e-Evidence Regulation prior to leaving the EU. However, the Government shares the view that efficient access to electronic data of operational value is very often critical to securing positive criminal justice outcomes. As per the Common Understanding, the UK and EU have agreed to “examine the difficulties for law enforcement and judicial authorities in one jurisdiction to obtain data from electronic communication and other relevant service providers offering services in the other jurisdiction, and potential solutions”. International agreements

on data access, with appropriate safeguards, have the potential to speed up access to operationally valuable data significantly.

We are examining potential solutions with the EU and will ensure that any future arrangements support the needs of UK law enforcement, including Scottish agencies.

- 8) *The UK has more limited participation in Europol now than it did when it was a Member State of the EU. Will the UK Government seek to enhance the UK's cooperation with Europol, subject to an agreement on funding, especially in regard to:*
- a. The inability of UK police officers to be employed within the Europol Operational and Analysis Centre;*
 - b. Lack of access to Europol training; and the ability to initiate and lead a Joint Investigation Team.*

The TCA allows for close cooperation between the UK and Europol. This forms the basis for a strong and effective partnership between UK agencies and Europol on mutual threats. The UK's commitment to Europol is reflected in its multi-agency liaison bureau at Europol's headquarters in the Hague, which continues to co-ordinate and deliver joint operational activity. Europol continues to support core training for UK officers to facilitate effective engagement with the agency.

To note, the UK can already initiate and lead a Joint Investigations Team, the legal framework for which is based on the 1959 European Convention on Mutual Assistance in Criminal Matters. For collaboration with European partners, this is coordinated through Eurojust. The UK can participate in Operational Task Forces, an EU mechanism for international joint working between law enforcement coordinated through Europol which can only be established by EU Member States, not by a third country.

We are committed to further deepening cooperation with Europol, to develop and enhance our operational response on serious crime and terrorism. This includes in the framework of analysis projects and operational action plans within the European Multidisciplinary Platform Against Criminal Threat (EMPACT) policy cycle. In addition to references in the Common Understanding text, we were further encouraged to see

- in Europol's latest Programming Document (2025-2027, published December 2024)
- a firm commitment from Europol to intensify co-operation with key existing partners, with specific reference to both the Schengen Associated Countries and the UK.

- 9) *The UK is yet to notify the Specialised Committee on Law Enforcement and Judicial Cooperation that, on the basis of reciprocity, the condition of dual criminality will not be applied to the offences listed in Article 599(5) of the TCA. Twelve EU countries have made such a notification, but to be effective this requires the reciprocity of the UK. The effect of the UK's decision is that dual criminality must be established in all cases with all EU Member States. The impact of this decision needs to be understood and revisited. This decision may be causing unnecessary complexity and delay during extradition hearings. How will the UK Government look to address this?*

We acknowledge the Committee's proposal on the implications of our current position on dual criminality and will keep our position under review.

- 10) *The UK Government should continue to work with EU Member States to understand domestic legislative impediments to police-to-police cooperation and seek to develop bilateral agreements which address the impediments or remove them, where legally possible. What work is the UK Government undertaking to address domestic legislative impediments with EU Member states?*

Article 563 of the TCA provides an additional legal basis for police-to-police operational information sharing. UK police continue to rely on common law as the primary legal basis for sharing information with EU police. Police in EU countries need to comply with their domestic legislation too. Domestic legislation in Belgium requires Belgian police to seek a magistrate's approval to share information with the UK under Article 563; the Home Office is negotiating a bilateral Law Enforcement Cooperation Agreement with Belgium which will remove this requirement. UK operational partners have not identified impediments in other EU Member States.

- 11) *What actions are the UK Government seeking to carry out to further develop the governance structures of the TCA so as to ensure greater transparency and accountability? Will the UK Government seek to introduce political mechanisms that will enable the TCA to evolve in parallel with UK and EU domestic changes to police and judicial cooperation instruments over time?*

The UK Government will continue to work closely with the Scottish Government to maximise the effectiveness of the TCA. The UK will continue to ensure that the Scottish Government is sighted on the Specialised Committee agenda and they will remain invited by mutual consent to attend Committee meetings, the agenda and minutes of which can be found online in accordance with the TCA.

As set out at the start of this letter, at the first UK-EU Summit in London on 19 May 2025 the United Kingdom and the European Union agreed a substantial package to take forward our future partnership. The UK and European Commission believe that there is scope for "*reinforcing cooperation through quicker, better and deeper implementation of Part Three of the Trade and Cooperation Agreement*" by "*fully exploiting and building*" on its potential. We are working alongside the Scottish Government and the EU Commission to identify areas to build our existing

cooperation, protect the public, and increase the safety and security of UK and EU citizens.

Additionally, as per the Leaders' statement published on 19 May 2025, the UK and EU Commission agreed to hold regular high-level meetings to strengthen our relationship and to oversee the TCA, including on justice and home affairs. The UK Government recognises the importance of ensuring that the Devolved Governments, including Scotland, are meaningfully involved in the development of the UK's strategic cooperation with the EU on Justice and Home Affairs. We are committed to ensuring that these arrangements provide a robust framework for inclusive and coordinated UK representation.

I am copying this letter to the recipients of your original letter: the Cabinet Secretary for Justice and Home Affairs in the Scottish Government, the Lord Advocate, the Chief Constable of Police Scotland, as well as the chairs of the House of Commons Home Affairs Committee and Justice Committee, and the House of Lords European Affairs Committee.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Dan Jarvis', with a horizontal line underneath.

Dan Jarvis MBE MP
Security Minister