



Brexit & the UK's fight against modern slavery

A briefing by the
Anti-Trafficking Monitoring Group

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The **Anti Trafficking**
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Executive Summary

The following paper considers the potential impact of the UK's withdrawal ('Brexit') from the European Union (EU) on efforts to tackle modern slavery. The purpose of this briefing is to review the extent to which the UK's membership in the EU has influenced national anti-trafficking efforts, and consider if and how Brexit may impact the UK's ability to combat modern slavery and protect its victims. Where possible, recommendations have been made on the steps to take to mitigate any potential risks posed by Brexit to UK anti-trafficking efforts.

Prosecuting modern slavery

- Trafficking networks can span several countries and even continents. Given the transnational nature of modern slavery, international cooperation in law enforcement is crucial.
- To this end, the UK has played a leading role in EU criminal justice measures and bodies, such as Europol, and has benefited considerably from EU support to carry out anti-trafficking operations, such as that provided by Eurojust to establish Joint Investigation Teams (JITs).
- The UK Government stated that it intends to maintain close cooperative links and partnerships with the EU in the area of criminal justice; however, access to the direct co-operation measures is either closed to non-EU Member States, or significantly limited.
- The UK Government's stated intention to leave the jurisdiction of the Court of Justice of the European Union (CJEU) seems to pose an existential threat to continued participation by the UK in European security and criminal justice mechanisms, including those that enable us to combat modern slavery.

Preventing modern slavery

- Protecting workers' rights is key to preventing modern slavery: the enforcement of protective labour laws safeguards workers against abusive employment practices.
- A significant proportion of workers' rights in the UK stem from EU law. In order to protect key rights, such as those in the Working Time Regulations, consideration should be given as to the merit of introducing primary legislation that transposes and enshrines relevant EU labour law.
- The UK Government's stated intention is to end the free movement of labour and introduce new immigration legislation to control and curb immigration to the UK. The risk post-Brexit is the introduction of overly restrictive immigration policies which increase the vulnerability of migrant workers to exploitation, as exemplified in the case of Overseas Domestic Workers. These risks are exacerbated when coupled with a labour market that favours deregulation and flexibility; in practice, this has resulted in an erosion of workers' rights.
- To prevent modern slavery, adequate safe and legal migration channels need to be established for workers that meet the realistic needs of the labour market, across all sectors and skill levels.
- Any future changes to immigration law and policy must be subject to an impact assessment which considers the likely effect of these changes on efforts to tackle modern slavery,

including whether migrants will be made more vulnerable to exploitation or less likely to seek protection from abuse.

- There should be a firewall between labour inspection and immigration enforcement. The Gangmasters' Licensing Authority, National Minimum Wage enforcement teams, Employment Agencies Standards Inspectorate and Health and Safety Executive must have their resources greatly increased in order to enable labour market-wide monitoring of labour abuses and enforcement of labour law.

Protecting victims

- The rights of victims to support and assistance have been enshrined in the 2011 EU Trafficking Directive. The Directive has direct effect in national law and its provisions can be relied on in UK Courts, as observed in the case of *L, HVN, THN & T v R [2013] EWCA Crim 991*.
- Currently there is significant disparity across the UK in terms of victims' rights to support and assistance: unlike legislation in Scotland and Northern Ireland, the Modern Slavery Act (England & Wales) does not explicitly place obligations on Ministers to provide support and assistance to victims.
- The EU Trafficking Directive may be transposed into UK law through the Repeal Bill, however there is a risk that it may be unilaterally repealed post-Brexit by Ministers, without reference to Parliament. If this occurs, then victims of modern slavery in England and Wales will be unable to look to domestic legislation to claim their rights to support.
- To end this disparity across the UK and potential post-Brexit uncertainty, a legal duty to assist, support and protect victims of modern slavery should be introduced through primary legislation in England and Wales prior to the UK's withdrawal from the EU.

Partnerships

- The EU has taken a leading role in coordinating and funding anti-trafficking efforts across Europe, for instance through instituting an Anti-Trafficking Coordinator and the creation of an EU Civil Society Platform against Trafficking in Human Beings. As part of Brexit negotiations, the UK must make whatever compromises are necessary to maintain membership of these mechanisms.
- EU funding streams, in particular the European Social Fund, have provided an important resource for UK charities. The risk post-Brexit is that UK organisations and public bodies will lose access to these various funds.
- UK NGOs will continue to individually collaborate with their counterparts in other EU Member States, however continued access to formal EU platforms and networks will have to be negotiated.

The UK's forthcoming exit from the EU risks jeopardising the progress made domestically in tackling modern slavery, preventing it and protecting its victims. To minimise these risks, the Anti-Trafficking Monitoring Group recommends the following minimum safeguards, to be introduced as a part of the Brexit process:

- The UK Government must pursue access to European criminal justice and security measures to the greatest extent possible, and continue to prioritise law enforcement cooperation as part of the Brexit negotiations.
- To the extent that it allows such continued cooperation, the UK must accept some measure of the jurisdiction of the CJEU.

- Prior to the UK exiting the EU, primary legislation must be introduced which transposes the rights of victims to support and assistance, as detailed in the EU Trafficking Directive, into domestic law in England and Wales.
- The UK Government should introduce primary legislation which transposes EU labour law that protects workers' rights.
- The UK Government must undertake an impact assessment for any new proposed law and policy related to immigration to assess its likely impact on efforts to tackle modern slavery, including whether migrants will be made more vulnerable to exploitation because of these changes, and/or less willing/able to seek protection and justice should they suffer abuse.

Introduction

On 23rd June 2016, the UK voted narrowly to leave the European Union (EU). This briefing considers the potential impact of the UK's exit from the EU ('Brexit') on efforts to tackle modern slavery¹. The briefing discusses in turn the impact of Brexit on each strand of the internationally-recognised four 'Ps' framework for tackling human trafficking; *prosecution* of traffickers, *prevention* of human trafficking, *protection* of victims, and *partnerships*.

This briefing assesses if and how membership in the EU has been beneficial or otherwise to UK efforts to tackle modern slavery, and any potential consequences of the UK's withdrawal on these efforts. Where possible, recommendations have been made on the steps to be taken to mitigate any potential risks to UK anti-trafficking efforts posed by Brexit. The intended audience of this research briefing is parliamentarians and government officials, civil society organisations, and any other individual or group who is concerned that, amid the radical upheaval that Brexit represents, the UK maintain its global leadership in the struggle against slavery.

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Background to 'Brexit'

In March 2017, the UK Prime Minister acted on the outcome of the EU referendum, and notified the European Council President Donald Tusk of the UK's intention to leave the EU.² In doing so 'Article 50' [of the **Lisbon Treaty**] was triggered and the UK entered a two-year period of negotiations with the EU regarding the terms of its withdrawal.

The UK has been a member of the EU (or the European Economic Community, as it was then) since 1973. Since it was established, the EU has generated a considerable body of law, a significant proportion of which is directly applicable in the UK. It is estimated that between 13% to 62%³ (depending on whether directly applicable EU regulations are included in the calculation or not)

¹Modern Slavery has been defined by the UK Government as encompassing slavery, servitude, forced and compulsory labour and human trafficking (see Modern Slavery Strategy, 2014, p. 9). Use of the term 'modern slavery' is unique to the UK, and mainly only England and Wales. For the purpose of this briefing the terms 'modern slavery' and 'human trafficking' will be used interchangeably.

²https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/604079/Prime_Ministers_letter_to_European_Council_President_Donald_Tusk.pdf

³The 13% figure is derived by looking at the percentage of UK Acts of Parliament and Statutory Instruments that have implemented EU obligations between 1993 and 2014, see here <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/RP10-62#fullreport>. However, this 13% figure doesn't consider the EU regulations that have been implemented in the UK that don't require additional UK legislation to be brought into force. The higher 62% figure is arrived at by counting all of the laws that apply in the UK counting all of the EU regulations, EU-related Acts of Parliament, and EU-related Statutory Instruments that apply in the UK which implement EU obligations <http://www.bbc.co.uk/news/uk-politics-eu-referendum-36473105>

⁴<https://www.gov.uk/government/publications/queens-speech-2017-what-it-means-for-you/queens-speech-2017-what-it-means-for-you>

⁵Announcement made at the Conservative Party Conference in October 2016 - <https://www.instituteforgovernment.org.uk/brexit-explained/brexit-explained-great-repeal-bill>

⁶<https://www.gov.uk/government/publications/the-great-repeal-bill-white-paper>

of the laws in the UK implement obligations derived from the EU. For the purposes of continuity, the UK Government has proposed to introduce a Repeal Bill⁴, originally titled the ‘Great Repeal Bill’⁵. The Government’s intention, as set out in a white paper⁶, is that the Repeal Bill will repeal the European Communities Act 1972 (the “ECA”), meaning that EU Treaties and Regulations will no longer apply in the UK, and secondary regulation, enacted by ministers pursuant to an EU Directive, may lose their constitutional basis.

The Repeal Bill will transpose all existing EU law into domestic law and set out a procedure for the Government to review this body of law and decide which elements to retain, which to amend and which to repeal. This will take effect when the UK leaves the EU (currently expected to be March 2019). The Bill will also establish powers for the UK Parliament and devolved administrations, where appropriate, to create secondary legislation. This has raised concerns by some⁷ that the Repeal Bill will include “Henry VIII powers”, thereby allowing the UK Government to amend or even repeal primary legislation, through the creation of subordinate/secondary legislation, without the scrutiny of Parliament.

“We will take control of our own affairs, as those who voted in their millions to leave the EU demanded we must, and bring an end to the jurisdiction in the UK of the Court of Justice of the European Union (CJEU).” – *Section 2.3, White Paper: ‘The United Kingdom’s exit from and new partnership with the European Union White Paper’*”

In addition to legislative reform, the UK will also have to negotiate its membership of the various EU bodies and measures, for instance those related to law enforcement, such as Europol. As discussed below, these negotiations will be complicated by several crucial factors, such as the Government’s reluctance for the UK to remain subject to the jurisdiction of the Court of Justice of the European Union (CJEU).

The following sections consider in turn each of the four ‘Ps’ framework for tackling modern slavery; assessing the benefits of EU membership and the potential opportunities and challenges presented by the UK’s withdrawal from the EU.

1. Prosecuting human traffickers

Modern slavery, and in particular human trafficking, is predominantly a cross-border crime. Trafficking networks can span several countries or continents. Modern slavery victims are recruited and transported from one country to another to be exploited. In 2016 only 326 of the 3,805 potential victims referred into the UK’s National Referral Mechanism (NRM) were UK nationals i.e. over 90% of potential victims of modern slavery were foreign nationals⁸.

Given the transnational nature of this crime, international cooperation in fighting it is crucial. The EU has adopted a collaborative and coordinated approach to combatting human trafficking, as well as other serious organised crimes, such as cybercrime. Numerous institutions, organisations and partnerships have been established by the EU, such as Europol and Eurojust, to aid with information-sharing and cross-border cooperation for the purposes of security and law

⁷Brexit: why the Great Repeal Bill will be the Great Whitehall Power Grab, The Financial Times, 20 March 2017 <http://blogs.ft.com/david-allen-green/2017/03/20/why-the-great-repeal-bill-will-be-the-great-whitehall-power-grab/>

⁸<http://www.nationalcrimeagency.gov.uk/publications/national-referral-mechanism-statistics/2016-nrm-statistics/788-national-referral-mechanism-statistics-end-of-year-summary-2016/file>

enforcement. The UK has negotiated the right to “opt-in” to EU measures related to criminal justice and security, such as the European Arrest Warrant, so that it can decide on a case-by-case basis whether it is in the national interest to do so. If it does not choose to opt-in, it is not bound by the EU measure in question. Successive governments have therefore been able to amend the extent to which the UK cooperates with the EU on criminal justice and security matters.⁹

An overview of some of the key European bodies and measures utilised by UK law enforcement in the fight against human trafficking are set out in Annex 1, and further discussed below. These include:

- Europol
- Eurojust
- European Arrest Warrant
- European Criminal Records Information System (‘ECRIS’)
- Schengen Second Generation Information Services (‘SIS II’)

The potential impact of the UK’s exit from the EU on each of these measures is considered below.

A. Europol

Europol is the European Police Office, and human trafficking is one of its priority crime areas and an EMPACT¹⁰ (European multidisciplinary platform against criminal threats) priority, for which a multi-annual strategic and operational plan has been devised.

The UK currently plays a key role in Europol and is heavily reliant on its services in its law enforcement activities. Since 2009 Europol has been led by Rob Wainwright, former head of the international division of the UK’s Serious and Organised Crime Agency (now the National Crime Agency)¹¹. In December 2016, Brandon Lewis, the Minister for Policing and the Fire Service stated that Europol provides, “a vital tool in helping UK law enforcement agencies to co-ordinate investigations involving cross-border serious and organised crime”, further noting that, “About 40% of everything that Europol does is linked to work that is either provided or requested by the United Kingdom.”¹²

In evidence to the House of Lords EU Sub-Committee in December 2016, the National Crime Agency stated “membership of Europol or an alternative arrangement” as its most important priority among all the Justice and Home Affairs (JHA) measures that the UK would potentially have to leave behind upon exiting the EU¹³. Whilst it is likely that the remaining EU countries will want the UK to have a continuing role in Europol, the current standing that the UK enjoys as an EU Member State i.e. having a strategic role in Europol’s management and in the setting of its organisational priorities, is likely to be lost.

⁹Most recently, in July 2013, the UK Government decided to block opt-out from the pre-Lisbon treaty (2009) police and criminal justice measures with effect from 1 December 2014. However, at the same time indicated that the UK would seek to re-join 35 of those same measures and stated that it would accept the enforcement powers of the European Commission and full European Court of Justice (ECJ) jurisdiction would apply in respect of those 35 measures from 1 December 2014.

¹⁰<https://www.europol.europa.eu/crime-areas-and-trends/eu-policy-cycle-empact>

¹¹His term of office is due to end in 2017 and a new Director will be appointed.

¹²Official Report, European Committee B, 12 December 2016; c. 5-7 Available: <https://goo.gl/YnmRo>

¹³House of Lords, European Union Committee, 2016, Brexit: future UK-EU security and police cooperation. Available at: <https://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/77/77.pdf>



Some non-EU countries (for example, the US, Norway and Albania) have negotiated associate membership of Europol through agreeing bilateral arrangements. Such memberships are categorised as either strategic co-operation partners (who do not have access to transmission of personal data) or operational co-operation partners (who do have access). The UK Government could decide to pursue one of these partnership models or seek to agree something different and unique. In statements made around Brexit the government has indicated that it believes it can achieve the latter and have a “bespoke solution” as the UK is a “known partner, and a known commodity to our partners in Europol”.

There are likely to be challenges in negotiating this new relationship; two keys ones are:

- **Maintaining a leading role in Europol whilst staying outside of the jurisdiction of the Court of Justice (CJEU):** The UK Government has made clear that with the introduction of the Repeal Bill it intends to bring an end to the jurisdiction of the CJEU, which acts as the EU’s ultimate arbiter of matters of EU law. In his statement to the Commons, David Davis stated that there will be “no future role for the CJEU in the interpretation of our laws, and the [Great Repeal] Bill will not oblige our courts to consider cases decided by the [CJEU] after we have left”.¹⁴

However, Europol is accountable to EU institutions and recognises the jurisdiction of the CJEU. As noted by the House of Lords EU Sub-Committee, there will therefore be practical limits on the extent that the UK and remaining EU Member States can collaborate on police and security matters “if they are no longer accountable to, and subject to oversight and adjudication by the same supranational institutions, notably the Court of Justice of the European Union.”¹⁵ Furthermore, if a revised agreement on justice and security is signed between the EU and the UK (as a non-EU member), the CJEU will continue to have jurisdiction to interpret this treaty. The competence of the CJEU extends to interpreting any treaties the EU signs with non-EU countries. The UK Government has stated that it may propose establishing a bespoke adjudication authority, to avoid the competence of the CJEU, however this would have to be agreed to by the remaining 27 Member States.

- **Data protection standards:** Membership of Europol, and other EU bodies and measures, will require that the UK remains subject to EU data protection laws that it will no longer shape. To retain membership of these bodies and continue sharing information with its EU counterparts, the UK will also have to adhere to broadly equivalent data protection standards to those in the EU, keeping apace of developments on an ongoing basis.

These considerations, regarding the jurisdiction of the CJEU and EU data protection standards, will be of relevance to all other criminal justice and security measures which are anchored in EU law.

B. Eurojust

Eurojust, the EU’s Judicial Cooperation Unit, plays a key role in supporting EU efforts to tackle human trafficking, most crucially through facilitating and funding Joint Investigation Teams (JIT)¹⁶. A JIT consists of judicial and police authorities from at least two Member States, who collaboratively conduct a specific cross-border criminal investigation for a limited period. JITs have the added

¹⁴<https://www.gov.uk/government/speeches/david-davis-commons-statement-on-the-great-repeal-bill-white-paper>

¹⁵Supra, note 13, at p.2

¹⁶For further information, see Eurojust, Joint Investigation Teams Practical Guide. Available at: <http://www.eurojust.europa.eu/doclibrary/JITs/JITs%20framework/JITs%20Practical%20Guide/JIT-GUIDE-2017-EN.pdf>

value of enabling law enforcement authorities to gather and exchange information and evidence, in real-time, without the need for the use of traditional channels of mutual legal assistance (MLA), which are known to be slow and often ineffective.

In evidence to the European Union Committee in 2013, Kier Starmer QC, the then-Director of Public Prosecutions stated that the benefits of JITs included:

- speedier cross-border coordination,
- enabling the deployment of UK law enforcement authorities to other Member States,
- providing all participating Member States with direct access to the same evidence,
- as well as the increased admissibility of this evidence, which was commonly challenged before the courts under the previous bilateral agreements.¹⁷

One recent example of a successful human trafficking investigation in the UK which would not have been possible without the use of a JIT is set out in Box 1 below.

Of the 148 Joint Investigation Teams facilitated by Eurojust in 2016; 40 were related to human trafficking. Between 2009 and 2013, the amount of funding provided by Eurojust for JITs in which the UK was involved totalled €1,823,379.¹⁸ This figure is now estimated to be around €2.5 million. In 2016 the UK received the most funding of all EU member states to establish JITs, 32 in total.¹⁹

The value of Eurojust is not limited to JITs, however. There is also a significant range of other support that it provides to resolve casework issues in human trafficking cases, particularly where there is a requirement for enquiries and evidence from other jurisdictions. It provides support for EAWs and extradition, assists in live links for witnesses to give evidence, advises on offences and legal systems in other jurisdictions – particularly helpful for Slavery and Trafficking Prevention Orders (STPOs) on sentencing; and provides ready access to prosecutors from every EU Member State, to enable successful prosecutions.

Membership of Eurojust is considered critical by the Crown Prosecution Service (CPS) and the National Crime Agency (NCA)²⁰. Law enforcement officers contacted by the Anti-Trafficking Monitoring Group for the purposes of this briefing highlighted how crucial JITs are in human trafficking cases, and highlighted that the financial support provided by Eurojust for these JITs is indispensable. Concerns were raised that, as a non-EU member, the UK would no longer be able to apply for JIT funding, instigate or lead on JITs, instead relying on other EU Member States to do so. In addition, as a third country, it would be unlikely that the UK would lead on the prosecution of any criminals identified; preference would be given to the EU Member State leading on the JIT. Hence, ultimately, the UK may need to rely on the willingness and ability of other EU Member States to prosecute traffickers linked to modern slavery in the UK.

Whilst some non-EU Member States have negotiated bilateral cooperation agreements with Eurojust, they do not play a role in the strategic direction or management of Eurojust, nor have

¹⁷<https://www.publications.parliament.uk/pa/ld201213/ldselect/lddeucom/159/15910.htm#note375> See para 201

¹⁸Home Office evidence to the Home Affairs Committee, Pre-Lisbon Treaty EU police and criminal justice measures: the UK's opt-in decision, October 2013, at p.55

¹⁹Eurojust Annual Report, 2016, Available here: http://www.eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202016/AR2016_EN_web.pdf

²⁰Supra note 13

access to the Eurojust case management system. Bilateral agreements made between the EU with third countries have typically taken years to finalise. For instance, the agreement between Switzerland and the EU took around 7 years to negotiate (2008-2015). In 2016, the European Union Committee in the House of Lords concluded, in relation to the post-Brexit agreement between the UK and Eurojust, that it would “ideally...provide for closer cooperation than has thus far been available to other third countries—for example by providing access to the Eurojust Case Management System”.²¹ The Committee went on to highlight that as with Europol, however, the UK’s reluctance to accept the jurisdiction of the CJEU may “present a political obstacle to forging the sort of partnership that would best meet the UK’s operational needs”.²²

Box 1: Use of JIT in a successful human trafficking case

In July 2015, 11 defendants were sentenced for the trafficking of at least 250 women from Hungary to be sexually exploited in 50 brothels in London and Peterborough. The women they exploited were forced to hand over up to half of their earnings. One of the defendants, Zsolt Blaga, 38, was jailed for 14 years for trafficking offences and two rape offences. Other offences that the defendants were convicted of included conspiracy to traffik and conspiracy to control prostitution. In total, the gang were sentenced to a total of 60 years’ imprisonment.

The arrest and prosecution of these defendants was made possible by the joint working between the Crown Prosecution Service (CPS), the Metropolitan Police Service (MPS), and the Hungarian authorities, who in 2013 established a Joint Investigation Team (JIT) through Eurojust. Eurojust funding and support enabled the JIT partners to work closely over a period of almost 3 years to gather the necessary evidence to build a case strong enough to ensure the defendants were convicted. This support facilitated strategy and planning meetings between UK and Hungarian police and prosecutors, enabled witness statements to be obtained from vulnerable witnesses across Europe, paid for interpreters, and facilitated the planning and execution of simultaneous arrests in each country.

When the defendants were located and arrested in Hungary, European Arrest Warrants (EAW) were issued which allowed them to be extradited to the UK to stand trial.

In the absence of a JIT being created, the authorities would have had to make repeated requests for Mutual Legal Assistance (MLA), which would have been time-consuming given the complex nature of the case.

See CPS press release, ‘11 sentenced in one of largest sex worker trafficking cases prosecuted in London’, 16th July 2015

C. European Arrest Warrant (EAW)

The EAW enables speedier and more streamlined extradition of wanted individuals between EU Member States, and is facilitated by Eurojust. Each year, around 1,000 people are extradited from the UK to another Member State, and over 100 people are extradited to the UK through the scheme²³. The EAW has been successfully used to extradite human traffickers. For instance, in 2016, Romanian national Razvan Nedelea was extradited to Romania from Scotland to stand trial alongside nine others for trafficking women for the purposes of sexual exploitation²⁴.

²¹House of Lords, European Union Committee, 2016, Brexit: future UK-EU security and police cooperation. At para. 83

²²Ibid

²³See Source: National Crime Agency, European Arrest Warrant Statistics. Available here: <http://www.nationalcrimeagency.gov.uk/publications/european-arrest-warrant-statistics/historical-eaw-statistics/693-historical-european-arrest-warrants-statistics-calendar-and-financial-year-totals-2004-may-2016>

²⁴<http://www.dailyrecord.co.uk/news/scottish-news/romanian-run-vice-ring-smashed-9851799>

The EAW superseded the previous extradition arrangements between EU Member States as set out in the Council of Europe's 1957 European Convention on Extradition. In evidence to the European Union Committee in 2016, the Crown Office and Procurator Fiscal Service stated that there was "clear evidence that EAWs allow suspects to be surrendered far more speedily than traditional extradition processes", and emphasised that this "benefits the public purse but more importantly is an important element in delivering justice and upholding the rights of both victims of crime and accused persons".²⁵

The Government has indicated its commitment to continued cooperation in the fight against crime and terrorism in the Brexit White Paper, including a reference to the EAW. Once the UK has withdrawn its membership of the EU, the Council Framework Decision on the EAW²⁶ will cease to apply. The UK's extradition arrangements with the EU will therefore need to be re-negotiated and any consequential amendments will need to be made to the UK's domestic law.

Several alternative options to the EAW have been identified: reverting to the 1957 European Convention on Extradition; concluding a new agreement with the EU; or concluding separate bilateral agreements with each of the 27 Member States. There is precedent for third countries, namely Norway and Iceland, to negotiate bilateral agreements with the EU that the UK could seek to replicate, although unlike these two countries the UK is not a member of the Schengen Zone and may be unwilling to accept the jurisdiction of the CJEU. Negotiating these bilateral agreements took many years, 13 in total for each. It may be unlikely that similar arrangements could be negotiated prior to the UK's exit from the EU and as such a risk that there is an "operational gap between the EAW ceasing to apply and a suitable replacement coming into force".²⁷

D. Data-sharing measures

The UK currently has access to a range of EU databases and data-sharing mechanisms which play a crucial role in law enforcement activities. A few of the key data-sharing tools are listed below:

- **European Criminal Records Information System ('ECRIS')**²⁸: ECRIS is a secure electronic system for the exchange of information on convictions between EU Member States. It provides judges and prosecutors with easy access to the criminal records history of an individual in a different Member State, thereby removing the possibility that they can escape justice by moving country.
- **Schengen Second Generation Information Services ('SIS II')**²⁹: SIS II is a database of live alerts regarding individuals and objects of interest to law enforcement (include EAW targets). Its main purpose is to help preserve internal security in the Schengen States in the absence of internal border checks.
- **Prüm Decisions**³⁰: These decisions have granted the UK access, through EU membership, to national databases containing DNA profiles, fingerprints and vehicle registration data across the EU. Their purpose is to simplify and increase the efficiency of EU-wide intelligence gathering processes, and encourage greater sharing of information.

²⁵https://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/77/7707.htm#_idTextAnchor047

²⁶2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States

²⁷https://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/77/7707.htm#_idTextAnchor051 Para 141

²⁸Council Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA

²⁹Schengen Acquis, Schengen Agreement Application Convention

³⁰Council Decision 2008/615/JHA and Council Decision 2008/616/JHA

In evidence to the European Union Committee in the House of Lords in December 2016, law enforcement agencies stressed how crucial it was to their activities to have access to the information and intelligence provided through these mechanisms. Helen Ball, the Senior National Coordinator for Counter Terrorism Policing for the Metropolitan Police Service, stated that it was “mission-critical in protecting both the citizens of the UK and the citizens of Europe that the UK policing effort is able to access that information”³¹

The UK’s exit from the EU will jeopardise the UK’s access to these data-sharing mechanisms. For instance, currently no non-EU, non-Schengen country has access to SIS II and no non-EU Member States (including Schengen countries) have access to ECRIS. Negotiating to maintain access as a third country outside of the EU and Schengen will therefore be ambitious.

The Council Decisions which underpin the Prüm Decisions will cease to apply to the UK when it leaves the EU. A new agreement must be reached if the UK is to continue to access the same intelligence. There is precedent for non-EU countries to negotiate access to Prüm, namely Norway and Iceland, although the relevant agreements are not yet in force. Both countries are members of Schengen, however, participation in the Prüm decisions is not necessarily linked to Schengen membership and the Government has concluded that it has “no reason to believe that such an international agreement could not be reached with the UK after the UK leaves the EU”. New legislation will be required to replace the existing Council Decision which underpin these data-sharing mechanisms.

E. Prosecuting human traffickers: Mitigating the risks of Brexit

In the fight against human trafficking, the UK has undoubtedly benefited from its membership in the various EU criminal justice bodies and measures. Human trafficking is largely a transnational crime and the UK cannot effectively combat it without having access to collaboration, support and information-exchange with EU partners.

In its statements concerning Brexit, the UK Government has consistently made clear its desire to maintain a collaborative relationship with Europe regarding security and justice. In his 10 October 2016 statement³², David Davis told the House of Commons that one of the government’s four aims for the Brexit negotiations was to “keep our justice and security arrangements at least as strong as they are”.

The Prime Minister, in setting out her ‘*Plan for Britain*’ in January 2017, further stated:

‘With the threats to our common security becoming more serious, our response cannot be to cooperate with one another less, but to work together more. I therefore want our future relationship with the European Union to include practical arrangements on matters of law enforcement and the sharing of intelligence material with our EU allies.’³³

³¹<https://www.publications.parliament.uk/pa/ld201617/ldselect/ldcom/77/77.pdf>

³²<https://www.gov.uk/government/speeches/exiting-the-eu-next-steps-ministerial-statement-10-october-2016>

³³<https://www.gov.uk/government/speeches/the-governments-negotiating-objectives-for-exiting-the-eu-pm-speech>

Whilst the intention and desire to maintain close cooperative links and partnerships with the EU has been repeatedly made clear by the UK government, as well as by law enforcement, the reality of this may be difficult to achieve. In many cases, in regard to the various bodies and measures, there is no precedent for a non-Member State to hold membership; in those bodies for which there is a precedent, the agreements have taken years to negotiate and implement. The Government's current position of wishing to withdraw completely from the jurisdiction of the CJEU further complicates negotiations, and may pose an existential threat to future UK cooperation with European police and security mechanisms.

As a signatory to the Council of Europe Convention on Action against Trafficking in Human Beings³⁴ (the 'Trafficking Convention'), the UK is required to cooperate with other parties during investigation and criminal proceedings, through the "application of relevant applicable international and regional instruments, arrangements agreed based on uniform or reciprocal legislation and internal laws, to the widest extent possible" (Article 32). **Given the importance of the above-listed criminal justice bodies and measures for tackling modern slavery, the ATMG urges the UK Government to pursue membership of them to the greatest extent possible. This will most likely require accepting at least some measure of the CJEU's jurisdiction.**

2. Preventing modern slavery

A. Protecting workers' rights

Protecting workers' rights is key to preventing labour exploitation³⁵ and forced labour³⁶: the enforcement of protective labour laws safeguards workers against abusive employment practices. Workers' rights in the UK are derived in significant part from European Union social law. This body of EU legislation sets minimum standards that Member States must comply with on issues related to employment protection, such as equal treatment and working times. Whilst in some cases EU law has codified standards which already existed in domestic law in the UK, such as maternity rights, in others domestic law has had to be changed to comply with EU standards.³⁷ For instance, legislation on age, religion and sexual discrimination was introduced in the UK because of the EU Framework Equal Treatment Directive in 2000. Protection from discrimination on the grounds of gender reassignment was further strengthened when the CJEU, found in the *P v S and Cornwall County Council case*³⁸, that dismissal because of gender reassignment was a form of sex discrimination.

It is encouraging that the protection of workers' rights has been named by the UK Government as one of the twelve key priorities in the Brexit negotiations, and that it featured in each of the main parties' manifestos in the recent General Election, albeit in varying forms.³⁹ However, the great unknown is how EU law protecting workers' rights will be applied to European Economic Area (EEA) nationals currently working in the UK and future EEA immigrants, particularly important given that the majority of those exploited for their labour in the UK are EEA nationals.

³⁴Council of Europe Convention on Action against Trafficking in Human Beings and its Explanatory Report, Council of Europe Treaty Series No. 197, 2005

³⁵Labour exploitation is work that deviates significantly from labour laws and other legal regulations, in particular regarding remuneration, working hours, leave, health and safety, and decent, respectful treatment of workers

³⁶Forced labour is defined under the ILO Forced Labour Convention, 1930 (No. 29), Article 2.1, as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily".

³⁷House of Commons Briefing paper, Brexit: employment law. Number CBP 7732, 10 November 2016

³⁸Judgment of the Court of 30 April 1996. - P v S and Cornwall County Council. - Reference for a preliminary ruling: Industrial Tribunal, Truro - United Kingdom. - Equal treatment for men and women - Dismissal of a transsexual. - Case C-13/94.

³⁹<http://www.labourexploitation.org/news/flex%E2%80%99s-run-down-what-party-manifestos-mean-labour-exploitation>



7.1 As we convert the body of EU law into our domestic legislation, we will ensure the continued protection of workers' rights. This will give certainty and continuity to employees and employers alike, creating stability in which the UK can grow and thrive.

7.2 ...The Great Repeal Bill will maintain the protections and standards that benefit workers. Moreover, this Government has committed not only to safeguard the rights of workers set out in European legislation, but to enhance them...

Brexit White Paper, February 2017

Whilst the Repeal Bill is intended to transpose EU law into national law at the point at which the UK withdraws from the EU, this law may then subsequently be reviewed, amended or repealed. Some EU laws relating to employment and workers' rights have proven to be controversial and resisted by the Government during the EU negotiations⁴⁰, for instance the Agency Workers Regulations 2010, which implements Directive 2008/104/EC, and the Working Time Regulations 1998, which implements EU Working Time Directive 2003/88/EC. The table below provides a summary of their respective contents.

<p>The Agency Workers Regulations 2010</p>	<p>Provides for the equal treatment of temporary agency workers to the same basic working and employment conditions (e.g. regarding breaks, rest time, overtime, holidays and pay) as if they were hired directly by the employer, following the completion of 12-week qualifying period, for the duration of the assignment with that employer.</p>
<p>Working Time Regulations 1998</p>	<p>Set the maximum working hours (caveated by allowing for an agreement to be reached between employer and employee to work beyond the maximum), and provides that an employer who fails to comply with the regulations is guilty of an offence and may be subject to a fine.</p>

There is a risk that the UK Government, current or future, may choose to repeal or amend EU-derived employment protections, particularly if it favours greater deregulation over worker protections in a bid to seek greater economic competitiveness. It is also worth noting that once the UK withdraws from the EU it will no longer be required to transpose any new EU law into domestic law, nor would any decisions of the CJEU have an automatic binding effect on UK law.

In addition to requiring strong legislation to protect workers' rights, it is also crucial that labour inspection authorities receive a substantial increase in funding to meet the challenges that Brexit will bring for vulnerable workers in the UK. The Gangmasters' Licensing Authority, National Minimum Wage enforcement teams, Employment Agencies Standards Inspectorate and Health and Safety Executive must have their resources greatly increased in order to enable labour market-wide monitoring of labour abuses and enforcement of labour law. Where abuses are uncovered, employers must be duly punished and workers provided access to remedies, including access to compensation in cases where wages have been withheld.

⁴⁰See TUC legal opinion, 'Workers' Rights from Europe: The Impact of Brexit'. Available here: <https://www.tuc.org.uk/sites/default/files/Brexit%20Legal%20Opinion.pdf>

As discussed below, there needs to be a clear separation between labour inspection and immigration enforcement. Failure to do so will prevent migrant workers from reporting abuse for fear of deportation.

B. Controlling immigration

EU immigration, the impact of it and the need for greater controls over it, played a considerable part in the run up to the EU referendum, and has subsequently been listed as one of the twelve priorities in the UK Government’s white paper on Brexit.

5.4 We will design our immigration system to ensure that we are able to control the numbers of people who come here from the EU. In future, therefore, the Free Movement Directive will no longer apply and the migration of EU nationals will be subject to UK law

5.6 We will create an immigration system that allows us to control numbers and encourage the brightest and the best to come to this country, as part of a stable and prosperous future with the EU and our European partners.

Brexit White Paper, February 2017

The current intention is stated to be to put an end to the free movement of persons⁴¹, one of the four freedoms underpinning the Single Market: ensuring that immigration rules for EU nationals are created and adopted in the UK. New legislation on immigration will be required to replace the existing legislative framework.

Official migration statistics show⁴² that the majority (72%) of EU migrants moving to the UK do so for the purposes of work; of these, 57% reported they had a definite job to go to, while 43% arrived looking for work. Much has been made of the migration of EU migrants to take low-skilled, low-paid jobs in the UK. From some corners this migration has been viewed negatively and concerns have been raised that migrant workers are taking jobs that British people could do. From others, this migration has been viewed as a positive development; credited with driving growth in labour intensive sectors such as agriculture and food manufacturing. EU nationals are more likely to take the low-paid, seasonal jobs, which are often unappealing to British nationals. At this stage in negotiations it is not clear which arrangements for UK-EU migration will be agreed upon. However, given that nearly three-quarters of EU nationals come to the UK for the purposes of work, it has been suggested that it could take the form of a work permit system, albeit that employers’ groups have warned against the potentially impractical nature of such a scheme.⁴³

In terms of preventing modern slavery, restrictive migration policies are unhelpful. Limiting the amount of legal migration when there is a demand for labour and services, such as in the UK, plays into the hands of traffickers. People will continue to migrate in search of work to provide a better life for themselves and their families; however, with fewer legal migration channels, individuals wishing to migrate must take greater risks and pay a higher price e.g. for the creation of false

⁴¹The 2004 Citizens Directive (also known as the Free Movement Directive) set out the rights of EU citizens and their family members to move and reside freely within EU territory, and is implemented in the UK via the Immigration (European Economic Area) Regulations 2016.

⁴²Written evidence from the Office of National Statistics to the House of Lords Committee on the European Union inquiry, ‘Brexit: UK-EU movement of people’. Available here: <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/eu-home-affairs-subcommittee/brexit-ukeu-movement-of-people/written/44746.html>

⁴³See House of Lords European Union Committee, Brexit: UK-EU movement of people, March 2017. Available at: <https://www.publications.parliament.uk/pa/ld201617/ldselect/lducom/121/121.pdf>



identity documents, to enter the destination country and the job market. Once in employment they can then be made to work to pay off their debt.

They may then have legitimate concerns about being caught by the immigration authorities; anxieties which can be used by traffickers to coerce them to remain in exploitation. These concerns will have been further exacerbated by the introduction of the 'Offence of illegal working' in the Immigration Act 2016 (Section 34), which applies to those who are working whilst living unlawfully in the UK or working in breach of the conditions of their leave, as well as the 'Right to Rent' scheme (see Sections 39-42), which seeks to prevent landlords and letting agents from renting residential property to people who are unlawfully present in the UK. The introduction of this 'Right to Rent' scheme could serve to increase a victim's reliance on their exploiter for accommodation. Having tougher immigration controls can lead to people being in positions of greater vulnerability and can drive people underground.

A prime example of this is in the case of Overseas Domestic Workers (ODWs). In 2012, the terms of the ODW visa was made more restrictive: domestic workers were tied to one employer through the visa, were only allowed to work in the UK for a maximum of 6 months (a non-extendable period), and were not allowed to change employers whilst in the UK. Prior to 2012, the terms of the ODW visa allowed domestic workers to change employer and renew their visa. An independent review of the ODW visa, published in 2015⁴⁴, decisively concluded that the 2012 changes to the visa terms increased the vulnerability of domestic workers to abuse. The below are key excerpts from the independent review.

Para. 86.2 – "... the presence of a tie to a specific employer places both real and perceived restrictions upon an overseas domestic worker's ability to seek protection of her fundamental rights while at work in the UK which increases her risk of abuse."

Para. 116 – "This review concludes that the current terms of the overseas domestic workers visa are incompatible with the necessary protection of overseas domestic workers' fundamental rights while in the UK. In particular, the effect of the tie to a specific employer, coupled with the absence of any general right to extend the initial six-month term severely restricts the opportunity - and thereby creates a practical barrier - to overseas domestic workers seeking the basic protection provided by an ability to leave an abusive employer."

Independent Review of the Overseas Domestic Workers Visa, 2015

Restrictive migration policies, coupled with a labour market that favours deregulation and flexibility, create the ideal environment for modern slavery to thrive. Although flexible working can provide benefits for some businesses and workers, recent cases (for instance, involving the firms Pimlico Plumbers⁴⁵, Sports Direct⁴⁶ and Uber⁴⁷) have highlighted that it can, in practice, result in an erosion of workers' rights and protections. Individuals on zero-hour contracts or working within the 'gig economy'⁴⁸, often in low-paid jobs, have been granted limited social protection, such as entitlements to sick pay and paid leave, compared to full-time employees. Migrant workers reliant

⁴⁴https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/486532/ODWV_Review_-_Final_Report__6_11_15_.pdf

⁴⁵<https://www.theguardian.com/business/2017/feb/10/pimlico-loses-appeal-against-plumbers-worker-status-in-gig-economy-case>

⁴⁶<https://www.theguardian.com/business/2015/dec/09/sports-direct-warehouse-work-conditions>

⁴⁷<https://www.theguardian.com/technology/2016/oct/28/uber-uk-tribunal-self-employed-status>

⁴⁸The 'gig economy' has been defined as a way of working that is based on people having temporary jobs or doing separate pieces of work, each paid separately, rather than working for an employer.

on these precarious jobs may not only be without labour protections but may also be marginalised and even criminalised by hostile immigration policies. This again plays into the hands of traffickers and exploitative employers.

C. Preventing modern slavery: Mitigating the risks of Brexit

Protecting workers’ rights is key to preventing modern slavery. A significant proportion of workers’ rights and entitlements in the UK employment stem from EU law, which may be vulnerable to repeal post-Brexit. Areas of labour law that are most likely to be reformed post-Brexit, particularly by a UK Government in favour of greater deregulation, include agency worker rights, working time regulations, paternity and maternity rights, and collective redundancy. In order to protect these rights, consideration should be given as to the introduction of primary legislation which transposes and effectively enshrines the relevant EU labour laws.

To effectively enforce these labour laws, labour inspectorates, solely focused on enforcing labour law and having no immigration enforcement responsibilities, must be adequately resourced to monitor compliance and uncover abuses.

The UK Government’s intention on leaving the EU is to end the free movement of people and introduce new immigration arrangements for EU nationals. The risk post-Brexit is that overly restrictive immigration policies will be introduced which increase the vulnerability of migrant workers to exploitation, as exemplified in the case of Overseas Domestic Workers.⁴⁹ These risks are exacerbated when coupled with a labour market that favours deregulation and flexibility; in practice, this has resulted in an erosion of workers’ rights.

If the UK Government wishes to prevent modern slavery it must develop adequate safe and legal migration channels for workers which meet the realistic needs of the labour market, across all sectors and skill levels. Any future changes to immigration law and policy must be subject to an impact assessment which considers the likely effect of these changes on efforts to tackle modern slavery, including whether migrants will be made more vulnerable to exploitation because of these changes, and/or less willing/able to seek protection and justice should they suffer abuse.

3. Protection of victims

A. EU Legislation

The EU has introduced a number of legislative measures to strengthen the protection of victims of human trafficking, the most notable of which is EU Directive 2011/36/EU⁵⁰ (hereafter the ‘Trafficking Directive’). The Trafficking Directive, which the UK opted in to on 18th October 2011⁵¹, adopts a victim-centred, human rights-based approach and contains comprehensive provisions covering the 4 P’s, including providing for a national rapporteur.

⁴⁹Statistics from the organisation show that those who entered on a visa which tied them to their employers (the tied or the diplomatic domestic worker visa) had worse conditions and less freedom. See <http://www.kalayaan.org.uk/wp-content/uploads/2014/09/Kalayaan-2nd-Reading-Modern-Slavery-Bill.pdf>

⁵⁰Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA.

⁵¹https://ec.europa.eu/anti-trafficking/legislation-and-case-law-eu-legislation-criminal-law/directive-201136eu-applied-united-kingdom_en



Articles 11 to 17 set out the assistance support measures to be provided to victims of human trafficking, including a recovery and reflection period and access to compensation. Not only does the Directive set out the types and standards of support that should be made available e.g. appropriate and safe and accommodation, but it also sets out safeguards for the provision of this support e.g. that assistance and support should be provided on a consensual and informed basis (Article 11(5)), and should not be made conditional on the victim's willingness to cooperate in a criminal investigation (Article 11(3)).

The UK's decision to opt-in to the Trafficking Directive was unanimously welcomed across the anti-trafficking sector, particularly as it had a significantly greater victim protection focus than the Framework Decision (2002/629/JHA) that it repealed and replaced. As a Directive, its provisions can have direct effect in national law when they are unconditional and are sufficiently clear and precise⁵². States must incorporate EU Directive provisions into national law which can then be relied upon by individuals in the national courts. UK courts can also look to the Court of Justice of the European Union (CJEU) regarding questions related to the interpretation and scope of the Directive.

Other EU legislation related to victim protection, which apply to the UK, include:

- **EU Directive 2004/80/EC** which establishes a system of cooperation to facilitate access to compensation to victims of crimes in cross-border situations, including human trafficking.
- **EU Directive 2012/29/EU** which establishes minimum standards on the rights, support and protection of victims of crime.
- **EU Directive 2011/99/EU** on the European Protection Order (EPO) which ensures that victims of crime who are granted protection under national law in one Member State will receive similar protection if they move to, or take an extended stay, in another Member State.

B. UK case law

In the UK Courts, the Trafficking Directive has been relied on in several significant test cases. For example, in the case of *L, HVN, THN & T v R [2013] EWCA Crim 991*⁵³ heard in the Court of Appeal, Article 8 of the Directive (non-punishment and non-prosecution of victims) was relied on in significant part. In this case three of the four defendants had been trafficked to work in cannabis cultivation and subsequently prosecuted and convicted for drug cultivation offences. The fourth defendant in this case, 'L', was a Ugandan national trafficked to the UK for sexual exploitation. When L attempted to apply for a National Insurance number following the release from her trafficker, she was arrested for the use of a forged passport, given to her by her trafficker (L believed the passport was genuine). Only once in prison was L identified as a potential victim of trafficking and referred into the National Referral Mechanism (NRM). The defence successfully argued that the crimes committed were consequent on, or integral to, their trafficking and therefore they shouldn't have been prosecuted. The convictions of the four defendants were all quashed, and resulted in new Crown Prosecution Guidance (CPS) guidance on the prosecution of victims of trafficking being issued.

⁵²<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AI14547>

⁵³Judgment available here: <http://www.bailii.org/ew/cases/EWCA/Crim/2013/991.html>

Another recent case of *AK vs Bristol City Council*⁵⁴ raised questions regarding the UK's obligations under Article 11 of the Trafficking Directive (as well as Article 3 and 4 of the European Convention on Human Rights). The claimant was a Lithuanian national and a victim of trafficking, conclusively identified as such by the Competent Authorities in the NRM. However, as an EEA national she was not granted leave to remain on receipt of her positive Conclusive Grounds decision. Having been unable to pass the 'habitual residence test' and also not being a jobseeker or worker, the claimant found herself destitute. Bristol City Council, initially unwilling to provide support, eventually agreed to provide accommodation to the claimant until she has access to alternative accommodation and provide the claimant with subsistence support. The case was heralded as a significant test case providing clarity on local authority responsibilities on the support to be provided to conclusively identified victims of trafficking.

C. Victim protection in domestic legislation

The Modern Slavery Act and the respective Human Trafficking and Exploitation Acts in Scotland⁵⁵ and Northern Ireland⁵⁶ each contain provisions regarding victim protection for children, for instance, providing for Independent Child Guardians/Trafficking Advocates. However, only the Scotland and Northern Ireland Acts place a legal duty on Ministers to provide support and assistance to adult victims of modern slavery.

Both Acts explicitly state the minimum types of support that should be provided (the list is non-exhaustive), which reflect the support standards set out in the Trafficking Directive, as well as the 2005 Council of Europe Convention on Action Against Trafficking in Human Beings (the 'Trafficking Convention'). They also state that support should be provided in the period between a reasonable grounds and conclusive determination (through the NRM) that the person is a victim, as well as prior to the reasonable grounds determination (i.e. if a referral about the individual is about to be made) and after the conclusive determination is made, for as long as deemed necessary. The Northern Ireland Act goes further still by stating that support can continue to be provided to persons who are conclusively determined not to be victims, if continued support is deemed necessary, and to eligible victims even if they leave Northern Ireland⁵⁷.

Both the Scotland and Northern Ireland Acts include the key principles and safeguards for support provision listed in the Trafficking Directive i.e. that support must be provided on an informed and consensual basis, and that support provision should not be dependent on an individual's willingness to act as a witness in criminal proceedings. The Northern Ireland Act again goes further, stating that consideration should be given to the special needs and vulnerabilities of victims, and that support must be offered from a person who is of the same gender.

The Modern Slavery Act does not explicitly place a duty on the State to provide support and assistance to victims, nor set out victims' support entitlements. Rather, the arrangements for identifying and supporting victims are to be set out in guidance (as per Section 49 of the Modern Slavery Act) to be issued by the Secretary of State, which may be revised from 'time to time'. The Secretary of State may also make regulations (as per Section 50) in this regard. Therefore, unlike those in Scotland and Northern Ireland, victims in England and Wales cannot look to the Modern Slavery Act to claim their rights to support.

.....

⁵⁴<http://www.dpglaw.co.uk/wordpress/wp-content/uploads/2016/04/1092383-Consent-order-sealed-18.11.2015.pdf>

⁵⁵Human Trafficking and Exploitation (Scotland) Act 2015

⁵⁶Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

⁵⁷The reasoning behind this can be found in the explanatory notes; 'Subsection (9) provides a further discretionary power which would ensure that the Department is able to continue to provide support to an individual beyond the point where a Conclusive Determination is made, where that is considered necessary'.



The drafting of the statutory guidance on victim identification and assistance began in 2016, however at the time of writing the drafting process has been postponed. There have also been no assurances given as to when, or even if, the statutory regulations will be brought forward. This must be rectified prior to the UK's exit from the EU: this important guidance and regulations must be published and in use as soon as possible and at least prior to the UK's withdrawal from the EU. To ensure parity of victim care across the UK, the guidance and regulations must be in line with international obligations under the EU Trafficking Directive, and set out victim support entitlements equivalent to those in the Scotland and Northern Ireland Acts.

D. Protecting victims: Mitigating the risks of Brexit

This disparity in legislation across the UK jurisdictions needs to be addressed prior to the UK's exit from the EU. Given the additional rights to support and assistance the EU Trafficking Directive provides to victims in England and Wales, rights which would be lost if the Directive is repealed post-Brexit, **primary legislation must be introduced without delay to transpose the Directive's support and protection provisions. This would ensure consistency across the three UK jurisdictions and 'future-proof' the legal rights of modern slavery victims to protection and support.**

4. Partnerships

In addition to the bodies and measures facilitating partnership-working and cooperation in law enforcement and criminal justice, funding streams and platforms have been established by the EU to facilitate partnership working between civil society organisations. The European Commission has led efforts to develop a co-ordinated approach by the EU to tackling human trafficking; launching the EU Strategy towards the eradication of human trafficking 2012-2016 (see Box 2 below) and appointing an EU Anti-Trafficking Coordinator. The Coordinator is responsible for improving coordination and consistency between EU institutions and agencies, Member States and international actors, and for developing EU anti-trafficking policies.

Box 2. EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016

The EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016 (hereafter the 'EU Strategy') sets the policy framework and identifies five priorities the EU should focus on. It also outlines several actions which the European Commission proposes to implement during 2012-2016 in concert with other actors, including Member States, European External Action Service, EU institutions, EU agencies, international organisations, third countries, civil society and the private sector. Those priorities are as follows:

- 1. Identifying, protecting and assisting victims of trafficking**
- 2. Stepping up the prevention of trafficking in human beings**
- 3. Increased prosecution of traffickers**
- 4. Enhanced coordination and cooperation among key actors and policy coherence**
- 5. Increased knowledge of and effective responses to emerging concerns related to all forms of trafficking in human beings.**

In 2016, the European Commission reported on the progress made by Member States to implement the 2011 EU Trafficking Directive and the action taken by stakeholders under the EU Strategy to tackle human trafficking. The report is based on information gathered from National Rapporteurs or equivalent mechanisms, civil society organisations and EU agencies and organisations.

The European Commission, together with other EU agencies, has also coordinated efforts to improve the response to the rising number of unaccompanied migrant children in Europe and their exposure to violence, exploitation, and trafficking both before and/or after their arrival in the EU. Most recently, in April 2017, the Commission launched new guidelines⁵⁸ on the protection of children in migration in the EU. The guideline set out a series of actions which need to be either taken or better implemented now by the European Union and its Member States to address protection gaps and needs that children, including those that are trafficked or at risk of trafficking, face once they reach Europe, ranging from their identification, reception, implementation of procedural safeguards, and establishment of durable solutions.

A. EU Civil Society Platform against Trafficking in Human Beings

The civil society platform was launched in 2013 and is open to a selected number of EU Member State civil society organisations who are experienced in protecting and supporting victims of trafficking. Members of the platform meet bi-annually to discuss key issues, share information and ideas, and network with other anti-trafficking organisations. The meetings are attended by National Rapporteurs or Equivalent Mechanisms (NREMs) from EU Member States, providing civil society organisations the opportunity to discuss pertinent issues with these representatives. In addition to the meetings, the European Commission website hosts an EU Civil Society e-platform where members can continue to discuss and share information.

At the time of writing, expressions of interest to participate in the civil society platform are being accepted from EU Member States and Albania, Morocco, Turkey and Ukraine. If the UK is no longer a member of the EU, UK-based NGOs must negotiate with the European Commission to continue to participate.

B. EU Projects and funding

The financial programmes of the European Commission provide vital funding for anti-trafficking projects across the EU and for third Member States.

Some examples of the key European Commission's funding programmes, past and present, have included:

- I. **European Social Fund** – 2014-2020 – Funding €4.9 billion for six operational programmes in Wales, Scotland, Northern Ireland, England and Gibraltar, and includes €206 million for the Youth Employment Initiative (YEI). Combined the European Social Fund and European Regional Development Fund are investing around €11.8 billion across the UK.
- II. **Prevention and fight against crime (ISEC)** – 2007-2013 – Budget of €600 million
- III. **The Daphne Programme**- 2014-2020 – a part of the Rights, Equality and Citizenship Programme with a budget of €439 million.
- IV. **European Instrument for Democracy and Human Rights (EIDHR)** - 2014- 2020 – Has a budget of €1,332,752,000

⁵⁸https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170412_communication_on_the_protection_of_children_in_migration_en.pdf

In 2016, the EU Anti-Trafficking Coordinator undertook a review⁵⁹ of the anti-human trafficking projects that had been funded by the European Commission. The review found that between 2004 and 2015 the Commission funded 321 anti-trafficking **projects** at a total of EUR €158.5 million during the period, enabling project activities in over 100 countries worldwide. Two thirds of funded projects and funding was awarded to principal grant holders located in EU Member States and one third to principal grant holders located in non-EU countries. Just over half of funded projects were led by non-governmental organisations (52%); other stakeholders included State agencies, international organisations, and universities and other research organisations.

Below are a few examples of successful European Commission-funded projects, in which UK organisations have worked collaboratively on projects with their European counterparts to tackle modern slavery.

Name of project	Date	Project partners	Project aims
Response Against Criminal Exploitation (RACE) in Europe	Nov 2012- Nov 2014	8 partners from 4 countries	To improve knowledge and responses to human trafficking for the purposes of forced criminal exploitation and forced begging in Europe.
Pro-Act (Pro-Active Identification and Support of Victims of Trafficking for Labour Exploitation in the EU Project)	Oct 2014 – Oct 2016	6 partners in 3 countries	To improve responses to human trafficking for labour exploitation by developing effective EU -wide strategies for the proactive identification and support for trafficked persons.
Reinforcing Assistance to Child Victims of Trafficking in Europe (ReACT project)	Nov 2015 – Nov 2017	6 partners from 5 countries	To increase the capacity of representatives (guardians and lawyers) for child victims of trafficking and to ensure that children are identified as victims (and not perpetrators), and have their rights upheld during legal proceedings in key trafficking destinations countries (Belgium, France, Germany, Netherlands and UK).
TRACKS - Identification of TRafficked Asylum seekers' Special needs	Jan 2016 – Jan 2018	6 partners from 6 countries	To identify the special needs of asylum-seeking victims of trafficking and improve practitioners' capabilities to respond to these needs, bringing consistency and coherence throughout EU Member States in the way asylum seekers victim of THB are accompanied and supported.

⁵⁹https://ec.europa.eu/anti-trafficking/sites/antitrafficking/files/study_on_comprehensive_policy_review.pdf

Annually, charities receive approximately £200m from EU funds every year, the majority from the European Social Fund. Until the terms of Brexit have been negotiated the UK will continue to make contributions to the EU budget and continue to receive EU funding. A guarantee was made by the Chancellor, Phillip Hammond, in August 2016 that the Treasury would underwrite any European Commission funding payments received by UK organisations whilst the UK was still a member of the EU, even if the projects continue beyond the date of the UK's departure from the EU.⁶⁰

The extent to which the UK will be able to continue accessing these funds post-Brexit will be dependent on the outcome of the negotiations. As detailed in the House of Commons briefing paper 'UK Funding from the EU', published in December 2016⁶¹, there is a possibility that the UK may still receive funding once it has left the EU, as a third member state. Full participation in the various funding streams will likely be conditional on various factors, such as the amount of financial payments made by the UK into the EU budget or membership of the European Economic Area (EEA).

The wider economic uncertainty around Brexit may also impact negatively on the financial health of charities. Individuals and businesses impacted by a downturn in the economy will be less inclined to donate to charitable causes, and a depreciation in the value of sterling will limit the amount of work that charities can do with the funding they receive. Given these concerns, the House of Lords Select Committee on Charities has recommended that the Office for Civil Society undertakes "an audit of the potential impact of Brexit on charities and brings forward proposals to address any negative effects".⁶²

C. Partnerships: Mitigating the risks of Brexit

Recognising that all countries are affected by human trafficking and modern slavery, and that cross-border partnerships are crucial to tackling it, the European Commission has taken a leading role in coordinating and funding anti-trafficking efforts, for instance through instituting an Anti-Trafficking Coordinator and through the creation of the EU Civil Society Platform. The various EU funding streams, in particular the European Social Fund, have provided an important resource for UK charities.

The risk post-Brexit is that the UK, outside of the EU, will have restricted access to vital EU funding to undertake anti-trafficking work. Furthermore, whilst UK NGOs will continue to individually collaborate with their counterparts in other EU Member States, continued access to EU platforms and networks, such as the EU Civil Society Platform against Trafficking in Human Beings, will require negotiation. Continued representation at these information-sharing and networking forums is important for UK anti-trafficking efforts; providing NGOs the opportunity to understand current trends, learn about good practice, and develop partnerships across the sector.

⁶⁰HM Treasury, Chancellor Phillip Hammond guarantees EU funding beyond date UK leaves the EU. Available here: <https://www.gov.uk/government/news/chancellor-philip-hammond-guarantees-eu-funding-beyond-date-uk-leaves-the-eu>
⁶¹House of Commons Library Briefing Paper Number 7847, 29 December 2016, 'UK Funding from the EU'.
⁶²House of Lords Select Committee on Charities, Report of Session 2016–17 HL Paper 133, 'Stronger charities for a stronger society'. Available here: <https://www.publications.parliament.uk/pa/ld201617/ldselect/ldchar/133/133.pdf>



Conclusion

The UK's membership in the European Union has played a considerable role in shaping domestic efforts to tackle modern slavery. In combatting what is often a transnational crime, the UK has relied heavily on involvement in European criminal justice bodies and measures, such as Europol and Eurojust, which have allowed closer collaboration between Member States to dismantle trafficking networks and bring traffickers to justice.

The introduction of targeted and comprehensive EU legislation on victims' and workers' rights has driven improvements in national standards of employment law and victim support. This legislation, either transposed into UK law or used directly, has been drawn on in national courts to secure the rights of trafficking victims in the UK to protection and support.

The European Commission, together with other EU agencies, has helped to coordinate efforts and facilitate partnership-working between state and civil society actors in the anti-trafficking field. It has done so through the introduction of key coordinating roles, such as the EU Anti-Trafficking Coordinator, and by creating information-sharing platforms, such as the EU Civil Society Platform against Trafficking in Human Beings. The institution of financial programmes, such as the European Social Fund, has also provided an important source of funds for UK organisations to undertake numerous cross-EU anti-trafficking projects. This partnership-working has led to a better understanding of modern slavery in the UK and across Europe: the form it takes, its causes and how best to tackle it.

The risk, post-Brexit, is that the UK will have reduced access (or in the worst case no access) to EU bodies, measures and funds that have proven so useful in the UK's fight against modern slavery. Whilst the UK Government has highlighted its desire to maintain a collaborative relationship with Europe regarding security and justice, and what appears to be reciprocal interest from the EU, the extent to which the UK can retain membership in the various bodies and measures as a non-EU, non-Schengen Member State remains to be seen. The UK's negotiating position is set to be complicated by the Government's stated reluctance to remain under the jurisdiction of the Court of Justice of the European Union (CJEU). In fact, given that European criminal justice and security bodies recognise the jurisdiction of the CJEU, the UK's intention to withdraw completely from the CJEU seems to pose an existential threat to future UK cooperation with European police and security measures.

If the UK transposes current EU law into national law, as intended through the 'Repeal Bill' (originally titled the 'Great Repeal Bill'), key legislation that protects victims' and workers' rights will be retained post-Brexit, at least in the short term. The risk, however, is that this legislation will be repealed or amended in the longer-term, particularly if the Repeal Bill includes "Henry VIII powers", which allow Ministers to change primary legislation without the scrutiny of Parliament. This could result in the weakening of victims' rights and labour protections. For instance, the 2011 EU Trafficking Directive sets out the minimum standards of support and assistance that victims of trafficking are entitled to, including a recovery and reflection period and access to compensation. Unlike in Scotland and Northern Ireland, domestic law in England and Wales (namely the Modern Slavery Act) does not place a duty on the State to provide support and assistance to victims, nor set out their support entitlements. Should the EU Trafficking Directive be repealed post-Brexit, victims of modern slavery in England and Wales will be unable to look to domestic legislation to claim their rights to support.

In summary, the UK's forthcoming exit from the EU risks jeopardising the progress made domestically in tackling modern slavery and protecting its victims. To minimise these risks, the Anti-Trafficking Monitoring Group recommends the following:

- The UK Government must **pursue access to European criminal justice and security measures to the greatest extent possible**, and continue to prioritise law enforcement cooperation as part of the Brexit negotiations.
- To the extent that it allows such continued cooperation, **the UK must accept some measure of the jurisdiction of the CJEU**.
- Prior to the UK exiting the EU, **primary legislation must be introduced which transposes the rights of victims to support and assistance**, as detailed in the EU Trafficking Directive, into domestic law in England and Wales.
- The UK Government should **introduce primary legislation which transposes EU labour law that protects worker's rights**.
- The UK Government must **undertake an impact assessment for any new proposed law and policy related to immigration** to assess its likely impact on efforts to tackle modern slavery, including whether migrants will be made more vulnerable to exploitation because of these changes, and/or less willing/able to seek protection and justice should they suffer abuse.

Annex 1: EU Criminal Justice institutions and bodies

EUROPEAN BODY/MEASURE	LEGAL BASIS	PURPOSE	BENEFITS OF MEMBERSHIP	CONSEQUENCE OF BREXIT
<p>Europol</p>	<p>Regulation (EU) 2016/794 The UK opted in to this Regulation as of 14 November 2016 (notably since the Brexit vote).</p>	<p>Europol is the EU's law enforcement agency. It supports EU Member States in their fight against serious international crime and terrorism.</p>	<p>Europol provides support to EU law enforcement authorities through information exchange, intelligence analysis, training, and coordinating law enforcement operations.</p> <p>Europol is highly active in supporting law enforcement agencies in tackling human trafficking and modern slavery.</p>	<p>When the European Communities Act (ECA) is repealed, Regulation 2016/794 will cease to have effect in the UK.</p> <p>The UK will cease to be a member of Europol unless a new relationship is negotiated. A non-EU member state cannot be a member of Europol but may be an affiliate member.</p> <p>Brexit may result in the UK losing its strategic role in Europol's management.</p>
<p>Eurojust</p>	<p>The scope of, and rules governing, Eurojust are set out in Council Decisions 2009/426/JHA, 2003/659/JHA and 2002/187/JHA.</p>	<p>Eurojust is the EU's Judicial Cooperation Unit. Its purpose is to support EU countries combat serious organised crime involving more than one member state.</p> <p>It can request competent authorities to investigate or prosecute specific acts of criminality, help organise and support coordination meetings and centres, and facilitate and support Joint Investigation Teams ('JITs').</p>	<p>Eurojust facilitates coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more member states.</p> <p>Eurojust provides technical, financial and logistical support to EU member states for JITs.</p>	<p>The Relevant Council Decisions related to Eurojust will cease to have direct effect.</p> <p>The UK, as non-EU Member State may negotiate a bilateral cooperation agreement with Eurojust, however it could lose its role in the strategic direction and management of Eurojust, and may not have access to the Eurojust case management system.</p>
<p>European Arrest Warrant (EAW)</p>	<p>Council Framework Decision 2002/584/JHA Extradition Act 2003</p>	<p>Facilitates the extradition of individuals between EU Member States to face prosecution or to serve a</p>	<p>EAW simplifies the judicial procedures designed to surrender people for the purposes of a criminal prosecution or prison sentence. It replaces lengthy</p>	<p>UK's rights and obligations under the Framework 2002/584/JHA will lapse. The UK will need to modify its extradition relationship with the remaining states of</p>

<p>European Criminal Records Information System ('ECRIS')</p>	<p>Council Framework Decision 2009/315/JHA and Council Decision 2009/316/JHA</p>	<p>ECRIS is a secure electronic system for the exchange of information on convictions between EU Member States. Its purpose is to ensure criminals don't escape their criminal past by moving countries.</p>	<p>ECRIS provides judges and prosecutors with easy access to the criminal records history of an individual in a different member state, thereby removing the possibility that they can escape justice by moving country. The system allows states to quickly know if they have identified a criminal within their state jurisdiction.</p>	<p>extradition procedures and aims to put an end to political involvement in extradition.</p>	<p>the EU. Non-EU Member States have negotiated bilateral agreements with the EU that the UK could seek to replicate, however these countries are members of the Schengen Zone and willing to accept the jurisdiction of the CJEU.</p>
<p>Schengen Second Generation Information Services ('SIS II')</p>	<p>Schengen Acquis, Schengen Agreement Application Convention</p>	<p>SIS II is a database of live alerts regarding individuals and objects of interest to law enforcement (including EAW targets). Its main purpose is to help preserve internal security in the Schengen States in the absence of internal border checks.</p>	<p>SIS II enables participating countries to share and receive law enforcement alerts in real time e.g. on persons wanted for arrest for the purposes of extradition, or for witnesses, absconders, or subjects of criminal judgements to appear before the judicial authorities.</p>	<p>SIS II enables participating countries to share and receive law enforcement alerts in real time e.g. on persons wanted for arrest for the purposes of extradition, or for witnesses, absconders, or subjects of criminal judgements to appear before the judicial authorities.</p>	<p>If the UK left Europol post-Brexit, it would lose access to ECRIS immediately. If the UK wishes to retain access to this information on another basis (either through a separate agreement or agreements or through informal channels), it would likely require that the UK be subject to EU data protection laws that it will no longer can shape.</p>
<p>Prüm Decisions</p>	<p>Council Decision 2008/615/JHA and Council Decision 2008/616/JHA</p>	<p>These decisions have granted the UK access, through EU membership, to national databases containing DNA profiles, fingerprints and vehicle registration data across the EU.</p>	<p>Prüm simplifies and increases the efficiency of current EU-wide intelligence gathering processes, and encourages greater sharing of information. It allows UK law enforcement agencies to rapidly establish whether an individual was known in another Member State, or eliminate a line of enquiry, much earlier in the investigation.</p>	<p>Prüm simplifies and increases the efficiency of current EU-wide intelligence gathering processes, and encourages greater sharing of information. It allows UK law enforcement agencies to rapidly establish whether an individual was known in another Member State, or eliminate a line of enquiry, much earlier in the investigation.</p>	<p>Decisions will cease to apply in the UK. New agreements (either UK-EU or bi-lateral) would need to be agreed. New legislation may be required to replace the decisions.</p>

<p>Passenger Name Records</p>	<p>Sharing and storing of passenger info regulated by EU Directives 2004/82/EC and 2016/681 (due to be implemented prior to 25 May 2018).</p>	<p>For the sharing of passenger information by carriers and the storage of passenger names.</p>	<p>UK Border Force screens information held or collected by carrier (e.g. how travel booked, by whom, contact details) against watchlists to allow early identification of persons of known interest to security, immigration, customs or law enforcement.</p>	<p>The 2004 Directive was enacted through various UK laws likely to be in force following the introduction of the Repeal Bill, however these may be subsequently amended and repealed by the UK Government.</p>
<p>Mutual Recognition of asset freezing & confiscation order</p>	<p>Council Framework Decision 2006/783/JHA</p>	<p>Recognition and enforcement of confiscation orders in criminal matters and for related cooperation between EU Member State courts.</p>	<p>This regime allows the UK to request that other EU Member States recognise UK orders and enforce them abroad, or vice versa.</p>	<p>Decisions will no longer have direct effect. New agreements (either UK-EU or bi-lateral) will need to be agreed.</p>
<p>European Investigation Order ('EIO')</p>	<p>Directive 2014/41/EU. Due to be implemented by the UK before 22 May 2017</p>	<p>EIOs used to obtain evidence in another Member State for the purposes of a criminal investigation.</p>	<p>EIO builds on previous 'mutual legal assistance' agreements by moving to a "demand-based" system with tight deadlines and few refusal grounds. It allows states to issue demands for evidence not yet in existence i.e. adds an evidence-gathering function.</p>	<p>If UK implements this Directive pre-Brexit, it will continue to be in force through the Repeal Bill, however may be subsequently amended and repealed by the UK Government.</p>



The Anti-Trafficking Monitoring Group (ATMG) was established in May 2009 and works to promote a victim-centred, human rights-based approach to protect the well-being and best interests of trafficked persons.

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The ATMG comprises:

AFRUCA

Amnesty International UK

Anti-Slavery International

Ashiana Sheffield

Bawso

ECPAT UK

Focus on Labour Exploitation (FLEX)

Helen Bamber Foundation

Kalayaan

Law Centre (NI)

The TARA Service (Trafficking Awareness Raising Alliance, of Community Safety Glasgow)

The Snowdrop Project

UNICEF UK

The Anti-Trafficking Monitoring Group,
c/o Anti-Slavery International,
Thomas Clarkson House,
The Stableyard,
Broomgrove Road,
London SW9 9TL,
United Kingdom

For further information see: www.antislavery.org/atmg

The **Anti Trafficking** **Monitoring** Group

