

Interim Title: *Brexit Means Brexit...Until it Doesn't: Examining the United Kingdom's Decision to Remain within Europol and Future Internal EU Security Cooperation*

Author: *Jobel Kyle Petallana Vecino*

Institution: *The University of California, Berkeley*

Adviser: *Andrew Reddie, The University of California, Berkeley*

Abstract: *In 2016, the United Kingdom voted to leave the European Union. In the ensuing months, the British government repeatedly emphasized that the UK was going to leave the EU and its institutions as per the will of the voters. However, approximately five months after the EU referendum occurred, the British government announced it would remain a member of Europol, thereby avoiding the first operational divorce from the EU. The decision to remain in Europol raised the question of why the British government would decide to remain a member of an EU security organization when it already committed itself to departing the EU and its institutions. This paper attempts to explain why the UK remained a member of Europol and what the future relationship between the UK and Europol may look like. This paper also illustrates that new crime trends give Europol more legitimacy as an institution for cooperation.*

The United Kingdom shocked the world on June 23, 2016 after a majority of its citizens voted to leave the European Union in a referendum called by then-Prime Minister David Cameron. (British Broadcasting Corporation, 2016) “Brexit” became the colloquial expression to describe the secession of the UK from the EU and related events post-referendum. In the midst of what seemed like a triumph for Euroscepticism and a possible sign of dire straits for the integrity of the EU, a moment of cooperation appeared – the UK would opt-in to (agree to accept) the new European Police Office (Europol) regulation, maintaining full membership within the organization (Home Office, 2016). The peculiarity of the decision to remain in Europol lies in its timing. Contemporary British political rhetoric included constant affirmations from prominent policymakers, most notably the new Prime Minister Theresa May, that “Brexit means Brexit” – that the country would undoubtedly leave the EU (Calamur, What 'Brexit Means Brexit' Means, 2017). Furthermore the announcement came at a time when negotiations between the UK and the EU were supposedly underway to determine how the UK will proceed with its departure and what the future relationship between the two entities would be (House of Commons, 2016). However, the government did not only retain membership in an EU institution, it also emphasized how pivotal this continued membership would be to British safety and security (Home Office, 2016). Hence, the British government decided to disavow the decision to divorce from at least one EU institution despite the fervor and public mandate to depart from the union. This paper seeks to examine why the UK decided to retain its membership in Europol despite choosing to abandon Europol’s parent organization, the EU.

Europol is an EU agency headquartered in The Hague, Netherlands. It primarily concerns itself with assisting member states with fighting crime and terrorism by providing member state law enforcement agencies with a mechanism to facilitate security intelligence exchange,

primarily concerning internal security matters (European Union, 2016). Europol also coordinates cross-border anti-crime and anti-terrorist operations with member states' law enforcement agencies and interfaces with outside partners (Europol, 2017). Europol also collects open-source intelligence (OSINT), intelligence procured from publicly-available sources, and creates analyses from both intelligence provided by member states and collected by the agency (Walsh J. I., *Intelligence-Sharing in the European Union**, 2006). This paper submits that growing security concerns, both internal and external, explain not only the UK's choice to remain a member of Europol, but also why the UK may remain a member of Europol even after the UK leaves the EU. These security concerns include the potential loss of access to Europol intelligence for British law enforcement agencies, the benefit that the UK and the EU perceive from continued security intelligence cooperation, the escalating digitization of crime, and the proliferation of cybercrime. The borderless nature of the last two and Europol's focus on collecting open-source intelligence from the internet will push the UK and the EU to increase their cooperation in these sectors in order to successfully fight cybercrime. Therefore, security concerns can trump a politically-driven divorce of a state from a larger entity.

This paper will discuss the referendum and the subsequent events regarding the UK's relationship with Europol, examine the four aforementioned security concerns and attempt to show why all four explain the UK's decision to remain in Europol, and provide an analysis of the UK's decision to stay in Europol and what future UK-EU security cooperation may look like. This paper draws from information from interviews conducted by the government institutions and think tanks as well as published reports and the existing literature on intelligence sharing and EU institutions. The following analysis draws from Björn Müller-Wille's intelligence cooperation model and neoliberal institutional theory to argue that the UK's continued

membership in the Europol shows that Europol members may trust the institution enough to outweigh mistrust of other member states. Effectively, this might also signal that the biggest hurdle to the “Europeanization of intelligence”, mistrust, can be overcome.

Britain on the Run

The Brexit referendum was held on June 23, 2016, resulting in a victory for the choice to “Leave” the EU with a vote share of 51.89% to 48.11%, creating shockwaves throughout the world (The Electoral Commission, 2016). Prime Minister David Cameron resigned the day after, remarking that negotiations “with the European Union will need to begin under a new prime minister” and that his successor should make the “decision about when to trigger Article 50 and start the formal and legal process of leaving the EU” (The Telegraph, 2016). Cameron served until his political party, the Conservative Party, chose a new leader who would also succeed Cameron as Prime Minister. Home Secretary Theresa May emerged victorious from the leadership election and formally became Prime Minister on July 13, 2016 (Kuenssberg, 2016). May appointed David Davis, a Eurosceptic member of Parliament, to be the Secretary of State for Exiting the European Union. Davis became the head of the Department for Exiting the European Union, the ministry in charge of exit negotiations with the EU and establishing the post-Brexit UK-EU relationship (Reuters, 2016).

Security became a major priority of the Brexit negotiations. In a debate in the British House of Commons, Davis outlined four points of focus for the negotiations. Among those points included “[maintaining] the strong security cooperation [the United Kingdom has] with the EU” (House of Commons, 2016). Not long thereafter, the May government needed to make one of its first long-term EU-cooperation decisions by choosing whether to opt-in to new Europol regulations adopted by the European Parliament earlier that year (Paravicini, 2016).

Choosing not to opt-in would result in the UK's exit from Europol and thus one of the first steps toward political and operational separation from the EU. One month later, the British government announced its intention to opt-in to new Europol regulations to allow for the UK to continue its Europol membership beyond May 2017. The government explained its reasoning in an explanatory memorandum: "Opting in will maintain operational continuity and minimise disruption for UK law enforcement ahead of the UK exiting the EU, ensuring our Liaison Bureau at Europol is maintained, and that law enforcement agencies can continue to access Europol systems and intelligence" (Home Office, 2016). The statement showed how necessary the British government deemed Europol to ensure domestic security.

In the lead-up to the referendum, opinions among policymakers, professionals, and academia were mixed about the potential effects of Brexit on British security. Richard Dearlove, the former head of the Secret Intelligence Service (MI6), Britain's foreign intelligence agency, argued that Brexit would lead to little loss on the national security front, claiming that it "is difficult to imagine any of the other EU members ending the relationships they already enjoy with the UK" (Dearlove, 2016). In other words, bilateral security relationships between UK countries and the EU were unlikely to change. David Omand, the former head of the British signals intelligence agency GCHQ, disagreed. He claimed that "the safer Europe the safer we are", arguing that despite British frustration with European intelligence and police actions, the UK's security remained dependent on continental security (Nawaz & Ebner, 2016). Dearlove and Omand's disagreements regarding the possible effects of Brexit on British security highlighted a crucial divide on the value of continued cooperation between the UK and EU institutions. Such a divide made the decision to rejoin Europol all the more indicative of what direction British policymakers wanted to go post-referendum.

The UK has been a member of Europol since the inception of the organization.

Cooperation on criminal and justice affairs was first codified within Article K9 of the Maastricht Treaty in 1992. The treaty outlined the following:

“police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol)” (European Union, 1992).

A limited form of the organization arose in 1994 as an intergovernmental group. After the EU member states ratified the Europol Convention, Europol began conducting full operations in 1999 (Buljevic, 2011). The Council of the EU established Europol as an EU agency in 2009 (European Union, 2009). Also in 2009, Rob Wainwright, a former intelligence analyst at the Security Service (MI5), the British government’s domestic intelligence agency, became the Director of Europol (Armond, et al., 2016). Under Wainwright’s leadership, Europol expanded its operations to focus on cybercrime and cybersecurity concerns, establishing the European Cybercrime Center (EC3) in 2013 (Europol, 2017). In 2014, Europol membership was one of 35 pre-Treaty of Lisbon police and criminal justice regulations the UK chose to opt-in to retain (European Parliament Secretariat, 2014). After the terrorist attacks in Brussels and Paris in 2015 and 2016, the European Parliament and the Council of the EU agreed to a new regulation allowing for the expedited establishment of specialized units to respond to terrorist or criminal threats, providing stronger legal grounding to Europol activities, and altering the governance of Europol, establishing a Joint Parliamentary Scrutiny Group meant to hold Europol accountable to the EU parliament and the member states’ legislatures (European Union, 2016). Most EU states adopted the regulation but the UK chose not to at the time (Armond, et al., 2016). The UK announced it decided to opt-in to the regulation and continue its full Europol membership on

November 16, 2016, nearly five months after the Brexit referendum determined that the UK should leave the EU.

Breaking Up is Never Easy

Given the divide on desired policy from members of government, academia, and former practitioners, it remained nebulous precisely what direction the British government would on Europol membership. In spite of the vote to leave the EU and constant affirmations from government officials that “Brexit means Brexit”, the British government not only made the decision to continue remaining a part of Europol, it also emphasized how important the institution was to British security (Home Office, 2016). Such a sentiment can only be testament to the belief from British policymakers that domestic British security is reliant (to some extent) on collective European security. There are two reasons that help explain this belief. First, government officials, particularly law enforcement, find the intelligence the UK receives from Europol very valuable. Second, policymakers and practitioners prize the influence the UK has over European security and intelligence-sharing policy, particularly through its membership in Europol.

Europol distributes intelligence that spans multiple topics which can be accessed through a variety of mechanisms, with some mechanisms only available to Europol members. Full membership in Europol allows access to the Europol Information System (EIS), which pools information on convicted criminals and terrorists from across the EU (Europol, 2017). EIS is used by law enforcement officials to receive information from other states’ law enforcement agencies without having to obtain information through liaison, which can be time-intensive. Bill Hughes, the former director of a predecessor organization to the British government’s National Crime Agency (NCA), noted that the UK utilizes as much as 40% of the capacity of the Secure

Information Exchange Network Application (SIENA), Europol's primary communications platform between EU law-enforcement agencies, institutions such as Eurojust and Interpol, and third-party states including the United States and Canada (Armond, et al., 2016). Information gathered by Europol span topics including economic crime, human trafficking, drug trafficking, firearms trafficking, terrorism, and cybercrime. Europol uses this intelligence to help facilitate multilateral operations, such as Operation Avalanche, where Europol among other organizations supported German and American provincial law enforcement in bringing down the Avalanche malware launching and money mule network (Europol, 2017). Thus, the British government concluded its assessment of the value of Europol by stating "the UK uses Europol more than almost any other country" (European Union Committee, 2016).

Some see British influence over European security and intelligence policy as a net positive. In a series of testimonies to the House of Lords, David Armond, the Deputy-Director General of the NCA, elaborated that the UK took a leading role in the development of Europol, including establishing the largest liaison bureau of all member states, providing the most intelligence to Europol alongside Germany of the EU member states, and directly inspiring the EU's policy cycle and organized crime risk assessment procedures. With that level of investment, Armond argues that the UK makes the Europol a more effective organization and therefore a boon to both British security and European collective security (Armond, et al., 2016). On a similar note, Omand emphasized the importance of British influence on European security and intelligence sharing policy, stating that the "psychology and the politics would be very different if [the EU states] did not consider us as one of them". He also argues that the improvement and modernization of the EU intelligence sharing mechanisms should continue to receive British attention (Nawaz & Ebner, 2016). Thus, leaving Europol and by extension, the EU, would

undermine the extensive influence the UK has on European security and intelligence sharing policy and Europol's effectiveness.

On the topic of crime prevention, the increasing technological literacy of criminals in other fields that Europol works in such as drug trafficking is increasing the importance of international cooperation and intelligence-sharing. The 2017 Serious Organized Crime Threats Assessment (SOCTA) released by Europol notes that criminals are quickly adopting new technology to facilitate organized criminal activity. Furthermore, organized crime groups are building new business models focusing on new innovations (Europol, 2017). One prominent example is that of the Darknet or Dark Web – a distributed anonymous network only accessible through platforms that facilitate user anonymization, but accessible to any individual user given the correct software. One study cited by Europol claims that up to 57% of active sites on the Darknet could be related to some form of illicit activity, including marketplaces for illicit goods such as narcotics or reactivated firearms (Europol, 2017). Due to the borderless nature of the internet, intelligence gathering and enforcement cannot be border-dependent as an illicit good or service being purchased in one country can conceivably come from any country within the EU or from outside the EU. A particularly poignant example is document fraud, due to the rise in demand for fraudulent identification documents coinciding with the refugee crisis stemming from the Libyan and Syrian civil wars and other regional conflicts (Europol, 2017). Given that these are crimes that cannot be confined by borders, the UK would find benefit in continued cooperation to combat against crime affecting the continent from within British borders and vice-versa.

Crime digitization also supported the growth of opportunities for cybercrime. Europol estimates that cybercrime costs EU member states up to €265 billion every year (approximately

\$285 billion) (Walsh C. , 2017). The proliferation of Crime-as-a-Service (CaaS), the ability of criminal organizations to offer cyberattacks such as Distributed Denial-of-Service (DDoS) attacks or support for malware attacks increases the emphasis that law enforcement organizations must place on cybersecurity (Europol, 2017). Cyberattacks are also used to extort individuals. This is most notable in ransomware attacks, in which criminal actors utilize malware to lock individuals out of their personal computer or data and request a fee from the owner to unlock the affected material (Europol, 2017).

The EU's previous efforts in cybersecurity have been criticized as "reactive/defensive", and lacking a unified strategy (Sliwinski, 2014). Prior to the establishment of EC3, the EU Agency for Network and Information Security (ENISA) was most prominent cybersecurity and cybercrime intelligence-sharing mechanism in the EU (Sliwinski, 2014). However, because ENISA is not a law enforcement organization and does not interface directly with member states' law enforcement agencies the way Europol does, there is benefit in the placement of EC3 within Europol as an anti-cybercrime center. In spite of some acknowledgement that EC3 is making headway in the mitigating cybercrime and the success of some Europol-sponsored anti-cybercrime operations, the continued growth of cybercrime and its financial success shows that the current strategy is not effectively deterring would-be cybercriminals (Armond, et al., 2016).

From a British perspective, this is particularly troubling as an effective national strategy to deter cybercrime does not exist. The NCA published a report in June 2016 detailing that "the accelerating pace of technology and criminal cyber capability development currently outpaces the UK's collective response to cyber crime" (National Crime Agency, 2016). Though the brief primarily focused on the cooperation of business and authorities to combat cybercrime, one can surmise that if the British government recognizes that its collective response remains insufficient,

a multilateral response would be more effective. Brandon Lewis, the British Minister of State for Policing and the Fire Services, acknowledged that the UK's relationship with Europol is one such tool in tackling the international scope of cybercrime (Armond, et al., 2016). Therefore, it would not seem logical whatever political decisions have been made with regards to the UK's future membership with the EU for the British government to throw such a tool away when it can become most useful. The UK does now have a National Cyber Security Centre (NCSC), a subsidiary of GCHQ, which focuses on cybersecurity. However, the NCSC is a very new organization, operating only since October 2016 (Burgess, 2017). It is too early to say whether the NCSC can supplant or even supersede the work of EC3 or ENISA. Until this is the case, Europol membership will hold value.

Come Together

There exist gains that can be made by continuing to partner with Europol. Within the context of neoliberal institutionalism, Robert Keohane illustrated that states can establish international institutions that provide incentives to members to contribute and not defect (Keohane, 1984). James Igoe Walsh extends this line of thinking further into the realm of intelligence sharing, arguing that the "sharing of intelligence between national governments is at the centre of their attempts to cooperate on contemporary problems such as preventing the proliferation of weapons of mass destruction and stopping the activities of terrorist groups and drug traffickers" (Walsh J. I., *Defection and Hierarchy in International Intelligence Sharing*, 2007). The latter example that Walsh gives fits perfectly within the purview of an anti-crime agency like Europol. If one considers the primary function of Europol to be gathering intelligence and institutionalizing intelligence sharing, then there exist gains to be made for all participants. Responses to terrorist attacks upon European soil seem to indicate that cooperation is becoming seen as more and more

valuable between respective state agencies. After the Paris terrorist attacks in 2015, cooperation between authorities of various European states allowed the French and Belgian governments to identify Saleh Abdeslam, one of the supposed perpetrators of the attack. Helen Ball, the Metropolitan Police Service's Senior National Coordinator for Counter-Terrorism Policing, echoes this pro-cooperation sentiment: "I am absolutely clear that police forces throughout Europe, their Governments and their security and intelligence agencies understand the threat and the way we need to work together to mitigate it" (Armond, et al., 2016).

Walsh's analysis of EU intelligence-sharing institutions showed some glaring problems, primarily that mistrust between member states hinders intelligence sharing (Walsh J. I., *Intelligence-Sharing in the European Union**, 2006). Because the EU does not mandate its member states to share in Europol, a strong mechanism within the organization to punish lack of participation or cooperation does not exist. Walsh recounts "states may learn about the existence of the analysis file...and may request access," but "the originators of the intelligence may object", potentially leading to the blocking of access to the file. Walsh concludes that "trust between [EU states] is too low to allow full sharing" (Walsh J. I., *Intelligence-Sharing in the European Union**, 2006). Without full sharing and the lack of an enforcement mechanism within Europol also seems to show that the organization does not meet the standard set forth by Keohane to allow for effective cooperation under anarchy. Therefore it is reasonable to question the effectiveness of Europol as an institution that facilitates cooperation. Müller-Wille takes this one step further, arguing that "expanded co-operation within [Europol] would make sense if it added value to the fight against crime in general" (Müller-Wille, 2008). He cites that such cooperation must meet one of three criteria:

- “– it produces something that national agencies are not able to produce;
- it generates better intelligence than national agencies on their own, as, for example, a result of pooling

expertise; and

- it produces intelligence that no national agency is willing to produce, or, for political reasons is not acceptable” (Müller-Wille, 2008).

Müller-Wille surmises that most of the information passing into Europol was produced by state intelligence agencies and could theoretically be shared with other states outside of Europol.

Therefore, none of the criteria could be met and advantages of expanded cooperation within Europol did not seem clear.

However, recent events can explain why continued and even expanded cooperation for any member state, including the UK, is logical in the present-day state of affairs. The aforementioned growth of cybercrime and the emergence of cybersecurity concerns give Europol the ability to meet one of the criteria, in this case, generating better intelligence than national agencies on their own. Because cybercrime is an international problem that occurs in massive volumes, the increased sharing of intelligence to handle criminal actors that may live on the other side of the content is vital. The establishment of EC3 in 2013 to handle the collection and analysis of cybercrime and cybersecurity intelligence showed foresight and understanding that this field would become a problem in the near future. However, as mentioned before, if current levels of cooperation are not enough to hold the tide of cybercrime at bay, further cooperation may be necessary to respond to possible threats. One other key property about Europol to note is that it collects OSINT. Because such intelligence can be procured on the internet and the internet is generally publicly accessible, Europol would be collecting some of the same intelligence that member states would be, but would also have the added benefit of interfacing with various law enforcement agencies from across the continent. This allows more minds to analyze the intelligence and possibly produce faster results if not necessarily better results than a state focused on unilateral collection and analysis. With this potential improvement in the quality and

importance of the intelligence Europol produces and facilitates the sharing and distribution of, states might trust the institution itself if they do not necessarily trust other member states. As Olivier Chopin writes, “only ‘horizontal’ regulation through interstate cooperation makes it possible to move toward an Europeanization of intelligence” (Chopin, 2015). Establishing trust in the competence of an institution would facilitate that interstate cooperation. At a very precarious time where that cooperation is needed most to address rising crime and threats on the cyber front, it becomes clear why the UK sought to continue membership.

If the UK were to fully leave the EU and all of its institutions, its relationships with both EU member states and with outside allies may suffer. With the adoption of the new Europol regulation by the EU Parliament, there exists stronger oversight over Europol from the Parliament and the constituent state legislatures. If the UK left the EU, various constituent state governments if not other European governing bodies may disapprove of a special status for the UK just to accommodate the state’s willing exit from the EU. With no foothold in Europol, British partners outside of the EU may also view the UK with less value. Armond testified to the House of Lords that the UK’s Five Eyes intelligence partners (the US, Canada, Australia, and New Zealand) sometimes work with Europol through the UK as a proxy (Armond, et al., 2016). Without the capability to use the UK in this capacity there would likely be some loss of perception in the UK’s value as an intelligence partner. In the words of Omand, the UK could “end up with no friends” (Nawaz & Ebner, 2016). The other concern for the UK is if its primary security alliance, the North Atlantic Treaty Organization (NATO), loses American support. US President Donald Trump made pointed rhetoric toward NATO and worried alliance members over the possibility of American divestment from the security organization (Calamur, NATO Shmato?, 2016). Such divestment could leave the UK on an island if it disowns relations its

European neighbors. It is interesting to note that the British government made its decision to opt-in to the Europol regulation and remain a member public approximately one week after Trump won the 2016 US Presidential election. Though such a decision was undoubtedly in the works well beforehand, the timing does raise some suspicion. Granted the likelihood of all of these scenarios are low but nevertheless contingency planning would be wise.

Operational concerns also exist if the UK were to depart from Europol. The only other case of a state leaving the organization occurred in 2015 when a Danish referendum to opt-in to Europol failed (Consuegra, 2017). Following the referendum both Danish and EU officials spent months negotiating a way for Denmark to maintain some sort of formal relationship within Europol while respecting the will of the Danish voters. These negotiations lead to a compromise that excluded Danish police from Europol databases but allowed Denmark to receive information through formal requests to Europol officials (Robinson, 2016). Such events show that in spite of rejection from a state's citizenry of Europol membership, government officials on the state-level and the EU-level believed membership to be so precious that a Danish-only agreement was formed to accommodate the situation. While the UK could proceed with a similar arrangement, it may take a substantial amount of negotiation and the breakdown of political union between the UK and the EU may occur before such a solution is found (European Union Committee, 2016). Such an operational gap may lead to the failure of domestic law enforcement to adequately address security concerns without Europol intelligence. It took approximately one year to negotiate the Denmark-specific compromise. The UK specifically opted-in to avoid an operational gap, showing that the British government would be unwilling to handle a similar period.

One type of partnership that the UK could seek with Europol would be an operational

partnership. Europol currently holds operational partnerships with the US, Canada, Australia, and Colombia among other countries. Such a partnership would allow for continued access to SIENA, but would not be allowed direct access to Europol's intelligence systems and the UK would have no say in Europol decision-making (European Union Committee, 2016). Operational partnerships can still be relatively effective – the case of the operational partnership between the US and the EU at-large have included instances where the two stopped organized crime, including breaking down euro-counterfeiting shops, fighting drug trafficking, and stopping the smuggling of cigarettes (Renard, 2016). There exists a high-level of coordination between the two entities, with joint trainings, coordination on internet governance measures, and information and intelligence exchange through Europol, among other joint actions (Renard, 2016). However, British government officials warned that an operational relationship would not be enough to avoid a drop-off in law enforcement effectiveness (European Union Committee, 2016). Armond argues that the UK should aim for “access and a partnership that is different from and closer than currently exists for any other non-member state” (Armond, et al., 2016). The Danish case does show some flexibility to build a “bespoke” membership deal between the UK and Europol. Furthermore, negotiation of a cooperation agreement with Europol can take months if not years. Lord Kirkhope of Harrogate testified to the House of Lords that such an agreement can take “nine to 12 years on average” to negotiate as it would likely involve the transfer of data (Armond, et al., 2016). As seen mentioned earlier, both the UK and the EU may find such a long period of negotiation untenable.

Concluding Remarks

The UK maintained membership in Europol for a bevy of reasons. The loss of Europol intelligence and influence in Europol both exist as compelling reasons to maintain membership.

Furthermore, an updated analysis of Europol within the confines of Müller-Wille's intelligence cooperation model shows that Europol can produce intelligence that EU member states would not be able to unilaterally produce at the same efficiency. The British government admitted as recently as 2016 that the state could not keep up with the proliferation of cybercrime and cybersecurity concerns despite employing a multifaceted approach. Leaving open the door for an operational gap should the UK leave Europol and the potential loss of influence and value that might come with such a departure may cost the UK dearly. Therefore, maintaining and expanding cooperation in Europol to share and analyze intelligence is necessary in order to tackle an increasingly international problem. These developments bode well for the future of the UK's membership within Europol and general relationship with the EU itself. Despite May's decision to trigger Article 50, it is clear that for the foreseeable future, complete separation is not possible. Security circumstances necessitate that the two must continue working closely together. Ironically, this may lead to further European integration on the intelligence and security front – a most poetic epitaph to Brexit.

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