

What does Brexit mean for the EU's Area of Freedom, Security and Justice?

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The UK's cooperation with EU policies in the 'Area of Freedom, Security and Justice' (AFSJ) – also denominated as 'Justice and Home Affairs' – has followed an arduous and rocky path. When thinking of the consequences of Brexit for UK-EU cooperation, the first and striking message is that the UK was never actually a full participant in these policy domains. Over the last 30 years of European integration and despite often being a key player in EU AFSJ-related negotiations and policy-making, the UK secured the privilege to pick and choose – formally called an 'opt-out' – whether or not to implement EU JHA legislative initiatives. This has led to a large degree of fragmentation and differentiation in European cooperation which has put the common nature and coherency of these EU policies at stake.

The AFSJ consists of a number of constituent elements, the most important of which are Schengen and the abolition of intra-member state border controls, immigration of third-country nationals, the Common European Asylum System (CEAS) and finally criminal justice and police cooperation.¹

Since its inception in 1985, the UK has never participated in the Schengen Agreement and has maintained its own border controls for the entire period. Indeed in 1999, when the Schengen *acquis* was incorporated into EU law by the Amsterdam Treaty, the UK sought and obtained an opt-out from all Schengen-related measures. Despite expressing its willingness to do so, the UK does not (at least formally) participate in the activities of Frontex, the European Agency responsible for the Management of Operational Cooperation at the External Borders of the EU Member States, due to its central contribution and role in the development of the Schengen *acquis*.² Thus, there should not be any consequences for the Schengen area of the UK's

¹ Title V of the Treaty on the Functioning of the EU also includes cooperation in civil justice (including family law), where the UK has opted out of virtually all measures.

² As interpreted by the Court of Justice of the EU in the Case C-77/05 *UK v. Council* [2007] ECR I-11501. On the specific ways in which the UK cooperates with Frontex, see B. Ryan (2016), "The EU's Borders: Schengen,

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withdrawal from the EU, nor should there be any legal consequences for the UK following its withdrawal from the EU as regards the Schengen area.

The UK sought and obtained an opt-out from measures on immigration of third-country nationals when competence for this area was transferred to the EU in 1999.³ It has opted into a very limited number of procedural measures (format of residence documents)⁴ and has remained out of all the substantive Union legislation on conditions for entry and residence, and the definition of rights of third-country nationals residing regularly in the EU. Thus, the UK's departure from the EU will be of no consequence for the EU in this policy domain. This latter observation, in fact, challenges the message widely spread by the Leave campaign that a vote to leave the EU would bring border and migration control back to the UK. In point of fact, these two competences never left the UK.

The CEAS⁵ is one of the few areas where the UK opted into the first round of legislation adopted in 2004, but it declined to opt into the second round adopted in 2013-14, other than the Dublin III Regulation, which allocates responsibility for the care of asylum seekers and the determination of their applications.⁶ The withdrawal of the UK from the EU will have important consequences for the CEAS.⁷ Assuming no transitional arrangements are agreed to, life will become much simpler for the CEAS as only one set of legislation – the 2013 measures – will apply to all Member States. The UK also did not participate in the decision establishing the EU temporary relocation system from Greece and Italy, adopted in July and September 2015.⁸ The continued practice by only one member state of applying the earlier CEAS legislation was an irritant in the system.

Despite the popular conception conveyed by some media and political discourses in the Brexit debate, the UK has not received a substantial proportion of the EU's asylum seekers compared to other large member states. In 2015, according to Eurostat statistics, the UK received around 38,800 asylum applications out of the total of 1,321,600 applications in the entire EU. As shown Figure 1, the UK's share corresponded to 2.9%, which sharply contrasts with the 36% received by Germany (476,510 applications), 13% by Hungary (177,135), 12% by Sweden (162,450), 6.6% by Austria (88,160), 6.3% by Italy (84,085) and 6% by France (75,750 applications).⁹

Frontex and the UK", Free movement immigration blog, Garden Court Chambers, London (www.freemovement.org.uk/brexit-and-borders-schengen-frontex-and-the-uk/#_edn38).

³ Protocol (No 21) on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, Lisbon Treaty, Arts 3 and 4.

⁴ Council Regulation (EC) No 1030/2002 of 13 June 2002 laying down a uniform format for residence permits for third-country nationals, OJ L 157, 15.6.2002, pp. 1-7.

⁵ For more information, see http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm.

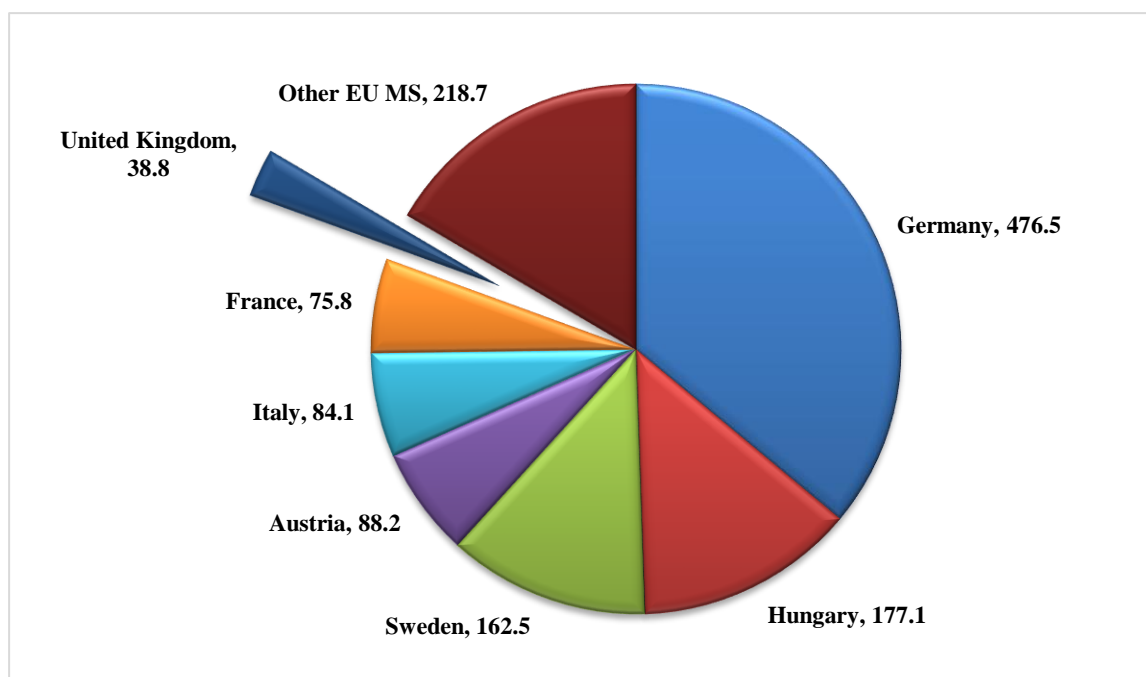
⁶ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, pp. 31-59.

⁷ E. Guild (2016), "The UK Referendum on the EU and the Common European Asylum System", Free movement immigration blog, Garden Court Chambers, London (www.freemovement.org.uk/brexit-and-the-common-european-asylum-system/).

⁸ Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, OJ L 248, 24.9.2015, pp. 80-94

⁹ Eurostat (2016), "Asylum statistics", *Statistics Explained* (http://ec.europa.eu/eurostat/statistics-explained/index.php/Asylum_statistics). See also Eurostat (2016), "Asylum and first time asylum applicants

Figure 1. Asylum and first-time asylum applicants by EU member state (in thousands)



Source: Authors' own elaboration, based on Eurostat data.

Cooperation in matters of criminal justice is an area in which the UK had an option to withdraw, which it exercised on 1 December 2014.¹⁰ It then 'opted back into' the most important set of criminal justice mutual recognition measures that were part of the old Third Pillar *acquis*.¹¹ One of the most relevant measures that the UK has (re-)opted into is the 2002 European Arrest Warrant (EAW), which provides for simplified extradition and surrender procedures among the member states.¹² The UK's departure from the EAW system, however, will mean that extradition between the UK and the remaining EU member states will become more complex and lengthy. Suspects who are nationals of EU member states but are living in the UK and are sought by other EU countries will have a better chance of avoiding being sent back for prosecution.

by citizenship, age and sex Annual aggregated data (rounded) (migr_asyappctza)", (<http://ec.europa.eu/eurostat/web/asylum-and-managed-migration/data/database>).

¹⁰ This was based on Protocol 36, entitled "Transitional provisions concerning acts adopted on the basis of Titles V and VI of the former version of the TEU prior the entry into force of the Treaty of Lisbon", attached to the Lisbon Treaty (http://europa.eu/rapid/press-release_IP-14-2266_en.htm). See also Council of the European Union (2014), "UK's block opt-out and partial re-opt-in to the ex-third pillar *acquis*", ST 15687/14, Brussels, 1 December (www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/145981.pdf). See also V. Mitsilegas, S. Carrera and K. Eisele (2014), "The End of the Transitional Period for Police and Criminal Justice Measures Adopted before the Lisbon Treaty: Who Monitors Trust in the European Criminal Justice Area?", CEPS Paper in Liberty and Security in Europe, CEPS, Brussels.

¹¹ These consisted of a total of 29 non-Schengen measures including the European Arrest Warrant, as well as participation in EU JHA agencies, such as Europol and Eurojust, and exchange of information/databases (www.europarl.europa.eu/RegData/etudes/STUD/2015/519225/IPOL_STU%282015%29519225_EN.pdf).

¹² See Council Framework Decision 2002/584/JHA of 13 June 2002 (<http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SN07016>).

The UK has played a very active role in the development of EU policy on police cooperation and access to data for law enforcement purposes. It has had access to the police and criminal justice-related information components held in the second generation of the Schengen Information System (SIS II) since April 2015.¹³ It also participates in the Prüm Decisions,¹⁴ under which EU police forces can automatically share DNA, fingerprint and vehicle registration data. The UK has 'opted into' the recently adopted EU Passenger Name Record (PNR),¹⁵ which allows for a large systematic collection, use and retention of PNR data on air passengers. The UK is also a member of several EU Agencies, including Europol,¹⁶ thereby providing it with access to the Europol Information System, and Eurojust.¹⁷ Brexit means that the UK will lose access to all these information tools for law enforcement purposes and the support and cooperation in the context of EU JHA agencies' activities.

The consequences of Brexit

One of the most profound consequences of Brexit will be that, as from 'the leave date', all UK citizens will become third-country nationals for the purposes of EU law. They will be deprived of their European citizenship as well as all the rights and freedoms attached to it in the Treaties and secondary legislation. This means that they will fall within the personal scope of the EU and its remaining member states' immigration legislation setting out the conditions for entry and stay in the Union. The loss of EU citizenship (rights) will potentially affect around 690,000 UK citizens residing in other EU member states. While the majority of these UK citizens reside in Spain, a large number of UK nationals living e.g. in Ireland, Germany, the Netherlands, Italy, Belgium, Sweden and other EU member states are similarly affected by Brexit (see Figure

¹³ V. Mitsilegas (2016), "Free Movement and Criminal Law", Free movement immigration blog, Garden Court Chambers, London (www.freemovement.org.uk/brexit-briefing-eu-free-movement-and-criminal-law/). See Council Implementing Decision (EU) 2015/215 of 10 February 2015 on the putting into effect of the provisions of the Schengen acquis on data protection and on the provisional putting into effect of parts of the provisions of the Schengen acquis on the Schengen Information System for the United Kingdom of Great Britain and Northern Ireland, *OJ L 36*, 12.2.2015, pp. 8-10.

¹⁴ Council Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime of 23 June 2008. Decision 2008/616/JHA on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (see www.publications.parliament.uk/pa/ld201516/ldselect/lducom/66/66.pdf).

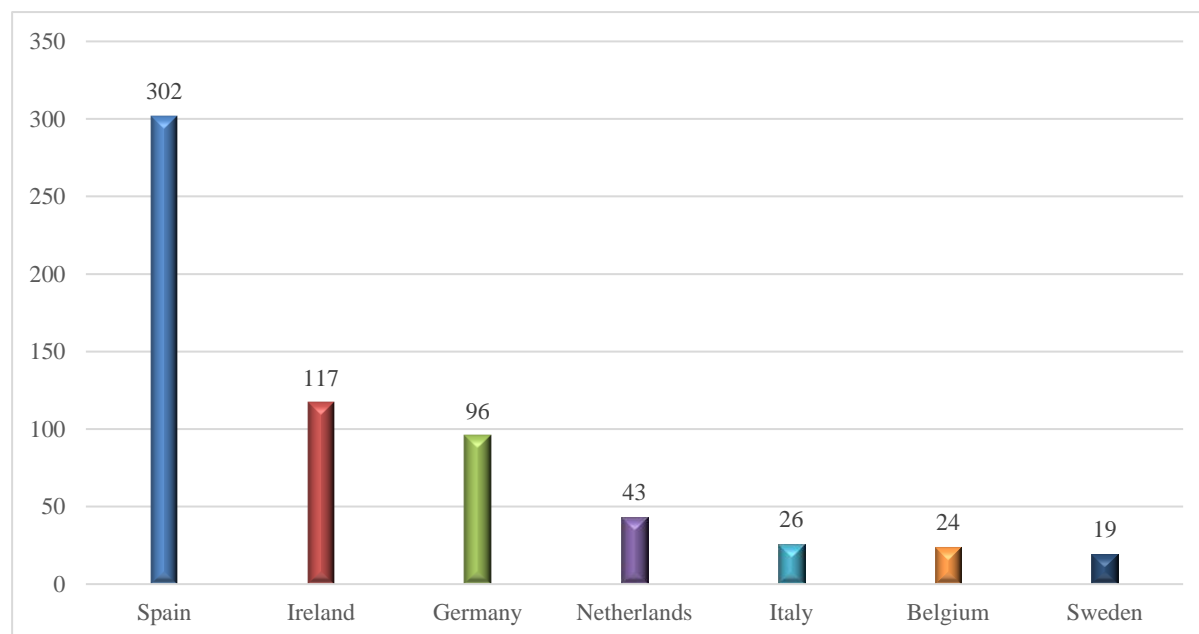
¹⁵ Directive (EU) 2016/681 of the European Parliament and of the Council of 27 April 2016 on the use of passenger name record (PNR) data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime, *OJ L 119*, 4.5.2016, pp. 132-149.

¹⁶ See www.europol.europa.eu/. It is worth noting that the current director of Europol is British.

¹⁷ See www.eurojust.europa.eu/Pages/home.aspx

2 below).¹⁸ This sum stands in marked contrast with the figures of 1.2 to 1.3 million commonly cited in the media,¹⁹ many of which rely on data from the UN.²⁰

Figure 2. Top 7 EU member states by number of resident UK citizens on 1 January 2015 (in thousands)



Source: Authors' own elaboration, based on Eurostat data.

¹⁸ Eurostat (2016), "Population on 1 January by five year age group, sex and citizenship (migr_pop1ctz)" (<http://ec.europa.eu/eurostat/web/population-demography-migration-projections/population-data/database/>).

¹⁹ See e.g. "Brexit: What does it mean for expats, here and in the EU?", BBC.com, 27 June 2016 (www.bbc.com/news/business-36606847); "Brexit: What does it mean for you?", CNN.com, 24 June 2016 (<http://edition.cnn.com/2016/06/22/europe/brexit-britain-eu-people/>); "What will Brexit mean for EU migrants to the UK and British expats?", Euronews.com, 23 June 2016 (www.euronews.com/2016/06/23/what-would-brexit-mean-for-eu-migrants-to-the-uk-and-british-expats/); "What does Brexit mean for EU citizens in Britain - and Brits in Europe?", *The Guardian*, 24 June 2016 (www.theguardian.com/politics/2016/jun/24/what-does-brexit-mean-for-eu-citizens-in-britain-and-brits-in-europe); and Migration Watch UK, "The British in Europe - and Vice Versa", MW European Union Briefing Papers 352, 23 June 2016 (www.migrationwatchuk.org/briefing-paper/354).

²⁰ UN DESA Population Division (2015), "International migration stock 2015" (www.un.org/en/development/desa/population/migration/data/estimates2/estimates15.shtml). These UN data do not accurately reflect the impact of Brexit on the position of UK nationals residing in the EU and EU citizens residing in the UK. Data from the UN "International migration stock" on international migrants refer to persons residing in a country or geographical area by their *country of birth* (see UN DESA Population Division (2015), "Trends in international migrant stock: the 2015 Revision", UN. Doc. POP/DB/MIG/Stock/Rev.2015, p. 7, www.un.org/en/development/desa/population/migration/data/estimates2/docs/MigrationStockDocumentation_2015.pdf). An individual's place of birth, however, does not accurately reflect his or her nationality (as a result e.g. of *ius sanguinis* acquisition of nationality where the individual was not born in that country, or naturalisation abroad). Since European citizenship (rights) are contingent on the possession of the *nationality* of a member state (see Art. 20(1) TFEU), and not on the place of birth, the use of UN data in this context may result in discrepancies and misrepresentation of the impact of Brexit of UK and EU nationals. Moreover, it needs to be noted that Eurostat data may not be fully inclusive either, as it is not clear whether national statistics include dual nationals holding UK and the reporting country's nationality.

Conversely, the UK will no longer fall within the scope of European citizenship and the corresponding rights and freedoms, potentially affecting many European citizens currently residing in the UK. Based on the data of Eurostat and the UK Office for National Statistics (ONS), there were around 2.9 million European citizens residing in the UK on 1 January 2015. The Eurostat and ONS data further show that Polish, Irish,²¹ and Romanian nationals are the top three EU member state nationalities present in the UK.²² Here as well, the figures commonly referred to (3 to 3.3 million) – based on the UN DESA data – may be misleading.²³

Plausible options for the UK following Brexit

So what are the most plausible options for a way forward? The option of joining Iceland, Liechtenstein and Norway in the European Economic Area (EEA) Agreement would not be appealing to the UK in this case. The EEA Agreement is faithful to the EU's internal market objective and includes as a core principle the free movement of persons among the parties.²⁴ However, it is unlikely that the Leave proponents will be able to sell the EEA model in light of the promises they made in the campaign. The Annex to this commentary provides a detailed overview of the state of play of EEA countries' participation in the most relevant JHA-related policy areas. As shown, the EEA includes free movement of workers 'in full', with no exceptions, 'safeguard clauses' or immigration caps.

Accession to the Swiss agreements with special arrangements on finance and an 'immigration cap' could be considered more palatable.²⁵ The Swiss route might be more attractive, as the Swiss did not accept the EEA Agreement, but instead negotiated a series of bilateral agreements with the EU, one of which relates to free movement of persons (Agreement on the Free Movement of Persons, AFMP).²⁶ The Annex shows that this Agreement foresaw various protection clauses to the Swiss labour market until 2014, which limited the issuing of residence

²¹ The impact of Brexit for Irish nationals resident in the UK is potentially less substantial than for other European citizens, owing to the fact that they might (potentially) also be UK nationals (i.e. dual UK/Irish nationals). This is particularly the case for persons born in Northern Ireland due to the overlap between the Irish and British nationality legislation. On dual Irish/UK nationality, see www.nidirect.gov.uk/articles/about-northern-ireland (particularly on the Belfast Agreement), and www.citizensinformation.ie/en/moving_country/irish_citizenship/irish_citizenship_through_birth_or_descent.html. See also Handoll (2012), "Country Report: Ireland", EUDO Citizenship Observatory Country Report, RSCAS/EUDO-CIT-CR 2012/02.

²² Eurostat (2016), "Population on 1 January by five year age group, sex and citizenship (migr_pop1ctz)"; ONS (2015), "Population of the United Kingdom by Country of Birth and Nationality, January-December 2014", Table 2.3: Non-British population in the United Kingdom, excluding some residents in communal establishments, by sex, by nationality (www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/datasets/populationoftheunitedkingdombycountryofbirthandnationality).

²³ The potential misrepresentation of using the UN data to show the consequences of Brexit for European citizens in the UK is – again – due to the distinction between country of birth (UN data) and nationality (Eurostat data). The latter data better reflect the legal effects of Brexit for European citizens resident in the UK. For a more detailed elaboration, see footnote 20 above.

²⁴ S. Peers (2016), "What next after the UK vote to leave the EU?", EU Law Analysis Blog, 24 June (<http://eulawanalysis.blogspot.be/2016/06/what-next-after-uk-vote-to-leave-eu.html>).

²⁵ Switzerland is a member of EFTA (European Free Trade Association) together with the EEA countries.

²⁶ See www.europa.admin.ch/themen/00500/index.html?lang=en.

permits to nationals of the EU15 and EU8 to a restricted number of quotas (15,000 new residence permits valid for one year and 115,500 valid for less than one year).

As the EU institutions made clear during the controversy with the Swiss over the introduction of a permanent 'immigration quota' for EU citizens following the referendum of February 2014,²⁷ the EU-Swiss arrangement is based on the principle that participation in the internal market goes hand-in-hand with (and is indivisible from) its four freedoms, including the free movement of persons and workers. Indeed, even in cases where there is proof of "serious economic or social difficulties", the EU-Switzerland Agreement on the Free Movement of Persons (AFMP) foresees that the scope and duration of any limitations on free movement of persons "shall not exceed that which is strictly necessary to remedy the situation". A temporary migration cap similar to the EU-Swiss model could therefore be a possibility for a renewed EU-UK framework of cooperation, as long as the intrinsic link between access to the internal market and the four freedoms would not be broken.

What is clear is that the current Brexit environment has led to a very high degree of legal uncertainty and insecurity for all EU citizens currently living and working in the UK, as well as for UK nationals who have exercised their Union citizenship rights and live elsewhere in the EU. The UK-EU Agreements to be negotiated during the procedures envisaged in Art. 50 of the Treaty on the Functioning of the European Union (TFEU) should pay special attention to mitigating the adverse effects of the 'Leave' decision for the individuals affected.

A key priority should be to explore specific legal arrangements to secure 'acquired residence rights' by EU citizens living in the UK and UK nationals living elsewhere in the EU. A clear signal of the current state of legal insecurity has been the reported increase in applications by British nationals for Irish passports,²⁸ as well as for Belgian nationality.²⁹ The situation presents the EU with an opportunity to clearly demonstrate the high value of European citizenship if UK nationals living in other member states can be assured that rather than losing their EU citizenship rights that those rights would be 'frozen' on the day the UK formally 'leaves' the Union.³⁰

²⁷ S. Carrera, E. Guild and K. Eisele (2015), "No Move without Free Movement: The EU - Swiss controversy over quotas for free movement of persons", CEPS Policy Brief No. 331, CEPS, Brussels, April (www.ceps.eu/publications/no-move-without-free-movement-eu-swiss-controversy-over-quotas-free-movement-persons).

²⁸ AFP (2016), "Brexit vote sparks surge in Irish passport applications", 27 June. (www.yahoo.com/news/brexit-vote-sparks-surge-irish-passport-applications-141925580.html).

²⁹ RTBF (2016), « Brexit: de des dizaines de Britanniques prêts à demander la nationalité belge », 27 juin. (www.rtf.be/info/regions/detail_brexit-des-dizaines-de-britanniques-prets-a-demander-la-nationalite-belge?id=9338668), La Libre Belgique (2016), « Brexit: des ressortissants britanniques de Bruxelles se renseignent sur la naturalisation », 27 juin (www.lalibre.be/actu/belgique/brexit-des-ressortissants-britanniques-de-bruxelles-se-renseignent-sur-la-naturalisation-5771347135708dcfedb86c65).

³⁰ See G. Gonzalez Marrero (2016), *Civis europaeus sum? Consequences with regard to Nationality Law and EU Citizenship status of the independence of a devolved part of an EU Member State*, Nijmegen: Wolf Legal Publishers, forthcoming.

ANNEX. EFTA³¹ AND JUSTICE AND HOME AFFAIRS: STATE OF PLAY

	Schengen	Workers	Asylum	Criminal Justice	Police Cooperation	Agencies
EEA³²	<p>Norway and Iceland are Schengen associated Members since March 2001, on the basis of Council Decision 2000/777/EC 1 December 2000, which provides for the application of the Schengen <i>acquis</i> arrangements to the five countries of the Nordic Passport Union.</p> <p>They are associated with the implementation, application and development of the <i>Schengen acquis</i>.</p> <p>Norway and Iceland have been 'Associated' partners in the development of Schengen since 19 December 1996.</p> <p>They have access to second generation of</p>	<p>Since 1994, Iceland, Liechtenstein and Norway provide free movement of workers based on Part III of the EEA Agreement (OJ No L 1, 3.1.1994).</p> <p>Part III (Free Movement of Persons, Services and Capital), Chapter 1: Workers and Self-Employed Persons (Arts 28-30).</p> <p>This includes 'full' free movement without the possibility of 'safeguard clauses' (such as the case of Switzerland): non-discrimination on the basis of nationality between workers of EU and EFTA states as regards employment, remuneration and other conditions of</p>	<p>Norway, Liechtenstein and Iceland participate in the EU Dublin Asylum System (Dublin II Regulation) through the conclusion of a Protocol signed in 2006 (in the case of Norway and Iceland) and a Protocol signed in 2008.</p> <p>They have therefore access to the EURODAC database .</p>	<p>Norway and Iceland concluded an Agreement with the EU on a surrender procedure, which follows a similar model to the one in the European Arrest Warrant (EAS):</p> <p>AGREEMENT between the European Union and the Republic of Iceland and the Kingdom of Norway on the surrender procedure between the Member States of the European Union and Iceland and Norway, L 292/2, 21.10.2006.</p>	<p>Norway and Iceland participate in the Prüm Decision, in particular Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combatting terrorism and cross-border crime, and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combatting</p>	<p>Norway, Liechtenstein and Iceland participate in Frontex (Management Board and Operations) .</p> <p>Norway, Iceland and Liechtenstein participate in EASO (European Asylum Support Office).</p> <p>Norway and Iceland participate in Europol and Eurojust (Iceland also participates)</p> <p>Norway, Iceland and Lichtenstein are represented in the Management</p>

³¹ European Free Trade Association (EFTA) is an intergovernmental organisation established for the promotion of free trade and economic integration. It is composed of four states: Switzerland, Norway, Iceland and Liechtenstein. For more information see <http://www.efta.int/about-efta/the-efta-states>.

³² All relevant documents on the EEA Agreement are retrievable from www.efta.int/legal-texts/eea. For Norway see also www.regjeringen.no/en/dokumenter/norway_in_europe/id762511/ and www.noorwegen.nl/System/logoer/DEL/Brosjyre%20endelig%20-%20WEB-versjon.pdf. On Iceland see www.mfa.is/media/esb/Evropustefna-ENS.pdf .

	<p>Schengen Information System (SIS II) and the Visa Information System (VIS).</p> <p>Since December 2011, Liechtenstein is an associate member of the Schengen Area.</p>	<p>work/employment (Art. 28).³³</p> <p>Annex V³⁴ of the Agreement contains specific provisions on the free movement of workers, which includes application of Directive 2004/38 on free movement.</p> <p>It foresees no restrictions on the freedom of establishment - the right to take up and pursue activities as self-employed persons and to set up and manage undertakings (Article 31 EEA Agreement), including "the setting up of agencies, branches or subsidiaries by nationals of any EC Member State or EFTA State established in the territory of any of these States".</p>			<p>terrorism and cross-border crime.</p> <p>Negotiations are ongoing for Liechtenstein's participation in the Prüm Decision.</p>	<p>Board of eu-LISA; the Associated Countries - Switzerland, Iceland, Norway and Liechtenstein - form a part of the stakeholder group of the Agency.</p>
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³³ Art. 28.1 of the Agreement stipulates that "1. Freedom of movement for workers shall be secured among EC Member States and EFTA States. 2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of EC Member States and EFTA States as regards employment, remuneration and other conditions of work and employment. 3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health: (a) to accept offers of employment actually made; (b) to move freely within the territory of EC Member States and EFTA States for this purpose; (c) to stay in the territory of an EC Member State or an EFTA State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action; (d) to remain in the territory of an EC Member State or an EFTA State after having been employed there. 4. The provisions of this Article shall not apply to employment in the public service."

³⁴ Available at www.efta.int/media/documents/legal-texts/eea/the-eea-agreement/Annexes%20to%20the%20Agreement/annex5.pdf.

SWITZERLAND ³⁵	The Swiss Confederation is an associated member of Schengen. It participates in the implementation, application and development of the Schengen <i>acquis</i> ³⁶ - Agreement (Bilateral Agreements II) signed in October 2004, and completed in February 2008, and which came into effect in March 2008. This includes access to SIS II and VIS .	The EU and Switzerland signed on 21 June 1999 the Agreement on the Free Movement of Persons (AFMP) . It entered into force in April 2002. The AFMP, together with its Protocol, establishes free movement of workers (reside and pursue economic activity), including the mutual recognition of professional qualifications, the right to buy property, and the coordination of social insurance system. The AFMP stipulates two key clauses, which differ from the free movement	Switzerland participates as associated member in the EU Dublin system - Agreement - and has therefore access to Eurodac.	The EU has concluded an Agreement with Switzerland on combatting fraud and any other illegal activity to the detriment of their financial interests.	The EU and Switzerland have recently concluded an agreement for Swiss participation in EASO . Switzerland participates in the Management Board of Frontex and has participated in its operational activities. It also takes part in Europol and Eurojust . Switzerland concluded a
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³⁵ See http://europa.eu/rapid/press-release_MEMO-14-100_en.htm To date, the EU and Switzerland have concluded more than 120 agreements. See www.europarl.europa.eu/meetdocs/2009_2014/documents/deea/dv/2203_07/2203_07en.pdf and www.eda.admin.ch/dam/dea/en/documents/fs/00-FS-Europapol-lang_en.pdf

³⁶ Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* L53, 27/02/2008, p. 52. Council Decision 2008/149/JHA of 28 January 2008 on the conclusion on behalf of the European Union of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* and the Agreement signed on 26 October 2004 (OJ L 53, 27.2.2008, p. 50). amended by the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen *acquis* signed on 28 February 2008, approved by Council Decision 2011/349/EU of 7 March 2011 on the conclusion on behalf of the European Union of the said Protocol relating in particular to judicial cooperation in criminal matters and police cooperation (OJ L 160, 18.6.2011, p. 1)

		<p>arrangements outlined in the EEA Agreement:</p> <p>First, transitional provisions in Art. 10 state that³⁷ for a period of five years after entry into force (already expired), Switzerland could apply quotas (15,000 new residence permits valid for one year and 115,500</p>				<p>Working Arrangement with EASO, which entered into force in March 2016.</p> <p>Switzerland is represented in the Management Board of eu-LISA.</p>
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³⁷ Article 10: “1. For five years after the entry into force of the Agreement, Switzerland may maintain quantitative limits in respect of access to an economic activity for the following two categories of residence: residence for a period of more than four months and less than one year and residence for a period equal to, or exceeding, one year. There shall be no restriction on residence for less than four months. From the beginning of the sixth year, all quantitative limits applicable to nationals of the Member States of the European Community shall be abolished.

2. For a maximum period of two years, the Contracting Parties may maintain the controls on the priority of workers integrated into the regular labour market and wage and working conditions applicable to nationals of the other Contracting Party, including the persons providing services referred to in Article 5. Before the end of the first year, the Joint Committee shall consider whether these restrictions need to be maintained. It may curtail the maximum period of two years. The controls on the priority of workers integrated into the regular labour market shall not apply to providers of services liberalised by a specific agreement between the Contracting Parties concerning the provision of services (including the Agreement on certain aspects of government procurement in so far as it covers the provision of services).

3. On entry into force of this Agreement and until the end of the fifth year, each year Switzerland shall reserve, within its overall quotas, for employed and self-employed persons of the European Community at least 15,000 new residence permits valid for a period equal to, or not exceeding, one year and 115,500 valid for more than four months and less than one year.

4. Notwithstanding the provisions of paragraph 3, the Contracting Parties have agreed on the following arrangements: if, after five years and up to 12 years after the entry into force of the Agreement, the number of new residence permits of either of the categories referred to in paragraph 1 issued to employed and self-employed persons of the European Community in a given year exceeds the average for the three preceding years by more than 10%, Switzerland may, for the following year, unilaterally limit the number of new residence permits of that category for employed and self-employed persons of the European Community to the average of the three preceding years plus 5%. In the following year, the number may be limited to the same level.

Notwithstanding the provisions of the previous subparagraph, the number of new residence permits issued to employed and self-employed persons of the European Community may not be limited to fewer than 15,000 per year valid for a period equal to, or exceeding, one year and 115,500 per year valid for more than four months and less than one year.

5. The transitional provisions of paragraphs 1 to 4, and in particular those of paragraph 2 concerning the priority of workers integrated into the regular labour market and controls on wage and working conditions, shall not apply to employed and self-employed persons...”.

		<p>valid for less than one year).</p> <p>Second, Art. 14.2 (Joint Committee) provides a 'safeguard clause' which reads as follows:</p> <p>"In the event of serious economic or social difficulties, the Joint Committee shall meet, at the request of either Contracting Party, to examine appropriate measures to remedy the situation. The Joint Committee may decide what measures to take within 60 days of the date of the request. This period may be extended by the Joint Committee. The scope and duration of such measures shall not exceed that which is strictly necessary to remedy the situation. Preference shall be given to measures that least disrupt the working of this Agreement."</p>				
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Source: Authors' own elaboration.