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WORKING PAPER

WHOSE INTERESTS?
BREXIT AND THE SILENCING OF PRACTITIONERS.
THE CASE STUDY OF POLICE AND JUDICIAL
COOPERATION PRACTITIONERS

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Whose Interests?

Brexit and the Silencing of Practitioners



The case study of police and judicial
cooperation practitioners

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Introducing myself...

Professor of International Relations and European Politics at Northumbria University, Jean Monnet Chair, and REF Lead;

Fellow of the Scottish Parliament

Secretary of the British International Studies Association,
<https://www.bisa.ac.uk/>

Research interests:

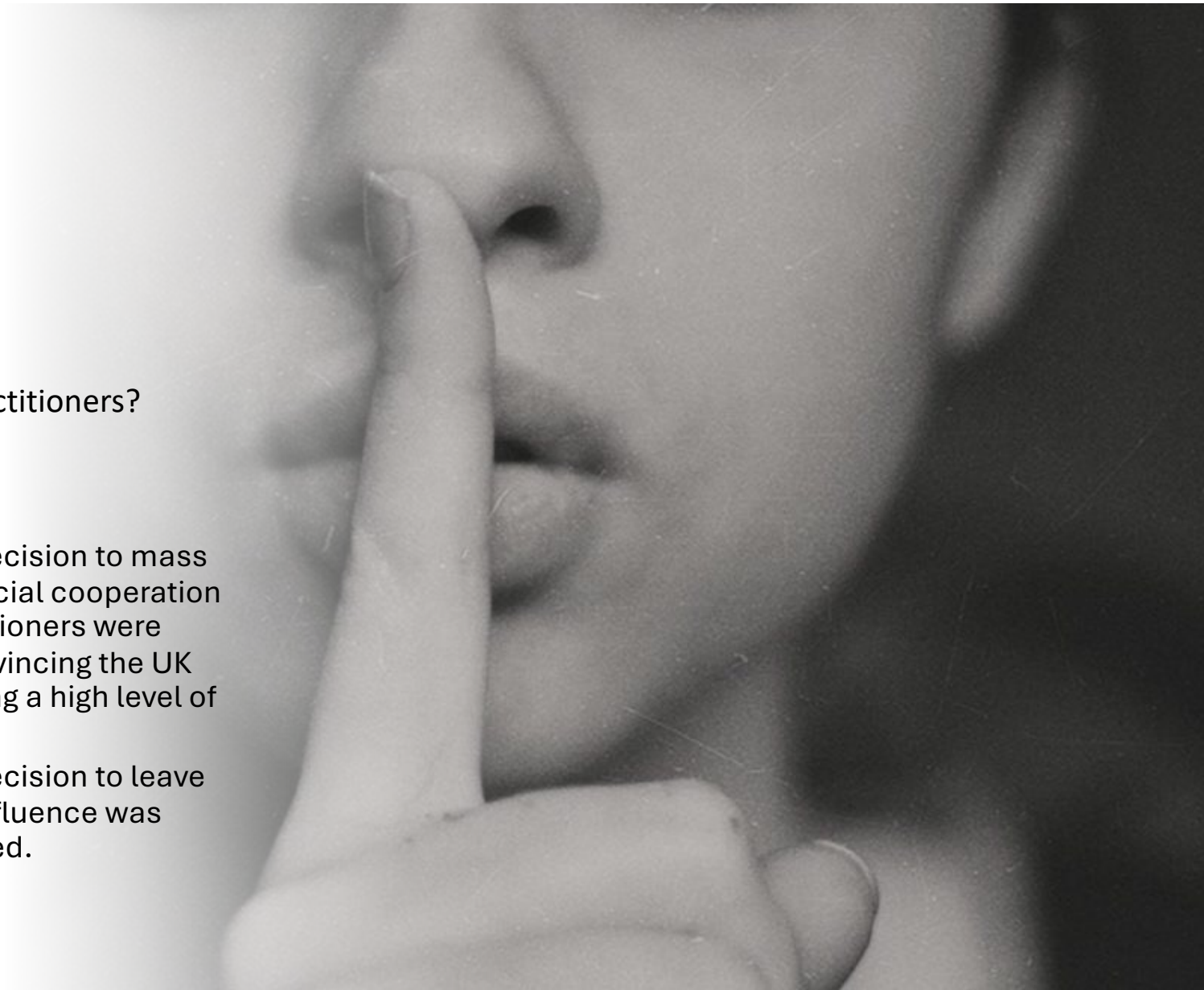
- European internal security/ Justice and Home Affairs;
- Cybersecurity, cybercrime, organised crime, migration and asylum;
- EU external relations, namely UK-EU relations.



Today's Talk

Introduction

- On the theme of silence;
- Paper on the silencing of practitioners?
- Context:
 - When the UK took the decision to mass exit from police and judicial cooperation measure in 2014, practitioners were deeply influential in convincing the UK Government in preserving a high level of cooperation;
 - When the UK took the decision to leave the EU, that degree of influence was considerably more limited.



Today's Talk

- Existing Literature in Brexit Studies:
 - Brexit has seen a boom in academic literature
 - Considerable focus on UK foreign policy: The role of domestic politics (Martill, 2023); The UK's search for new foreign policy narratives (Opperman et al., 2020); alternative foreign policy venues (Brattberg, 2020); bilateralism (Wolff, Carrapico and Piquet, 2024).
 - Very limited literature on internal security
 - Mostly focusing on the impact of Brexit on police and judicial cooperation (Carrapico et al., 2019; Pencheva, 2021; Mitsilegas and Guild, 2023);
 - What has Brexit meant for the different JHA sub-policies? What does re-engagement look like? (Wolff, Piquet and Carrapico, 2022);
 - Even less on practitioners...
 - The impact of the implementation of the TCA (Davies and Carrapico, 2025);
 - How practitioners have experienced Brexit? (Shellaker et al, 2023; Carrapico and Christou, 2024).
- Research Question: Why was practitioners' influence on the negotiation of the TCA so limited?

Today's Talk

How do I propose to answer this question?

- Main argument:
 - Practitioners in the context of the 2014 mass opt-out;
 - With Brexit this situation changes quite radically;
 - Politicisation leads to the silencing of practitioners and politics trumps operational security priorities;
 - Post-Brexit, practitioners find themselves in a position of reduced cooperation/data exchange/ dialogue with their EU counterparts;
- Silencing is understood in 2 ways: 1) procedural silencing: not as having lost the possibility of speaking out, but rather as seeing their voices become less relevant, less influential; and 2) physical silencing: having loss the possibility of speaking through communication channels they used to have access pre-Brexit;

Today's Talk

How do I propose to answer this question?

- Theoretical Framework:
 - Communities of Practice (COPs) (Lave and Wenger, 1991): a knowledge-based community of individuals who share an identity and a sense of joint venture, who learn through shared practice (which they develop, share and maintain), who make pragmatic use of practice, and who have the potential for resistance (Drieschova and Bueger, 2022);
 - Concept of Politicisation (Hoogue and Marks, 2009): politicisation should not be understood as a given, inevitable process, but rather as a consequence of a deliberate choice by political party actors shaped by the context and legal and political rules of the arena where those debates are taking place. Politicisation shifts discussions from an elite-focused domain to a wider audience, resulting in greater polarisation and contestation that reflects itself on policy formulation.
 - Politicisation restricts COPs;
- Methods:
 - Discourse analysis of documents submitted by practitioners prior to the mass opt-out and prior to Brexit to the UK Parliament + discourse analysis of press interviews + semi-structured interviews with practitioners (50);
- Challenges:
 - Is silencing the right concept? Should it be part of the theoretical framework?
 - Who counts as a practitioner?
 - Is the paper convincing?

Structure of the Talk

- 1) Context of UK-EU police and judicial cooperation pre-Brexit
 - 1) A (VERY) brief history of EU police and judicial cooperation
 - 2) The UK's participation in the AFSJ
 - 3) The creation and development of COPs in police and judicial cooperation: knowledge and learning; pragmatism and practices; resistance
- 2) The 2014 mass opt-out from pre-Lisbon police and judicial cooperation measures
 - 1) Context of the 2014 mass opt-out
 - 2) The absence of politicisation
 - 3) The influence of the COP on the outcome of the mass opt-out decision: knowledge, practices, resistance
- 3) Brexit Negotiations and impact on police and judicial cooperation
 - 1) The Context of the Brexit negotiations
 - 2) The politicisation of police and judicial cooperation from 2016 onwards
 - 3) The impact of politicisation and the silencing of the COP
 - 4) A light at the end of the tunnel?

1) Context of EU-UK police and judicial cooperation pre-Brexit

A (VERY) Brief history of EU police and judicial cooperation

- Ad hoc cooperation emerges in the 70s;
- This cooperation is formalised as the EU's Third Pillar in 1993 to address increasing levels of transnational criminality and to protect the Single Market;
- This cooperation continues to expand rapidly through mutual recognition, and through the creation of instruments and agencies;
 - Examples: Schengen Information System, Europol and the European Arrest Warrant;
- The purpose was to create an Area of Freedom, Security, and Justice (AFSJ), providing citizens with a high level of safety, and protection of their fundamental rights and freedoms;
- The AFSJ today is one of the most important and most dynamic policy areas of the EU. It covers the fight against terrorism, organised crime and cyber crime, as well as migration and asylum, and external border protection;

1) Context of EU-UK police and judicial cooperation pre-Brexit

The UK's participation in the AFSJ

- Opt in/ opt out 'a la carte' model introduced with the Amsterdam Treaty;
- The UK's participation in the AFSJ matched UK national interests and priorities:
 - Police cooperation (Europol, Prüm, PNR, SIS II, JITS...)
 - Judicial cooperation (EAW, Eurojust, ECRIS...)
 - Borders, asylum and migration (Dublin, EURODAC...)
- UK was a leader a number of these initiatives/ policies (mutual recognition, intelligence-led policing).

2) The 2014 mass opt-out from pre-Lisbon police and judicial cooperation measures

Context of the 2014 mass opt-out

- Signature of the Lisbon Treaty and the inclusion of Protocol 36 (concerns of jurisdiction of the Court of Justice + enforcement powers of the Commission);
- Mass opt out was applicable to all pre-Lisbon EU police and judicial cooperation measures (130);
- The Protocol gave the UK the possibility of later re-joining some of those measures if the EU was happy to do so;
- October 2012: the position of the UK Government was that the UK should opt-out from all the measures, as that would be in the best interest.

2) The 2014 mass opt-out from pre-Lisbon police and judicial cooperation measures

The absence of politicisation

- In order to make the decision, the Government consulted the Houses of Parliament, who, in turn, ran inquiries allowing practitioners to give evidence. In addition, practitioners also submitted statements to the Government directly;
- This process took around 6 months and allowed practitioners to have their say on each individual measure that was being considered;
- Although this decision was in line with the overall approach of the Government elected in 2010 (Conservative- Liberal Democrat coalition), there was no indication of politicisation of this area at this time
 - Debate stays elite/ practitioner-focused;
 - There is no polarisation, no public contestation;

2) The 2014 mass opt-out from pre-Lisbon police and judicial cooperation measures

Outcome of the 2014 Mass Opt-out

- Some voices supported the full opt-out:
 - Raised the issue of the Court of Justice and its ‘judicial activism’;
 - Loss of national control;
 - A lot of those 130 measures were of less use/ defunct;
 - Proposed that cooperation could still be achieved informally, outside of EU law.
- The large majority of practitioners opposed the mass opt-out:
 - Keeping pre-Lisbon measures is in the national interest of the UK and even vital to its security;
 - Opt-out would prevent the UK from easily requesting the extradition of suspects who have committed crimes in the UK and escaped, and would allow it to protect UK citizens who have been accused of crimes abroad;
 - CJEU provides legal clarity and consistency in the way measures are applied (there is no risk to UK Common Law system);
 - If the UK was to opt-out completely, it would need to rely on slow and less effective international law instruments;
 - No capacity to influence the direction of the AFSJ.

2) The 2014 mass opt-out from pre-Lisbon police and judicial cooperation measures

The influence of the COP on the outcome of the mass opt-out decision

COP Characteristics	Outcome of the 2014 Mass opt-out
Knowledge	EU is described as an essential element in the way UK police and judicial COP developed its skills, identities and competences. Knowledge is presented as shared.
Practices	Numerous examples were provided of efficient cooperation practices, mechanisms, and habits with EU counterparts to address shared criminal problems.
Resistance	Clear resistance to exiting police and judicial cooperation measures.

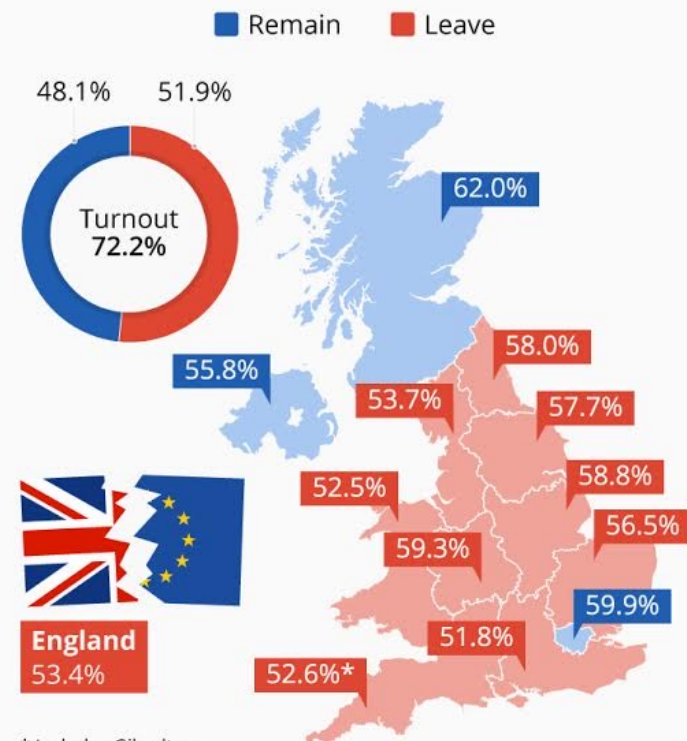
In 2014, the UK tended to listen to practitioner's expertise and prioritises its operational needs over its more hesitant approach to EU integration (most important measures were retained).

3) Brexit Negotiations and impact on police and judicial cooperation

The Context of the Brexit
Negotiations

UK chooses Brexit

EU referendum results by region



* Includes Gibraltar

Source: The Electoral Commission

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3) Brexit Negotiations and impact on police and judicial cooperation

The Context of the Brexit Negotiations

- Period of internal political turmoil (June 2016- March 2017)
 - Prime Minister David Cameron stands down
 - How to deliver Brexit? 'Brexit means Brexit'
 - How to heal the rifts within the Conservative Party?
 - How to heal the rifts within the country itself (between remain and leave voters, and between nations)?
- Triggering of Art 50 (March 2017)
- The Withdrawal Agreement:
 - Legal agreement that creates a Transition Phase and manages the relation between the UK and the EU during that time;
 - Negotiations start in June 2017;

3) Brexit Negotiations and impact on police and judicial cooperation

The Context of the Brexit Negotiations

- UK red lines for the WA
 - End of free movement
 - Exit from Common Market
 - End to Court of Justice jurisdiction
 - Stop contributing to the EU budget
 - Exit customs Union
- The political Declaration:
 - Road map for the negotiation of the future relationship;
 - Ambitious cooperation in internal security;
- Internal security in the WA:
 - What access to databases the UK could still have;
 - What would happen to on-going police investigations;
 - Business as usual, but with a twist (extradition);

3) Brexit Negotiations and impact on police and judicial cooperation

The Context of the Brexit Negotiation

- Negotiations close in November 2018, but we would have to wait until January 2020 for the UK to ratify the documents
 - No internal agreement on the WA (leavers vs remainers);
 - New Prime Minister, Boris Johnson.
 - The ratification of the WA and political declaration creates a transition period (11 months) for the negotiation of the future relationship;
- Negotiations of the Trade and Cooperation Agreement
 - Negotiations start in March 2020;
 - Considerable shift in the UK's ambition for its relationship with the EU (more narrow);
 - Progress was very slow and characterised by serious friction;

3) Brexit Negotiations and impact on police and judicial cooperation

- Negotiations conclude at the end of December 2020;

The Trade and Cooperation Agreement

- Information exchange and access to databases
 - DNA, fingerprints and vehicle registration data (Prum)
 - Transfer of PNR data
 - Some exchange of criminal records (ECRIS)
- Cooperation between agencies
 - Cooperation with Europol and Eurojust
 - Posting of liaison officers
 - Indirect and piecemeal access
 - Access to JITs but within EU law
- Extradition
 - Extradition arrangements through the 'Surrender' system (mirrors Iceland/ Norway arrangements)
 - Differences: political, dual criminality, and no extradition of own nationals
 - Warrants are limited in their circulation.
- Fairly different outcome than what practitioners were proposing (replication of pre-Brexit instruments). Why was that the case?

3) Brexit Negotiations and impact on police and judicial cooperation

The Politicisation of Police and Judicial Cooperation

- Police and Judicial Cooperation in the referendum campaign:
 - Leave campaign: EU membership was weakening the UK's border control capability, affecting its surveillance powers, and threatening its security;
 - Remain campaign: the UK would be less safe if it left the UK because it would exit a number of instruments that were essential to the maintenance of UK security, and would also lose the capacity to influence the direction of the AFSJ.
- This process takes place within the wider politicisation of Brexit, which becomes the main goal (sovereignty, autonomy, 'take back control');
- The politicisation of the policy area continues during the WA negotiations;
- Politicisation accelerates considerably during the negotiation of the TCA;
 - UK backtracks on Political Declaration and pursues a much more slimmed down relationship with the EU;
 - Sovereignty and Global Britain concepts become central to UK rhetoric;
 - This reflected itself in the police and judicial cooperation negotiations, which became very difficult (fundamental rights/ ECHR, and data protection issues).

3) Brexit Negotiations and impact on police and judicial cooperation

The influence of the COP on the outcome of Brexit negotiations

COP Characteristics	Outcome of the Brexit Negotiations
Knowledge	EU is described as an essential element in the way UK police and judicial COP developed its skills, identities and competences. Knowledge is presented as shared.
Practices	Numerous examples were provided of efficient cooperation practices, mechanisms, and habits with EU counterparts to address shared criminal problems.
Resistance	Capacity for resistance disappears. Instead: Contingency planning; Normalisation of UK/ EU relations; Increased presence/ socialisation of practitioners; Search for alternative platforms and mechanism; Bilateralism.

3) Brexit Negotiations and impact on police and judicial cooperation

The influence of the COP on the outcome of Brexit negotiations

- COP did not change its views on the importance of UK-EU police cooperation;
- They expressed their views through multiple statements aimed at the Government, witness statements for Parlement inquests, and media interviews;
- But, in 2016- 2020, the UK tended to prioritise political priorities and rhetoric over operational goals. The politicisation of police and judicial cooperation and of Brexit more widely, made it very difficult for practitioners to shape the UK negotiation position.

Conclusion

- By comparing the two historical periods, we can observe a clear difference in practitioners' capacity to shape policy;
- 2014- priority is operational capability;
- 2020- priority is a political project, a vision of post-Brexit UK that is sovereign and global;
- Practitioners are silenced: their views are ignored as they do not fit within the new political vision for the UK

But this is not the end of the story...

- Review of the Trade and Cooperation Agreement in 2026
- Identification of issues and progress on areas that are yet to be implemented;
- In the context of the re-set of UK-EU relations, practitioners have a third chance to shape future cooperation.



Thank you for listening

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