

EU criminal justice international data sharing: the only show in town?

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Not the only show in town, but.....

EU international police/judicial data sharing is far superior to the principal alternative in terms of range/quality of data, ability to ensure cooperative arrangements are put in place, governance and support for scientific standardisation.

This view is evidenced from a published article, a contribution to a UK government report and evidence to the Commons Justice Committee about, inter alia, the *business processes* of criminal justice.

Context: why international cooperation is important

- Cross border movement:
 - 1970 – the number was equivalent to one third the size of the UK resident population
 - Today – the position is more than reversed

And is most unlikely to change with Brexit
- Successive UK governments have increasingly ceased to treat border control as a public good and again Brexit is unlikely to make a **positive** difference.
- There is no evidence of a crime wave attributable to the citizens of other EU member states
- It is important, however, to identify a small group of significant individuals within the generally law-abiding and tax-paying border-crossing crowd
- The UK also gains mutual benefits from cooperation that helps to protect UK travellers abroad

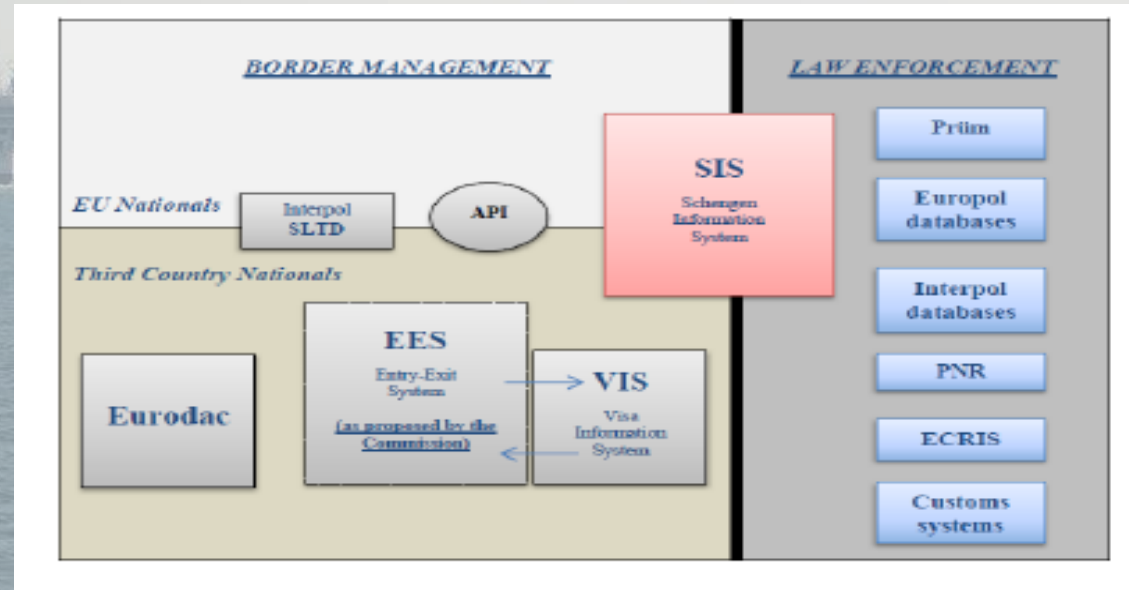
The principal alternative

- Interpol despite its global reach does not offer the same potential for data sharing as the EU via its **centralised** IT systems
- In contrast to the Interpol data **mainly dispersed** IT systems (see the table), EU data exchanges via the Prüm system were functioning at the following levels:
 - On average 13,000+ DNA matches annually (police/**judicial** data)
 - By 2014 more than 6,000 fingerprint matches annually

Interpol Database		Data	Searches	Hits/ Matches?
DNA	2014	140,000		86
Fingerprint	2010, but searches for 2009	103, 000 (all but 3,000 ten-prints)	Capacity to handle 1,000 requests each day	1,000
	2013	189,000	Ditto	1,200
Travel Documents	2008	16.7 million	25 million	5,000
	2014	45 million	+ One thousand million	'nearly 72,000'

The principal alternative

- Where Interpol offers volume data sharing, it **may** become part of an increasingly single access/integrated EU system:



The principal alternative – where is the Interpol logo?



Ensuring cooperative arrangements are put in place: project delivery

UK Government E-borders (PNR system)

Initiated in 2003 for completion by 2011 involving 600 carriers + 30 UK agencies, but the contract was terminated early (2010) after:

- A protracted legal dispute/‘at least’ £830 million spent (2003 – 2015) on this programme and its successors.
- A failure to deliver the programme objectives in full (NAO) (by Year 7: 50% of potential passport data, but ‘unknown’ for the *‘intelligence richer’* booking data; though the latter did reach **20% by Year 12**).

Prüm DNA, fingerprint and vehicle registration/owner data

By Year 6 over 750 international connections (total for all three types of data), but this was equivalent – *in terms of final connectivity* - to 29 per cent for fingerprints, 36 per cent for DNA and 55 per cent for vehicle/driver registration data.

All three Prüm data sources together require three times the number of interfaces (counting the international interfaces) than for e-borders and, particularly for fingerprints; also significant inter-agency and regional connectivity within member states.

Fingerprint sharing requires very high levels of processing capacity.

Ensuring cooperative arrangements are put in place: project delivery

(a) Transposition/legislative implementation cycle [2005] to 2012	(b) Technical implementation cycle 2011 to 2015			
<p>Relevant existing legislation prior to Prüm (June 2008):</p> <ul style="list-style-type: none"> • The Police Act (1990) • The Polish Constitution (1997) • The Code of Criminal Procedure (1997) • The Protection of Personal Data Act (1997) <p>Legislative changes made to create the legal framework that governs the technical facilitation of Prüm exchanges:</p> <ul style="list-style-type: none"> • Order no 1565 of the Police Commander in Chief dated 29 December 2005 [DNA only, and appears to have been issued in anticipation of Prüm] • The Act for the Exchange of Information with the Law Enforcement Authorities of the Member States of the European Union (2011) • The Ordinance of the Minister of Internal Affairs (2012) <p>Other legislative changes relevant to Prüm exchanges:</p> <ul style="list-style-type: none"> • The Act on Proceedings against Persons with Mental Disorders... (2013) <p>Other legislative changes relevant to the probative significance of forensic bioinformation in Poland:</p> <ul style="list-style-type: none"> • Amendments to the Code of Criminal Procedure (2013 & 2015) 		Assessment EU Prüm member states' experts	Initiation of routine data sharing	By early 2016, sharing data
	VRD	28-29 Nov 2011	Jan 2012	17 countries
	DNA	23-25 Oct 2012	Jan 2013	17 countries
	Fingerprints	24-26 Nov 2014	Nov 2015	8 countries
	(c) Operational initiation /match filtering cycle 2012 onwards			
	<p>It was recognized that a decision making process needed to be initiated to determine which verified matches should be prioritized (alternatively which cases to 'filter out for no immediate action) for further action. Relevant factors, in addition to criminologically determined priorities, such as the seriousness of the offence, will include the avoidance of potential legal inhibitors to further investigation or prosecution. For example, it will be important to have regard to date on which crimes were committed in order to avoid investigations/proceedings becoming time barred should the verified match result in strong case for prosecuting the suspected person/suspect.</p>			

Figure 6. The Prüm implementation cycle in Poland.¹⁰⁰

Governance

Soletto Muñoz and Fiodorova (2014), noted 'huge difference' in the greater volume of forensic biometric exchanges facilitated by Prüm compared with the Interpol system, even at the date of their research (completed in July 2013). ***They did not attribute this to technical choices and implementation skills. Instead:***

- Better national control over the data under the Prüm system
- Confidence in EU-wide data protection rules
- A tendency to search for information within the Schengen area first
- Above all mutual trust between EU countries compared with the arrangements for and context in which the Interpol system operates

To that I would add:

- Doctrines of ***proportionality*** and ***margin of appreciation***
- Practical ***implementation support*** by Europol, Eurojust and the EC
- Enforcement (***self-restraint***) by the EC and CJEU

Support for scientific standardisation

- UK has strongly influenced and benefited from EU research investment into the development of international scientific standards
- Both UK austerity policies and ultra Brexit are massively diminishing this influence
- A further risk is that the Trump Administration's fiscal and 'America first' policies could damage the effective relationship between US public science, US commercial entities and the international scientific community

Table 2: The international convergence of DNA multiplexes

YEAR	MULTIPLEX	NUMBER OF MARKERS	OVERLAP WITH UK MULTIPLEX AT THAT TIME		OVERLAP WITH USA MULTIPLEX AT THAT TIME	OVERLAP WITH CHINA MULTIPLEX AT THAT TIME
			ENGLAND AND WALES	SCOTLAND		
1995	UK SGM	7	N/A		N/A	N/A
1998	USA ORIGINAL CODIS	13	6		N/A	N/A
1999	UK SGM+	11	N/A		8	N/A
2010	CHINA SINFILER	15	9		11	N/A
2014	UK (ENGLAND AND WALES) DNA-17	17	N/A	11	8	10
2015	UK (SCOTLAND) DNA-24	24	17	N/A	13	14
2017	USA CODIS CORE LOCI	20	15	20	N/A	14

T. Wilson, 'The Global Perspective' in *Annual Report of the Government Chief Scientific Adviser 2015: Vol 2 Evidence and Case Studies*

References

- Tim J Wilson, 'Criminal Justice and Global Public Goods: The Prüm Forensic Biometric Cooperation Model', *The Journal of Criminal Law* 2016, Vol. 80 (5) 303-326
- T. Wilson, 'The Global Perspective' in M. Peplow (ed.), *Annual Report of the Government Chief Scientific Adviser 2015: Forensic Science and Beyond: Authenticity, Provenance and Assurance: Evidence and Case Studies* (Government Office for Science: London, 2015) 82-93.
- The House of Commons Justice Committee, *Implications of Brexit for the justice system* (March 2017)
- Read about current NCEJS cybercrime research (jointly with Open University of the Netherlands, the Norwegian Police University College and Stockholm University co-financed by NordForsk, the Economic and Social Research Council (ESRC) and the Netherlands Organisation for Scientific Research (NWO)) at:
<http://whatworks.college.police.uk/Research/Research-Map/Pages/ResearchProject.aspx?projectid=636>

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**Cooperation in Criminal Matters
EUROMED JUSTICE**

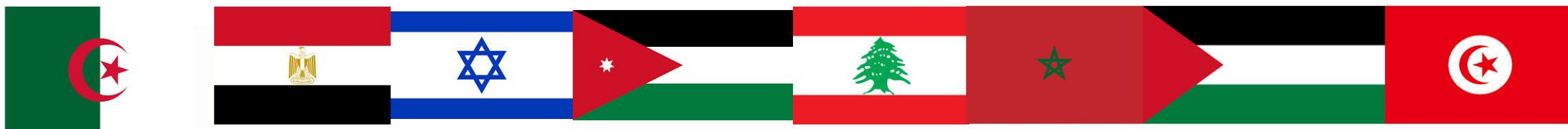
**European
Judicial
Network**



With the overall objective of contributing to the development of a Euro-Mediterranean area of cooperation in the field of justice and of effective, efficient and democratic justice systems, the European Union, alongside the Project's Partner Countries from the Southern Neighbourhood

**Mutual legal assistance
Transfer of Sentenced Persons
Special Investigative Techniques**

**Extradition
Transfer of Criminal Proceedings
Joint Investigations**

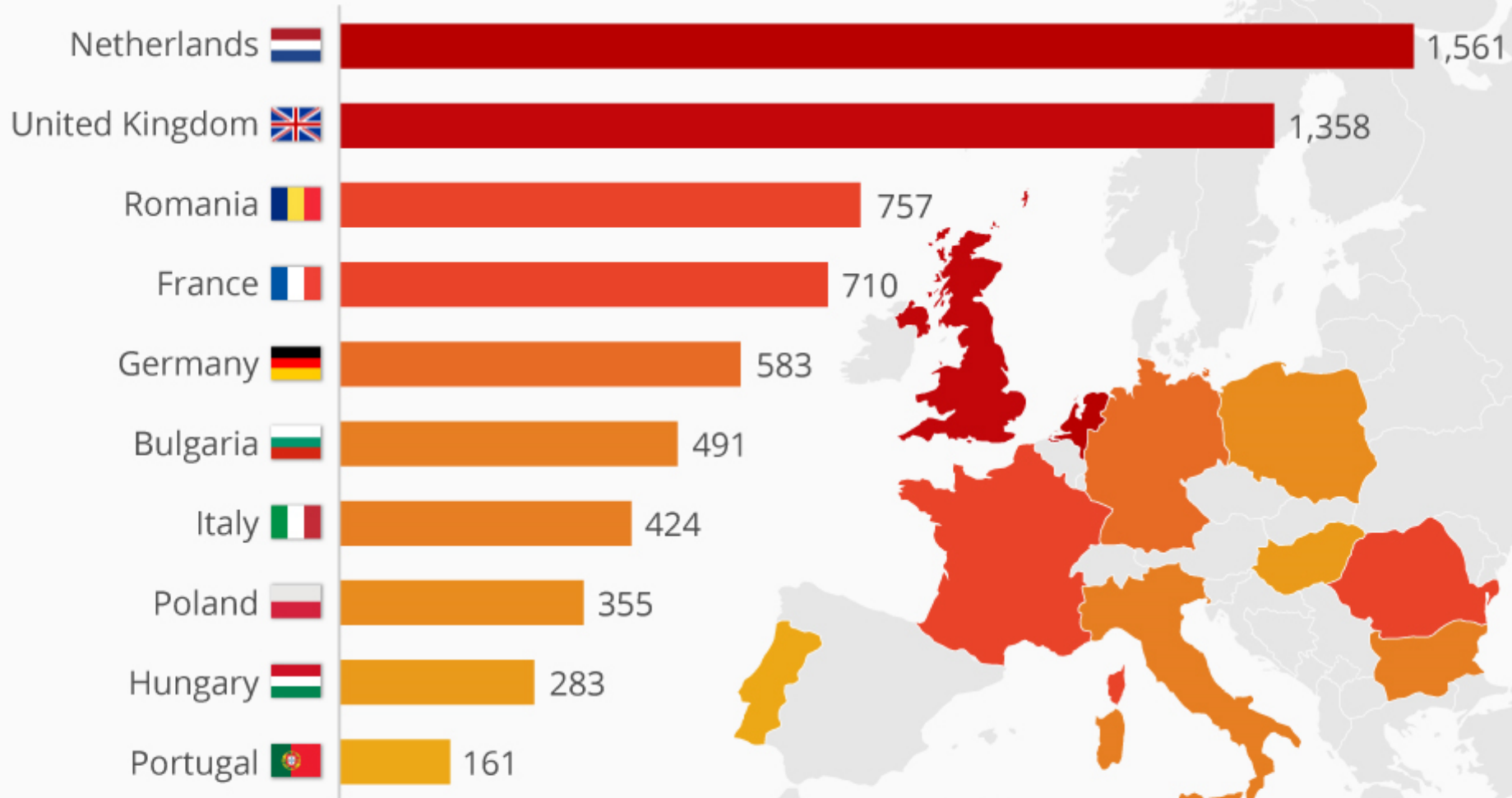




Criminal Justice Information Sharing in a Post Brexit Context: Part 2

The EU's Hotspots For People Trafficking

Top-10 EU countries with the most registered victims of people trafficking in 2014



@StatistaCharts Source: European Commission

1

- Criminal Justice Co-operation

2

- European Legislation and Policy

3

- Hard Border consequences

1. Relevant cooperation mechanisms

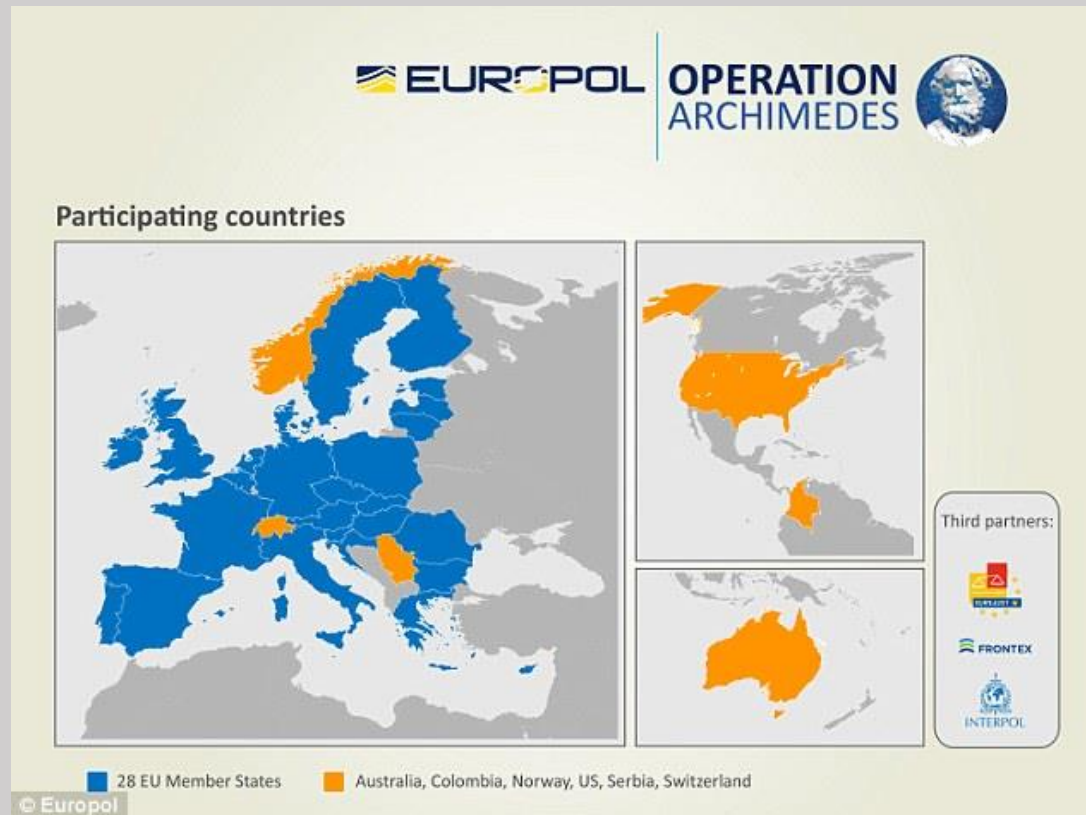
- European Arrest Warrant (EAW)
 - European Criminal Records Information System (ECRIS)
 - The Second Generation Schengen Information System (SIS II)
 - The Prüm Decision (Prüm)
 - EU Passenger Name Records Directive (PNR)
 - European Investigation Order (EIO)
-
- To name just 6 out of 65 instruments the UK is part of

1. Bodies Facilitating Co-operation

- Europol
- Eurojust



An example: Operation Archimedes



- 'the single largest coordinated assault on organised crime ever seen in Europe,'
- 'the operation was made necessary by the increasing sophistication and interconnectedness of Europe's crime groups, many of whom were using the hard-to-monitor 'dark net' - or encrypted internet - to communicate with each other'.
- 'What we have seen emerging is an integrated underground criminal economy,'

2. European Legislation

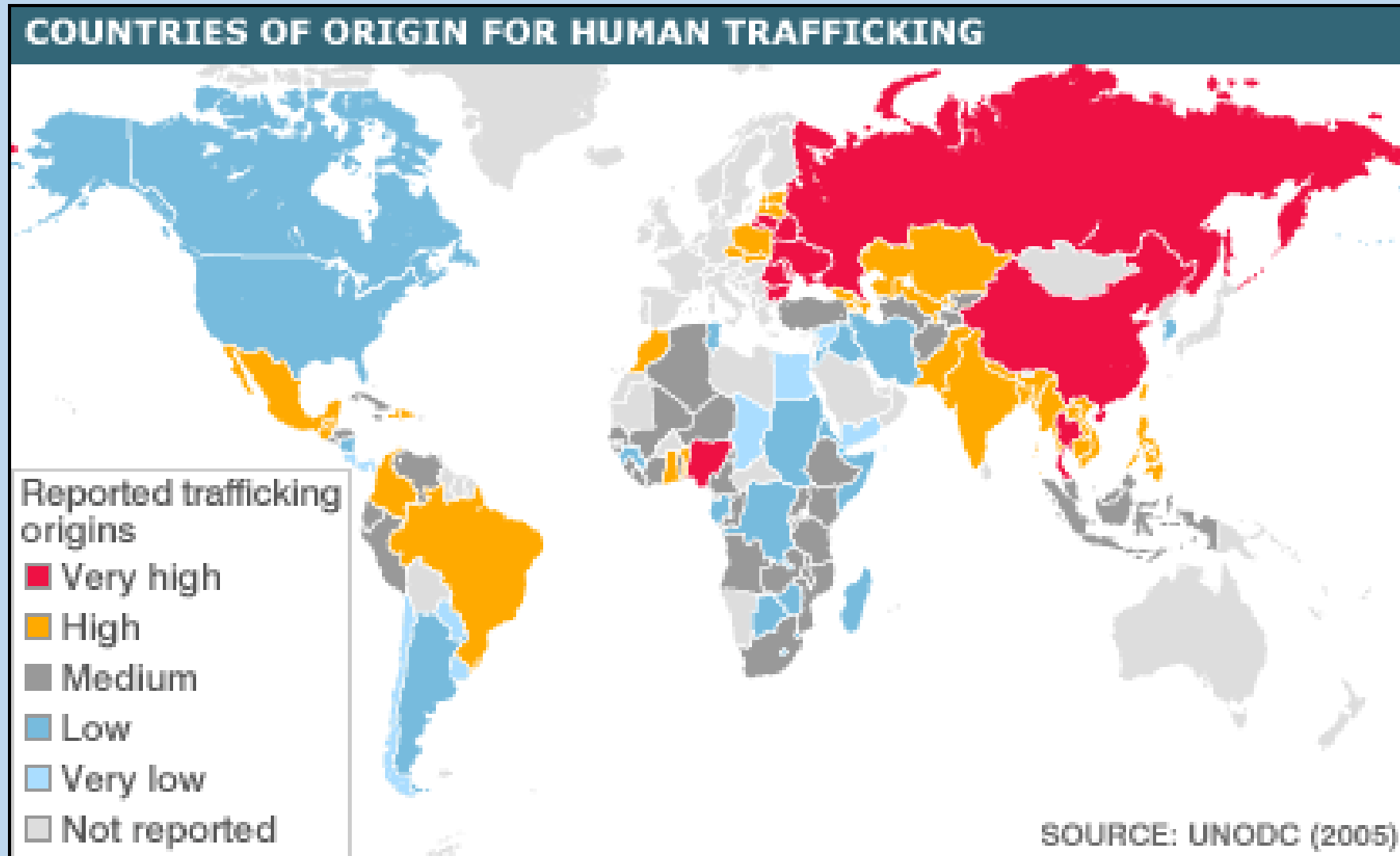
- UN's Palermo Protocol 2004
- Council of Europe Convention on trafficking in human beings 2005
- Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims
- Modern Slavery Act 2015

2. European Policy



- EU Strategy Towards the Eradication of Trafficking in Human Beings 2012-16
 - National referral mechanisms
 - EU Transnational Referral Mechanism
 - Collection of data
 - funding
- EU Anti-Trafficking Coordinator

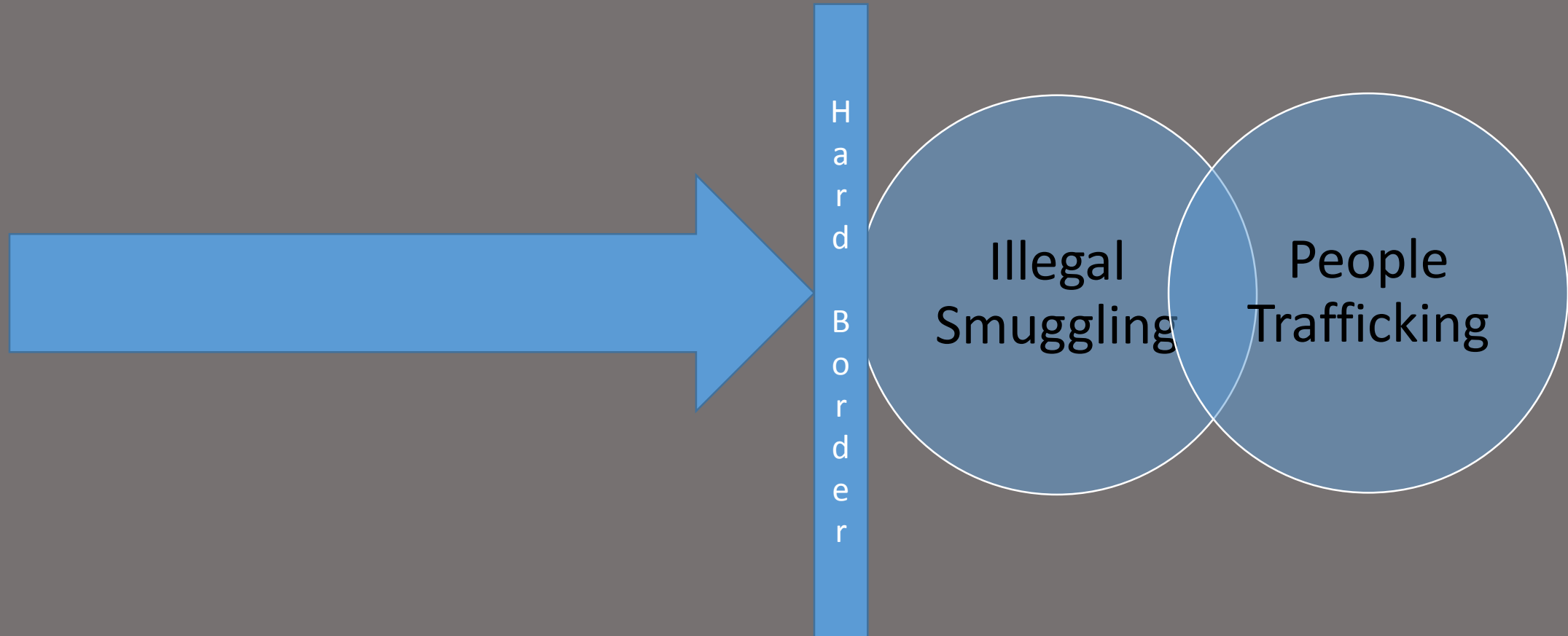
Influencing THB policy world-wide



3) Consequences of hard border controls



3) Consequences of hard border controls



The Brexit Plan

- Fiona MacTaggart MP said she had not heard any government ministers working on Brexit mention what new protections there will be for trafficked people after Britain leaves the EU.
- "I call on those planning our exit from Europe to prepare and publish a plan to protect future victims of slavery and compensate them for their exploitation."



References

- Guido Friebal and Sergi Guriev, 'Smuggling Humans: A Theory of Debt-Financed Migration', *Journal of the European Economic Association* 4:6 (2006): 1085-1111
- John Davies and Benjamin Davies, "How to Use a Trafficked Woman: The Alliance between Political and Criminal Trafficking Organisations," *Recherches sociologiques et anthropologiques* 1 (2008) 114-131
- Slobodan Djajic and Alexandra Vinogradova, "Undocumented Migrants in Debt," *Labour Economics* 21 (2013): 15-24