

This submission emanates from an Arts and Humanities Research Council project which funded the UK-Irish Criminal Justice Co-operation Network. The network brings together practitioners, academics and policy makers from across the regions of the UK and Ireland to explore the impact of Brexit on criminal justice co-operation between the UK and Ireland with the aim of understanding the risks and possible mitigation of those risks. This written submission reflects the deliberations of over 70 individuals who have generously given their time to the network over the last two years, as well as academic research emanating from the project.

1. What effects Brexit will have on cross-jurisdictional criminality between Northern Ireland and the Republic of Ireland

Despite the close working relationship between the Police Service of Northern Ireland (PSNI) and An Garda Síochána (AGS)) Brexit presents a risk of increased criminality between Northern Ireland and the Republic of Ireland at a time when loss of EU police and judicial co-operation mechanisms will negatively impact operational effectiveness. The extent to which Brexit will impact cross-border criminality depends on what the relationship between the EU and the UK looks like after the transition period ends. The more tangible the border and the greater the regulatory divergence between the two states the greater the impact will be on crime. The greater the loss of EU co-operation mechanisms the harder it will be to deal with transnational crime. **There are two distinct ways in which a more tangible border could lead to increased levels of criminality. Firstly, this could manifest itself in the form of cross-border smuggling of people and/or commodities. Secondly terrorist violence could erupt in the wake of a fostering of nationalist sentiment. Risks of increased criminal activity could be further compounded by a belief that loss of the EAW and other EU criminal justice co-operation mechanisms decreases the risk of detection and/or arrest and that the border could be used to avoid/delay prosecution.**

Immigration crime

Divergence of immigration rules between the UK and the EU could create an increased risk of organised immigration crime. Whilst there is already some capacity to deal with immigration crime and human trafficking this may require further resourcing post Brexit. Currently Operation Gull aims to prevent the movement of undocumented migrants crossing the Irish land border and the sea border with Britain by conducting periodic document checks at Northern Ireland's air and seaports. Concerns around racial profiling means that this is not as systematic as initially envisaged. Whilst sea ports across the south of England are still the most common entry point, in the last few years there has already been an increase in the use of Northern Ireland via the Republic as an entry route to the rest of the UK. The extent to which Brexit will further increase the use of the Irish border as a route for illegal immigration is unclear. EU citizens will still be able to enter the UK for up to 6 months without a visa and Ireland is outside of the Schengen Area so it would remain impossible to enter the UK without requiring documentation on arrival in Ireland. A close working relationship between border control agencies in both countries is needed to minimise the risk of undetected arrival in Ireland which would then facilitate entry to the UK through the border. **Arrival in Ireland makes it very easy to move to the UK through the Common Travel Area, and it is therefore vital that there is investment in collaborative border procedures and efficient data sharing.** The most important data for immigration purposes are fingerprints, DNA and vehicle registration through Prüm and passenger name record data via the PNR Directive. It is hoped that the UK will continue to have access to both Prüm and the PNR Directive subject to compliance with pre-existing CJEU safeguards. However, although Ireland has not implemented SIS II the PSNI regularly use it and are concerned about its loss. **The PSNI have stressed that they are not a border service and should not be used to check passports or routinely monitor crossing points as it will undoubtedly increase tensions as discussed below.**

Commodity smuggling

Illegal activity attempting to avoid tax differences is not new to the island. Historically between the 1920s and 1960s smuggling across the border to avoid paying duty on everyday goods was widespread. More recently this has remained a feature of the border notwithstanding the customs union as there remained differing tax regimes in relation to fuel, cigarettes and alcohol. Elaborate fuel laundering operations which are estimated to have cost the taxpayer £40 million in 2017 alone are an example of this sort of activity. **Northern Ireland has seen a rise in organised crime in recent years which has been linked to 'paramilitary diversification'. Such organisations are well placed to**

take advantage of different excise duties, VAT regimes and other differences in regulation or standards after 01 January 2021. Divergence in environmental protection could also facilitate the smuggling of waste. These risks are explored in greater detail in answer to question 2 below.

Terrorism

Brexit and the reawakening of the debate over the constitutional status of Northern Ireland strengthens the position of the four main politically motivated dissident Irish republican groups and fosters nationalist sentiment. Such violence could, as in the past, focus on physical manifestations of the border. Any attempt to reinstate border checkpoints would be seen by extremists as a target for terrorist attacks. Research has shown that physical infrastructure, even unmanned technology is likely to increase tensions. Dissident Republican terrorists have in the past used the land border to frustrate counter-terrorism operations, while they and other organised crime gangs breached bail and crossed the land border to avoid prosecution. Just as the process of European integration was one of the catalysts for the depoliticization of Irish/Northern Irish cross-border co-operation the UK's departure from the EU removes this context and reintroduces a political dimension to co-operation. The Irish border still holds the potential for conflict. Northern Ireland, for all of its progress, is still a divided society and any action which draws attention to the border fuels tension. The current threat level is already graded as 'severe' by MI5. In recent months Operation Arbacia is an example of a substantial co-ordinated operation between the PSNI and the Garda and demonstrates that the terrorism threat in Northern Ireland is very real.¹

2. What effects Brexit, and the new customs arrangements under the Northern Ireland Protocol, could have on criminality between the island of Ireland and Great Britain;

The Ireland/Northern Ireland Protocol gives Northern Ireland a unique status. Whilst being officially still part of the UK internal market and customs territory, it will be de facto in the EU's single market for goods and operating under the Union Customs Code. This is in order to create a situation in which the Irish border remains as open as it currently is. As such, goods circulating in Northern Ireland can move across into the EU's single market without the need for checks or controls. This

¹ <https://www.irishexaminer.com/news/courtandcrime/arid-40034351.html>

means that the smuggling problem which exists across the Irish border will not radically expand as a UK/EU customs frontier, but instead remain one stimulated by the incentive of avoiding VAT and excise duty (e.g. cigarettes, fuel) (not insignificant, but not directly undermining of the whole NI legitimate economy)

The Protocol thus effectively creates a customs and regulatory border down the Irish Sea. The degree to which this will cause an incentive for smuggling will depend on three things. First, whether there is a UK-EU free trade agreement. If there is such an agreement, with zero tariffs and zero quotas, there will be minimum incentive for smuggling across the Irish Sea because there will be no need to try and exploit tariff differentials. If there is no FTA, then there will be increased incentive for smuggling across the Irish Sea from GB in order to access the EU single market and avoid paying tariffs (as would be faced in direct GB to EU movement). This risk will be greatest for those goods which will face the highest EU tariffs, e.g. dairy produce.

In such a no deal scenario, there will also be increased risk of smuggling of goods into GB from the Republic of Ireland in order to avoid tariffs on imports to the UK(GB) coming from the EU. This could come directly from Ireland (e.g. Dublin-Holyhead), but it would then need to navigate the controls put in place for that trade anyway. It could also come via Northern Ireland to exploit the unfettered access offered NI-GB. This risk depends greatly on how that NI to GB movement is managed, and on how goods qualify as 'Northern Irish' for unfettered access. This is still to be determined.

Secondly, the risk of smuggling depends on the degree to which the UK diverges from EU standards. Northern Ireland will continue to follow EU rules when it comes to the production of goods and goods will not be allowed into Northern Ireland unless they meet those standards. If the UK remains largely aligned in practice to EU standards, then the need for controls will be minimal. The UK Internal Market bill means that if one part of Great Britain decides to lower standards, then those goods will not be confined to that part of Great Britain but can circulate freely across it. A 'race to the bottom' would mean that there will be a need for tighter controls on goods entering NI from GB. Foods produced to lower standards are cheaper to produce. There will be an incentive to smuggle such goods into Northern Ireland where the price differential is significant.

Third, the risk of smuggling across the Irish Sea is not just about GB or EU goods but those from the Rest of the World (ROW). There are differentials between the UK Global Tariff and EU Common External Tariff on some 5000 product lines; under the UKGT there will be zero tariffs on 47% of tariff lines (compared to on 27% for the CET) and the average tariff will be 5.7% (compared to 7.2% under the CET).² Where the differences are greatest (e.g. in processed agricultural produce), then the

²https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/885943/

incentive for the ROW to import into GB and then access the EU via NI will be the highest. It is for this reason that the EU Commission proposed that tariff differentials form the basis for the definition of goods as being “at risk” of being smuggled into NI from GB (and thus be subject to tariff payment in advance).³ This issue will remain live as the UK secures new FTAs around the world.

All in all, the risk of smuggling across the Irish Sea is lower than that of smuggling across the Irish border given the fact that the added logistical difficulties and the costs of movement across that border substantially effects the profitability of such smuggling. It is also more simple to effectively manage and control entry and exit of goods from specified air and sea ports rather than across a 500km land border of some 280 crossings. This is no doubt part of the reason for the Protocol in the first place: practicality.

However, it should be recognised that there is some doubt about the implementation of the Ireland/Northern Ireland Protocol. **Legal uncertainty about the implementation of the Protocol would mean that the international economic status of Northern Ireland – and goods produced in and exported from there – will become immediately insecure. This would be compounded by the absence of a UK-EU deal. The rules that apply to goods produced in and moving to/from Northern Ireland need to be absolutely clear in order to create the conditions for legal business and trade. More broadly, it looks extremely unlikely that the UK authorities will be ready to implement the Protocol effectively from 1 January 2021. The EU will be keen to assess as to the scale and immediacy of the subsequent risk for smuggling/criminality exploiting a poorly enforced sea border. Such a risk would be all the greater without a UK-EU deal, for reasons explained above.**

3. What new barriers will be created to cross-border security co-operation between the UK and the Republic of Ireland when the transition period ends, including if no deal on the UK-EU future relationship is agreed

Despite the positive number of bi-lateral police co-operation arrangements between the AGS and PSNI, EU processes and institutions still facilitate much of the cooperation between the PSNI and the AGS. EU co-operation mechanisms enable a quicker, more efficient and dynamic response to crime and criminality. Between the UK and Ireland a huge amount of data is exchanged. This was estimated by network members to be between 60-70K items of shared information a year. **In a no**

[Public consultation on the UK Global Tariff government response.pdf](#)

³ <https://www.rte.ie/news/brexit/2020/0928/1168086-european-commission-brexit/>

deal scenario the primary areas of concern are the loss of the EAW (dealt with below) and ECRIS. A quick and reliable method of assessing criminal records is needed when policing across an open border. The proposed EU treaty offers some improvement to the European Convention on Mutual Assistance in Criminal Matters 1959. The treaty proposes communication of criminal record information on each other's nationals once a month rather than once a year. The treaty provides for electronic exchange but the technical details of this are not yet published. Whilst ACRO are making preparations for the loss of ECRIS any replacement will inevitably be much slower and less reliable.

In a no deal scenario the loss of the Prüm database would similarly present obstacles to checking identity through fingerprints and DNA. The loss of access to SIS II is less problematic for cross-border co-operation as Ireland does not yet have access to the database (although it plans to link up imminently). From a UK perspective the PSNI use SIS II to run checks at ports in Northern Ireland. The loss of SIS II with the UK is not considered a particular threat to Ireland as the size of the population means that conventional methods of information exchange are still effective. Whilst Europol and Eurojust are important to the UK, if an investigation only involved the UK and Ireland, these institutions would not be used.

One important aspect of Brexit is that it takes away much of the legal architecture which informal cooperation has flourished under. Cross-border cooperation between the ROI and the UK is anchored by the Intergovernmental Agreement on Co-operation on Criminal Justice Matters (July 2005 and April 2010), which provides a structured framework to enhance and develop more effective North-South cooperation and coordination and includes a programme of secondment between the two police forces. In 2010 and again in 2016 the PSNI and AGS launched a Joint Cross-border Policing Strategy, which aims to disrupt criminal activity across the border. At operational level the Joint Manual of Guidance aims to support police and prosecution services across both jurisdictions dealing with investigations that have a cross-border element. In November 2015, the UK and ROI governments and the Northern Ireland Executive agreed to the creation of a Joint Agency Task Force as part of a concerted and enhanced effort to tackle organised and cross-jurisdictional crime led by senior officers from the PSNI, AGS, the Revenue Commissioners and HM Revenue and Customs. This agency will become increasingly important after Brexit. Devolution has marked an era of enhanced capacity for co-ordination in this area and one of the priority areas for discussion in the North/South Ministerial Council (on the island of Ireland) has consistently been that of justice. Brexit does not remove these informal co-operation mechanisms and co-operation between the PSNI and AGS has never been better. However, removal of the UK from police cooperation and judicial cooperation in criminal matters means that the legal architecture supporting informal co-operation is removed. Data protection concerns in the event of a no deal or in the absence of an adequacy

decision will alarm practitioners who will fear sharing information if they are unsure of the legal basis for doing so. There will be new processes in place which many police officers and lawyers will have to familiarise themselves with and legal challenges are likely to become more frequent. Goodwill and a desire to co-operate on both sides of the border does not extend to breaking the law. Information will not be shared if there is no legal basis to do so. **There is a real danger that the loss of EU level agreements will lead to a slow grinding down of co-operation as we move forward. It is suggested that bilateral co-operation can mitigate this risk as discussed.**

4. What steps need to be taken by the UK Government, in collaboration with the Irish Government, to replace any loss of access to the European Arrest Warrant as a tool for law enforcement co-operation between the UK and the Republic of Ireland in the context of:

(a) a future relationship deal agreed between the UK and EU that includes arrangements for security and judicial co-operation;

Access to the EAW or a EAW style system has always been a top priority for UK and Irish criminal justice organisations. Ireland's Department of Justice and Equality 2017 Annual Report on the operation of the European Arrest Warrant Act 2003 stated '*[t]he departure of the UK is particularly significant for Ireland on a range of issues. However, in the context of combatting crime and terrorism, the necessity to maintain a functioning system of extradition between the two States has been identified as the key priority*'.⁴ The shared land border and geographic proximity, the free movement of persons under the Common Travel Area and the history of politically-related violence between and within Great Britain and the island of Ireland all contribute to the priority. The benefits of the EAW have been well set out during the opt out and in decision of 2014 and throughout the Brexit process. Ireland is the UK's largest 'trading partner' for EAWs. From September 2018 to August 2019 the PSNI issued 38 EAWs, twenty-six of which related to the Republic of Ireland and 12 to all other EU states. Conversely, the PSNI received 5 requests from the Republic of Ireland during that period, out of a total of 44 EAWs. The EAW has strengthened mutual trust between Ireland and the UK in extradition matters. Having its origins in Irish case law, extradition between Ireland and Northern Ireland broke down within a decade of the founding of the Irish Republic. From 1928 to

⁴ Department of Justice and Equality, Report on the operation of the European Arrest Warrant Act 2003 (as amended) for the year 2017, p 4, cited at [http://www.justice.ie/en/JELR/European Arrest Warrant Annual Report for 2017.pdf/Files/European Arrest Warrant Annual Report for 2017.pdf](http://www.justice.ie/en/JELR/European%20Arrest%20Warrant%20Annual%20Report%20for%202017.pdf/Files/European%20Arrest%20Warrant%20Annual%20Report%20for%202017.pdf) <accessed 29-08-20>.

1965 there were no practically applicable arrangements between the two. Things changed as both the UK and Ireland participated in international agreements and over the last 17 years the EAW has further smoothed the extradition waters as both re-embraced the principle of mutual trust and recognition.

The preferable replacement to the EAW is an EU-UK multilateral treaty. This is simply because the UK's extradition relations would be the same with all its former partners. However, the priority is a functioning system of extradition whether that be multilateral or bilateral. Both the UK and the EU have set out proposals which closely mirror the Norway/Iceland agreement and would in most ways provide an adequate replacement for the EAW. It is proposed under the EU agreement that Member States may declare derogations to certain aspects of the Treaty. These include derogations on the refusal to extradite on the grounds that the offence is political and extradition of nationals or a requirement that nationals be transferred back to their home state to serve their sentence. It is not anticipated that Ireland would make either of these derogations. Ireland have recently made legislative provision to ensure Irish nationals can be extradited to the UK under the 1957 Convention post-Brexit and they have not made any of these declarations in relation to the Iceland/Norway agreement. However, recent CJEU case law makes it clear that Ireland (as a Member State) would be obliged to inform the country of nationality of a Union citizen when applying a third party extradition agreement and to give priority to any EAW. When the UK becomes a 'third country' for the purposes of extradition with EU countries after 31 December 2020 its requests for extradition will be secondary to any request from the country of nationality for all EU citizens. If the UK requests extradition of a Polish citizen from Ireland, for example, Ireland will first contact Poland to make them aware of the request and will give precedence to a Polish EAW.

The EU's negotiating mandate unambiguously sets out legal parameters for post-Brexit co-operation as continued UK ECHR compliance which includes the ability of individuals to enforce Convention rights directly in UK courts. **Confidence in whether human rights will continue to be embedded in the legal systems of the UK has been undermined by the UK Government's recent statements on the Human Rights Act 1998. Whilst it is recognised that this stumbling block could prevent an EU-UK agreement being reached it needs to be recognised that it could also act as a stumbling block to bilateral co-operation, even with Ireland.**

In the absence of an EU-UK agreement extradition to and from Ireland will continue under the 1957 Convention. However, such extradition will be without the benefit of associated defence rights and access to other aspects of the EU acquis such as prisoner transfer. Despite political will to co-operate, such omissions alone could give rise to legal challenge in Irish courts or before the CJEU on

the weakness of human rights protection. Whilst the UK Government will not accept being bound directly by CJEU decisions indirectly the UK will be impacted by the court as the CJEU has jurisdiction over third party extradition agreements from the Member State perspective. **The UK Government must be prepared to offer credible guarantees about future formal and institutional human rights compliance.** Fundamental rights lie at the heart of the EU project and are inescapably linked to the ECHR's scheme of protection. Human rights standards distilled from the ECHR, influence each Member States' internal legal orders. This is particularly true in Ireland. The ECHR is therefore a valuable bridge in shoring up fundamental rights commitments in the arrangements that will define the UK's future relationship with the EU *and* with Member States such as Ireland.

What steps need to be taken by the UK Government, in collaboration with the Irish Government, to replace any loss of access to the European Arrest Warrant as a tool for law enforcement co-operation between the UK and the Republic of Ireland in the context of:

(b) there being no deal agreed between the UK and EU before the transition period ends on 31 December 2020;

If an agreement between the EU and UK is not concluded and ratified by 31 December 2020 the UK and Ireland will have to fall back on the 1957 European Convention on Extradition, in the medium term at least. The problems with the Convention are well rehearsed. Reliance on the 1957 Convention could see a slow grinding of co-operation, previously lubricated by membership of the EU. If sectarian violence were to resurface theoretically requests for extradition under the 1957 Convention of any individuals wanted on IRA related terrorism charges, could be refused on the basis of Article 3 of the 1957 Convention, which prohibits extradition for offences 'regarded by the requested Party as a political offence or as an offence connected with a political offence.' Of course, both Ireland and the UK remain party to the European Convention on the Suppression of Terrorism 1977, which stands in the way of reliance on the exception. There is no doubt, however, EU membership and the Framework Decision on the EAW, acted to build the trust to render the revival of the exception, unthinkable. The proposed UK-EU agreement, in line with the Norway-Iceland agreement, bars refusal of co-operation on the grounds that the offence may be regarded by the executing state as a political offence, connected with a political offence or inspired by political motives. Whilst the proposed UK-EU agreement would protect the UK and Ireland from problems that could arise in relation to sectarian terrorism charges, the 1957 Convention *per se* does not.

Both countries have made legislative preparations to facilitate falling back on the 1957 Convention and we heard that Irish prosecutors had for some time been working to identify backlogs in EAW caseloads to lessen problems arising with EAWs that had been issued but not executed before 31 December 2020. Article 62 of the Withdrawal Agreement provides that EAWs executed before the end of the transition period continue to operate under the Framework Decision.⁵ This would seem to provide that provisional arrest warrants will not be required in the UK if the EAW has already been executed before the end of the year. If this is the case Ireland will be able to reciprocate. **The UK and Irish governments should work together to ensure the operation of Article 62 is clear and consideration should be given to the role that CJEU case law will have once the transition period ends in terms of EAWs executed in the UK before 31 December 2020.**

5. What steps the UK can take to replace any loss of access to existing EU data and information-sharing arrangements

The draft EU treaty makes provision for access to the Prüm framework facilitating automatic searching and comparison of DNA profiles, fingerprints and vehicle registration data as well as passenger records through the PNR Directive. However, there is a loss of capability in all other areas. There is no access to SIS II for real time data although there will be ‘cooperation on operational information’. Data would be provided only in response to a request and would therefore not be comparable to SIS II. The draft treaty does not envisage access to ECRIS. The UK will have to fall back on the 1959 European Convention on Mutual Assistance in Criminal Matters which would be supplemented by setting out the detail for making requests for assistance and agreeing a timeframe for responding to requests. Once conviction information has been requested there is provision for an automated electronic system for exchanging information although the technical details have yet to be set out. The primary problem with these arrangements is the significant increase in time it takes to obtain the relevant criminal conviction information for Foreign National Offenders and how out of date information might be. There is no provision for asset freezing and confiscation or prisoner transfer.

⁵ Article 62(1)(b) - Council Framework Decision 2002/584/JHA(3) shall apply in respect of European arrest warrants where the requested person was arrested before the end of the transition period for the purposes of the execution of a European arrest warrant, irrespective of the decision of the executing judicial authority as to whether the requested person is to remain in detention or be provisionally released.

A bilateral agreement which covers areas of co-operation such as prisoner transfer, supervision of probation and recognition of financial penalties could help to facilitate free movement across the border. A bilateral agreement covering exchange of criminal records and mutual legal assistance would also be particularly desirable. The legal basis for a bilateral agreement is considered in question 7 but in short this is much easier in areas where the EU has chosen not to enter into an agreement and therefore has no competence.

6. How Brexit will affect co-operation between the PSNI and AGS, as well as UK and Irish crime agencies, in tackling cross-border crime;

Cooperation between UK and Ireland in policing and criminal matters has long predated membership of the EU and much cooperation between the two countries is outside of the EU framework. The PSNI have a central academy for Brexit which is attempting to maximise existing structures and is making sure what currently exists works well, such as the cross-border agency taskforce. The PSNI had funding for an additional 300 officers. Much of this resource has gone to the borders but also into local communities and Belfast. There is evidence of increased community tensions in the build up to Brexit therefore, resources need to be spent on building trust and legitimacy. A recent example is Operation Arbacia which has worked to prevent planned attacks on police and prison officers in Northern Ireland in the run-up to the conclusion of the Brexit talks. Scotland have increased their border policing unit by 60 and this will increase further as they move forward. The new officers are primarily uniformed officers and counter terrorist officers liaising with the Home Office border force and mirror the percentage increase in Home Office numbers. From the Irish perspective AGS have focused its Brexit preparations on examining existing structures and ensuring they work. The critical areas for AGS are the EAW and data sharing. Ireland will after Brexit have an international land border but policing will primarily remain the same and their focus is on ensuring the quality of life of all individuals who reside within the area of the border and they are keen to ensure that policing of the border is as informal as possible. AGS have been building on their already very good levels of co-operation with the PSNI with a further focus on ratcheting up cross-border co-operation looking for areas to enhance co-operation. In particular AGS have encouraged better relations at a district level between those working in the border area.

Brexit has therefore not only created risks but also opportunities. It has increased the conversations about the international world, highlighted differences in legislation and approaches in the regions and overall relationships between the regions has improved as a result. This has happened through the Brexit cross law enforcement group which is co-chaired by the NCA and NPCC. Overall, there is more communication now between different agencies and relations between AGS and PSNI are better than they have ever been. However, there are external constraints. High level political rhetoric does not always transform into real forums where agencies can really work on the issues that Brexit presents. No one can remove the fact that the border is deeply politically sensitive. It is difficult to discuss the border at all levels and this is frustrating. Warm words about ensuring the peace process is not damaged must be backed by practical realities as confidence in border communities is dripping away. There needs to be clear evidence that the UK Government understands the difficulties Brexit poses for policing of the border.

The feeling of network members was that focus should not just be on maintaining cross-border relationships but on enhancing them. Many felt that this could only be achieved by the creation of a permanently established joint operational centre involving key personnel from the police services of each of the devolved nations and AGS. This could operate on a model seen between multi-agency hubs for UK joint intelligence and operations but on a cross-border level. Such co-operation needs to have a legal basis. An example of highly functional police co-operation can be seen between the Nordic countries. Co-operation is based on formally signed international law instruments supplemented with intergovernmental protocols. Enhanced co-operation is premised on a shared history (not always harmonious), a common legal and policing culture and the removal of passport controls long before the advent of Schengen. Co-operation is driven by the Nordic Council which is the official body for inter-parliamentary co-operation. Adherence to the rule of law and human rights principles underpin co-operation. The network also heard evidence of a model of co-operation between police in the South of England and France which, from a legal perspective is ahead of what is available between north and south of Ireland. The UK-France Coordination and Information Centre underpins co-operation between the UK and France. The centre's legal basis comes from the Sandhurst Treaty.⁶ **The UK should investigate with Ireland the appetite for agreeing a similar treaty and coordination centre with its own budget as they have done with France and is modelled by the Nordic countries.**

⁶ <https://www.gov.uk/government/news/joint-uk-france-centre-opens-in-calais-to-tackle-criminality-at-border>

Post Brexit the landscape will not be the same. The instruments that have been utilised to great effect over the last 20 years will not all be available. We will therefore have to find alternative ways of ensuring that co-operation between the two countries continues to flourish. Culturally, economically and politically these islands have been inextricably linked for centuries and Brexit should not alter this. **The UK government should not underestimate how quickly informal co-operation can deteriorate if crime, even low impact crime, increases across the border.** With the advent of GDPR and the Law Enforcement Directive informal cooperation is likely to be less effective than it has been in the past. Formalising co-operation through legal instrument and establishing a joint operational centre offers a positive way forward. This is more likely to be successful if supplemented by high level forums for co-operation. **What the UK negotiates with the EU about criminal justice co-operation both now and in the future uniquely impacts Northern Ireland. It is recommended that the remit of the British-Irish Council be expanded to include criminal justice co-operation. This would emulate the Nordic model which sees criminal justice co-operation driven by justice ministers in the Nordic Council.**⁷

7. What scope exists for the UK and the Republic of Ireland to pursue alternative approaches to policing, security and criminal justice co-operation outside the EU acquis.

The preferable replacement to the EAW is an EU-UK multilateral treaty. However, a bilateral agreement would form a bridge between the EAW and any subsequent multilateral agreement and would mitigate the failings of the 1957 Convention. Article 4 of the Council Decision implementing the Withdrawal Agreement (2020/135) states that Ireland can request permission to negotiate bilateral agreements with the United Kingdom in areas of exclusive competence of the Union. Such a request needs to show that the agreement is necessary for the proper functioning of the arrangements set out in the Protocol on Ireland/Northern Ireland and the envisaged agreement is compatible with Union law and does not put at risk the attainment of an objective of the Union's external action in the area concerned. The Council must consent to the final text of the agreement.⁸ **Bilateral negotiations between the UK and Ireland should begin as soon as possible and should not wait until 01 January 2021. If Ireland and the UK were to successfully conclude a bilateral agreement this could be influential in any later EU-UK agreement.** Given the legal and linguistic

⁷ <https://www.norden.org/en/news/call-closer-police-co-operation>

⁸ https://eur-lex.europa.eu/legal-content/EN/TXT/?toc=OJ%3AL%3A2020%3A029%3ATOC&uri=uriserv%3AOJ.L_.2020.029.01.0001.01.ENG

connections between the two countries it is hard to see a larger agreement being made without the former being successful. Current stumbling blocks to a multi-lateral agreement such as a proportionality bar would be easier to overcome in a bilateral agreement.

The Nordic countries have had a regional system of extradition, akin to the backing of warrants system which predated the EAW. Like the UK and Ireland the Nordic countries had an area of free movement of people which predated Schengen and co-operation was underpinned by mutual trust and historically strong cultural, legal and linguistic ties between the countries. In 2005 parties agreed the Nordic Arrest Warrant (NAW). This was inspired by the EAW and mirrors its substantive provisions. However, the NAW goes even further than the EAW with lower minimum penalties, complete abolition of double criminality, no territoriality restrictions and limits on the speciality rule. The time limits are even shorter than those found in the EAW and it is described as ‘an even more efficient extradition procedure between close neighbours.’⁹ **It is therefore wholly possible for Ireland and the UK to conclude a bilateral extradition agreement with terms even closer than those found in the EAW.**

The principle of EU citizenship has always been at the heart of the EAW. Whilst Brexit changes the status of UK citizens, who no longer enjoy EU citizenship, it does not change the fundamental tenets of the Good Friday agreement. Citizens of Northern Ireland and the Republic of Ireland are to be treated equally, they can choose Irish citizenship, British citizenship or both. They are free to choose where to live, work and study. **The shared history of the UK and Ireland, particularly in relation to their citizens living on the island of Ireland, lends strong justification to a continued close extradition relationship. The NAW offers a blueprint for a future which could see the UK and Ireland enjoy closer extradition arrangements than at present without harming or hindering the EAW or the prospects of a UK-EU multilateral agreement.**

Gemma Davies, Associate Professor, Northumbria University

Katy Hayward, Professor, Queen’s University Belfast

Maura Butler, Chair, Association for Criminal Justice Research and Development, Ireland

October 2020

⁹ G. Mathisen, ‘Nordic cooperation and the European arrest warrant; intra-Nordic extradition, the Nordic arrest warrant and beyond’ (2010) 79(2) *Nordic Journal of International Law* 1.