

Written evidence submitted by the Crown Prosecution Service (FRE0066)

The CPS has the following functions concerning international cooperation in criminal matters:

- Conducting extradition proceedings on behalf of foreign authorities (or States) for 'requested persons' arrested in England and Wales;
- Applying for European Arrest Warrants (EAWs), issuing extradition requests, and authorising Interpol Red Notices/Diffusions, for the purposes of arresting and extraditing 'requested persons' to the UK for prosecution (or to impose or execute a sentence);
- Issuing letters of request (LORs) and issuing, applying for, or validating European Investigation Orders (EIOs) to obtain overseas evidence for the purposes criminal investigations or proceedings in England & Wales.
- Issuing requests for restraint and confiscation of assets overseas and applying for and issuing European Freezing or Confiscation Orders;
- Conducting asset recovery proceedings on behalf of foreign authorities (or States); and
- Participating in Joint Investigation Teams (JITs).

In addition, the CPS has a number of liaison prosecutors deployed overseas for the primary purpose of delivering improved criminal justice outcomes in the UK. This includes liaison prosecutors deployed to France, Spain, Italy, Greece, and Romania. In addition, we have also deployed two "roving" prosecutors covering Ireland, Belgium, Netherlands, Portugal, Poland, and Germany, and have seconded a specialist prosecutor to the UK desk at Eurojust.

The CPS has long held the position that the EU law enforcement and criminal justice tools provide the most comprehensive and effective toolkit for international cooperation in criminal matters. Other methods of multilateral cooperation, for instance under Council of Europe tools, are useful but are substantially less effective, slower, more complex, and more expensive. The aims of the UK approach to negotiations for a fast-track extradition arrangement and fast and effective mutual legal assistance and asset recovery are broadly welcomed. The Home Office has kept the CPS up to date with negotiations as they develop and has sought advice on technical issues and operational experience. Although progress has been slow, we remain hopeful that a good deal will be agreed. However, we are concerned that a late agreement will leave little time for implementation, for both the UK and EU Member States, before the end of the transition period, and that there is a risk that despite a deal being agreed, cooperation on the new terms would not be practically possible on 1 January 2021.

I turn now to some of the specific issues raised by the Committee. As a non-Ministerial Government department and criminal justice agency, I have inevitably limited my comments to operational observations and practical implications for the CPS. It would not be appropriate for me to comment on policy aims, which are a matter for Ministers, nor to speculate on the current state of negotiations.

Turning now to some of the specific issues raised by the Committee:

- **Which aspects of a possible agreement are at risk due to the negotiating positions of the UK and the EU on the role of the CJEU? How can these risks best be overcome?**

The Norway/Iceland Surrender Agreement established a clear basis for cooperation in criminal matters without direct CJEU jurisdiction (under Articles 36 and 37 it provides an alternative basis for dispute resolution and sharing of case law).

- **How can the UK and EU positions on the ECHR be resolved without risking the wider law enforcement and judicial cooperation agreement?**

The UK has proposed draft clauses across the tools used by prosecutors providing grounds for refusal on the basis of “fundamental rights” (ARTICLE SURR 4, ARTICLE MLA 6, ARTICLE F&C 11). This approach is consistent with recent UK bilateral agreements (see Article 3(1)(e) of the UK-Kuwait Extradition Treaty). It is also consistent with the approach taken by the EU in the EIO Directive (Article 11(1)(f)) and to a lesser extent the Freezing Confiscation Order Regulation (Article 8(1)(f)). From an operational perspective this proposal provides sufficient practical safeguards in relation to human rights for both sides.

- **The UK will be a non-Member State outside Schengen. What precedents are there in this area on: access to EU databases (such as ECRIS and Prüm), Passenger Name Records, Europol and Eurojust? Is the UK asking the EU to go significantly further than it has in these precedents? Is the EU asking the UK to go significantly further than it has in these precedents?**

Eurojust has entered into cooperation agreements with a number of third countries aimed at improving and facilitating the coordination of investigations and prosecutions. Cooperation agreements provide for the posting by third countries of Liaison Prosecutors to Eurojust. Liaison Prosecutors currently posted to Eurojust include prosecutors from Switzerland, Norway, and the US. The CPS is a firm supporter of Eurojust and regularly uses the services it provides to prosecutors and investigators. We welcome the Government’s aim to secure an agreement that provides for continued cooperation

between the UK and Eurojust, and hope the UK can continue to have a strong presence that matches the volume of UK-EU casework.

- **The UK has asked for capabilities similar to those delivered by SIS II. What are the main capabilities of the SIS II system that the UK is seeking to replicate? Why might any replacement not fulfil these? Why might the UK be holding back its proposed text on SIS II?**

The CPS main direct interest in SIS II is Article 26 alerts, as these are alerts regarding wanted persons (those subject to UK or EU Member State EAWs). Failure to replicate EAW/Article 26 alerts will reduce capability to bring wanted persons to UK to face justice, and reduce UK capability to arrest and surrender wanted persons to EU Member States.

- **How would an agreement on extradition similar to those negotiated with the EU by Norway and Iceland differ to the current situation where the UK has access to the European Arrest Warrant? Is there scope for the UK and the EU to negotiate an extradition arrangement that builds on those of Norway and Iceland?**

In the absence of continued access to the EAW, an agreement close to the Norway/Iceland Surrender Agreement would be an adequate replacement. This is subject to the inclusion of additional grounds for refusal in relation to fundamental rights (as noted above), trial readiness, and proportionality. This would ensure that the new agreement is line with existing domestic law under Part 1 of Extradition Act 2003 (specifically sections 12A, 21, and 21A).

However, we remain concerned about the inclusion of a 'nationality bar'. Under Article 185 of the Withdrawal Agreement, Germany, Austria, and Slovenia made declarations stating they will not extradite their own nationals to the UK during the transition period. Under the Norway/Iceland Surrender Agreement six Member States (Austria, Czech Republic, France, Germany, Slovakia, and Slovenia) have declared an "absolute" nationality bar. A further 11 have declared "conditional" nationality bars (typically an own national will be surrendered, but only if there is a guarantee that they will be returned to the Member State to serve a sentence if convicted). Under the Council of Europe Convention on Extradition, at least 15 EU Member States have declared an absolute nationality bar (with a further 7 declaring conditional bars). Although there are alternatives to extradition such as transfer of proceedings, transfer of sentence, or trials in absentia, use of absolute nationality bars can lead to impunity, delays, increased risks to the public, and distress to victims and witnesses. A new agreement should aim to limit the use of absolute bars to maximise its effectiveness.

- **What are your main concerns if, at the end of the Transition Period, the UK and the EU cannot agree a future security relationship? What would that mean for day-to-day operational policing, access to EU criminal justice databases, and the UK's relationship with Europol and Eurojust? In which areas would the loss of operational capability be greatest?**

Our principal concern is in regard to extradition. The disadvantages of using the Council of Europe Conventions are well rehearsed and include substantially increased time and cost to extradite individuals to and from the UK. This will mean an increase in resources in the CPS Extradition Unit to deal with extradition proceedings here. It will make it more difficult to bring wanted persons to the UK to face trial or sentence. In addition, as noted above, the majority of Member States do not extradite their own nationals under the Convention. Nonetheless, the CPS has learnt lessons from previous planning for a "no deal" EU exit, has made plans, and will be ready (across all the tools) for a non-negotiated outcome in December.

- **In which areas are there standard third country arrangements that the UK and EU could fall-back on in the event of no agreement by 1 January 2021? If there are no such fall-back mechanisms, what contingency measures could the UK and the EU put in place, either unilaterally or jointly, to ensure some sort of cooperation on law enforcement and judicial cooperation?**

The CPS conducted extensive engagement with counterparts in EU Member States in 2019. We are satisfied that in the event of a non-negotiated outcome cooperation will continue with all EU Member States on the basis of Council of Europe Conventions:

- EAW fall-back: Council of Europe Convention on Extradition 1957 (and its Protocols)
- EIO/EU Convention on Mutual Assistance 2000/JITs Framework Decision fall-back: Council of Europe Convention on Mutual Assistance 1959 (and its Protocols)
- European Freezing and Confiscation Order fall-back: Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990 / 2005

As noted above there is no direct replacement of SIS II Article 26 alerts, but greater use of Interpol Red Notices/Diffusions would provide a basis for provisional arrest (pending a full extradition request under the Convention) in most EU Member States.

- **Is there anything else in the two parties' proposals, for example on prisoner transfer or anti-money laundering, that you wish to bring to the Committee's attention?**

The UK draft text on prisoner transfer also provides a basis for transfer of sentence (ARTICLE PT 1(2)). This means those convicted in the UK, but resident in an EU Member State, can serve the UK sentence overseas. This reduces the need for extradition in

'conviction' cases. We therefore strongly support the inclusion of these clauses. I also bring to the Committee's attention the UK draft text on asset recovery (PART 12). The EU has not yet published a proposal on this matter. However, enhanced capabilities are essential to ensure both the UK and EU Member States can continue to rapidly restrain and confiscate the proceeds of crime; a key part of wider efforts to tackle money laundering. I hope agreement can be reached on both these matters.

July 2020



Committee on the Future Relationship with the European Union

House of Commons, London, SW1A 0AA

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05 June 2020

Max Hill QC
Director Public Prosecutions
Crown Prosecution Service

Dear Mr Hill,

The House of Commons Committee on the Future Relationship with the European Union is inquiring into the progress of the negotiations between the UK and the EU. Under normal circumstances, the Committee holds regular oral evidence sessions in Westminster. However, measures to prevent the spread of the coronavirus make this difficult.

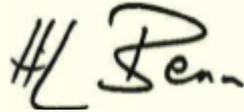
The Committee is keen to gather as much evidence as possible to inform its deliberations so I am writing to you to ask whether you would be willing to help us with our work by making a written submission. We welcome general responses to our [call for evidence](#), which was published on 4 March. We also hope that you would be willing to answer some of the more specific questions set out below on issues that fall within your area of expertise. Submissions need not address every bullet point and can include other matters that you think are relevant to the negotiations and should be drawn to the attention of the Committee.

- Now that we have seen draft legal texts from both the UK and the EU, what are the main areas of disagreement that risk a future arrangement on law enforcement and judicial cooperation in criminal matters? In which areas does it appear that the two parties are closest to an agreement?
- Which aspects of a possible agreement are at risk due to the negotiating positions of the UK and the EU on the role of the CJEU? How can these risks best be overcome?
- How can the UK and EU positions on the ECHR be resolved without risking the wider law enforcement and judicial cooperation agreement?
- What are the other major obstacles to reaching an agreement on law enforcement and judicial cooperation? And how might these obstacles be overcome?
- The UK will be a non-Member State outside Schengen. What precedents are there in this area on: access to EU databases (such as ECRIS and Prüm), Passenger Name Records, Europol and Eurojust? Is the UK asking the EU to go significantly further than it has in these precedents? Is the EU asking the UK to go significantly further than it has in these precedents?
- The UK has asked for capabilities similar to those delivered by SIS II. What are the main capabilities of the SIS II system that the UK is seeking to replicate? Why might any replacement not fulfil these? Why might the UK be holding back its proposed text on SIS II?
- How would an agreement on extradition similar to those negotiated with the EU by Norway and Iceland differ to the current situation where the UK has access to the European Arrest Warrant? Is there scope for the UK and the EU to negotiate an extradition arrangement that builds on those of Norway and Iceland?
- In which areas of the current law enforcement and judicial cooperation relationship is the UK a net contributor in terms of information flows, expertise and resources? In which areas would security in the EU be most impaired without the UK's involvement?
- The UK aims to receive a comprehensive data adequacy decision from the EU before the end of the Transition Period. What concerns might the EU have that will affect whether to award a data adequacy decision? How important is it to any future UK-EU relationship on law enforcement that the UK secures a data adequacy decision?
- What are your main concerns if, at the end of the Transition Period, the UK and the EU cannot agree a future security relationship? What would that mean for day-to-day operational policing, access to EU criminal justice databases, and the UK's relationship with Europol and Eurojust? In which areas would the loss of operational capability be greatest?

- In which areas are there standard third country arrangements that the UK and EU could fall-back on in the event of no agreement by 1 January 2021? If there are no such fall-back mechanisms, what contingency measures could the UK and the EU put in place, either unilaterally or jointly, to ensure some sort of cooperation on law enforcement and judicial cooperation?
- Is there anything else in the two parties' proposals, for example on prisoner transfer or anti-money laundering, that you wish to bring to the Committee's attention?

The Committee staff will be happy to discuss the inquiry, any issues raised, or the process for submitting written evidence. You can contact them at freucom@parliament.uk.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'H/ Benn'.

Hilary Benn
Chair of the Committee