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UK risks losing extradition powers after Brexit | Accountancy Daily

UK risks losing extradition powers after Brexit

If the UK leaves the EU without a deal, it will no longer benefit from the European Arrest Warrant, making extraditions far more complex, warn Kathryn Howarth, Myles Grandison & Daniel Sternberg of Temple Garden Chambers

The European Arrest Warrant (EAW) was first introduced to facilitate the swift extradition of those wanted to stand trial and serve sentences for very serious offences, such as terrorism. In practice, it has been used to cover a wide range of criminal offences, including the full gamut of white collar crimes, most notably carousel and missing trader frauds.

However, from 1 January 2021 the UK will lose access to the EAW, along with other important European cross-border criminal cooperation measures such as the Schengen Information System.

In the event of a no-deal exit, from 1 January 2021:

- The UK will be disconnected from all EU networks, information systems and databases;
- The UK will no longer be able to participate in EU criminal justice agencies like Europol and Eurojust, and will be treated as a third country; and
- Judicial cooperation procedures including the EAW scheme, will no longer be available to the UK.

This will have a significant impact on those sought for white collar crime, high net worth individuals with an interest in those proceedings and their financial advisers.

Consequently, it will become much more costly, labour intensive and slower to extradite those sought by other jurisdictions. This article summarises how the law is going to change and the impact that this will have on the extradition process, what this means in practice and what you need to know and do in order to ensure that clients are best placed in these times of change.

Current system

Under the current scheme, a member state can issue an EAW in respect of a person who is wanted to face a criminal prosecution, or someone who has already been convicted and is required to serve a sentence of imprisonment (including defendants convicted in their absence).

Once issued, the EAW can be transmitted to the relevant policing bodies of the other 27 states of the EU. If the whereabouts of the person is already known, policing authorities, including the National Crime Agency (NCA) in the UK, can act at speed to arrest and bring the person to court for extradition proceedings to begin.

If the whereabouts of the person are unknown, authorities of the member states will be on alert for the presence of that individual in their country and can act quickly to apprehend that individual if and when detected. The states using the

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EAW are currently assisted by a plethora of complementary cross-border cooperation measures.

For example, Europol (the European Agency for Law Enforcement Cooperation) assists with cross-border investigations, SIS II (Schengen Information System II, a European database that can be used to find information about individuals for the purposes of national security), border control and law enforcement, and ECRIS (European Criminal Records Information System) permits criminal records in the different member states to be shared.

In the UK, extradition proceedings usually begin on the same day the individual is apprehended. After arrest, the requested person is transferred to Westminster Magistrates' Court in London, where all extradition proceedings under the jurisdiction of England and Wales take place. A specialist extradition judge will then formally open the extradition proceedings and straightforward cases can result in extradition to the requesting state within a matter of days or weeks.



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Proposed system

In the absence of a deal, all new requests will be governed by the European Convention on Extradition 1957 (ECE).

There is no doubt that the ECE was, at the time, an important advance in terms of cross-border judicial cooperation in criminal law. However, even before the 11 September terrorist attacks, there was recognition among member states that the procedures relied upon for extradition required an overhaul.

The process of extraditing an alleged criminal to the EU will be much more cumbersome. Even if the EAW form can still be utilised by member states other than the UK, the whole process will become significantly less streamlined; any requests for extradition will now have to go through diplomatic channels, a process which will be significantly more time consuming than is presently the case.

If the whereabouts of an individual are unconfirmed, police will be hampered by lack of access to intelligence sharing with other European states that membership of the EU allowed. Extradition proceedings will certainly take longer.

Under the EAW, a UK judge would hear the extradition case and make a decision to either order extradition or discharge a requested person from the proceedings. Now, after a specialist judge has heard the case, it will have to be sent to the Home Secretary to decide whether or not to order extradition, which will add several months to the entire process.

The principal problem is therefore going to be significant delay to the extradition of requested persons to and from Europe. While the UK has expressed an interest in re-joining the EAW from outside the EU, it has taken Norway over 15 years to make such an arrangement.

Is a new type of arrangement possible? In theory, yes. However, it is likely to be a long time before one is agreed, given the red lines that the UK has imposed regarding the jurisdiction of the CJEU and the end to freedom of movement.

How best then to advise clients facing extradition requests?

It is important to seek legal representation from a specialist extradition barrister (either through direct access, or in conjunction with a solicitor) at an early stage. Extradition is a technical area of the law, so specialist advice is imperative.

Experienced solicitors and counsel will often be able to help clients sought for extradition to navigate the instruction of a foreign lawyer to ensure that there is a two-pronged approach to the criminal and extradition proceedings, both in the requesting EU member state and before the courts in London.

Anyone whose extradition is sought, or whose financial dealings are implicated, would be well advised to engage the services of a local criminal lawyer in the requesting European state. This will enable the client to access case papers and the court file.

It will also enable the client to make representations to prosecutors or the relevant courts. This is important, because if representations are made at an early enough stage, a formal request for extradition may be avoided. Alternatively, if extradition proceedings have begun, a dialogue with the domestic prosecutor or court may lead to the compromise of the request for extradition prior to the completion of proceedings in the UK.