



## Extradition after Brexit

Kathryn Howarth and Daniel Sternberg examine the implications for policing following the UK's exit from the EU, in particular the loss of access to the European Arrest Warrant.

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During the course of the Government's negotiations with the EU, senior police officers stressed the importance of shared policing and security measures, in particular the European Arrest Warrant (EAW).

However, the Government's 'red line' – that it will not accept the jurisdiction of the Court of Justice of the European Union (CJEU) – means that from January 1, 2021, the UK will lose access to the EAW, along with other important European cross-border criminal cooperation measures.

In summary, a no-deal exit means that from January 1:

- The UK will be disconnected from all EU networks, information systems and databases, such as SIS II (Schengen Information System II) and ECRIS (European Criminal Records Information System);
- 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.

The EAW was introduced to facilitate the swift extradition of those wanted to stand trial and serve sentences for serious offences. In practice it has been used more frequently than originally envisaged to cover a wide range of criminal offences, from murder and terrorism to more mundane crimes of theft and public order offences. It has been used for both 'import extradition' – requests from the UK to surrender individuals present in the member states of the EU to our courts – and more often 'export extradition' – requests from the EU to surrender individuals present in the UK to courts in member states of the EU.

The loss of the EAW will be a significant blow. It will become much more costly, labour-intensive and slower to extradite those sought by other jurisdictions and return individuals to face justice here.

Under the current scheme, a member state can issue an EAW for a person to face a prosecution, or to serve a sentence of imprisonment. The EAW can then be transmitted to the relevant policing bodies of the other 27 states of the EU. If the whereabouts of the person are known, police 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 will be on alert for that individual in their country and can act quickly to apprehend them, assisted by the complimentary cross-border criminal cooperation measures.

In the UK, the Metropolitan Police Service (MPS) has a specialist extradition squad responsible for carrying out all arrests of persons in non-EU extradition cases, as well as the arrest of all persons sought under EAWs who fall under the MPS force area. It also makes arrangements for the surrender of persons whose extradition has been ordered.

Outside of London, arrests and searches of persons wanted under an EAW are carried out by local officers. Local forces are typically the first to be involved in executing EAWs, often when an arrest is made in respect of an offence here and criminal records checks reveal an outstanding EAW.

Once arrested on an EAW, the requested person must be produced at Westminster Magistrates' Court "as soon as practicable", failure to do this can result in the person's discharge. Once transferred to Westminster Magistrates' Court, a specialist extradition judge will formally open the extradition proceedings and straightforward cases can result in extradition to the requesting state within a matter of days or weeks.

### **Proposed system**

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

The process of extraditing an alleged criminal to the EU will be much slower and more cumbersome. Even if the EAW can still be utilised by member states other than the UK, the whole process will become significantly less streamlined – any requests for extradition will go through diplomatic channels, which is significantly more time consuming than at present.

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 take longer and all communications will have to go through diplomatic channels.

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 more than 15 years to make such an arrangement.

What will be the implications for policing and extradition? Up until December 31, 2020, we remain in a 'transitional period', individuals can still be arrested on an EAW. Proceedings that begin before this date will continue under the old system. After January 1, EAWs will still be issued by EU member states but at present it is unclear whether the UK will accept extradition requests in that format or whether a formal request for an individual will need to be made by the EU state supported by information about the alleged offending, or sentence. Either way, the request for extradition will need to be made through diplomatic channels.

The MPS extradition squad will be primarily responsible for arresting persons requested and the role of local police may reduce. The volume of extradition requests is likely to significantly reduce as the entire process becomes more labour-intensive. Further, should cross-border information sharing come to an abrupt end, the existence of EAWs will no longer be flagged up for persons arrested on other matters.

Although a reduction in extradition requests might at first seem like a benefit, the unfortunate reality is that persons for whom there are extant EAWs will be able to operate undetected unless and until formal requests are made to the UK for their extradition. It also means foreign criminals who previously would have been arrested and removed swiftly will remain in the UK, and if they offend here that will increase the workload of UK police forces further.

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