

The UK as it leaves EU judicial cooperation: quo vado?

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Prior chronology

- [29/03/2017](#) – UK notifies intention to withdraw under Article 50 TEU
- [17/10/2019](#) – EU-UK Withdrawal Agreement
 - Effects of EU law generally preserved for transitional period of 1 year
 - Article 62 – Mutual recognition instruments apply beyond then if trigger event happens within it (e.g. arrest on an EAW)
 - Nationality refusal possible as of 31/01/2020: (DE, AT, SI)
- [17/10/2019](#) – Political Declaration: envisages future UK-EU agreement on judicial cooperation (e.g. “streamlined procedures ... to surrender suspected and convicted persons efficiently and expeditiously”)
- [23/01/2020](#) – EU (Withdrawal Agreement) Act 2020 (UK legislation)
- [30/01/2020](#) – Council Decision (EU) 2020/135 on conclusion of WA



Negotiations (1)

- [25/02/2020](#) – EU negotiating mandate agreed
 - § 123 – procedures subject to judicial control (like EAW)
 - § 123 – possible waiver of dual criminality (like EAW)
 - § 123 – political offence and nationality conditions (unlike EAW)
- [Feb 2020](#) – UK approach to negotiations published
 - Must be a separate agreement on police & judicial cooperation
 - No role for the CJEU in any UK-EU dispute
 - Data: PNR, criminal records, DNA, **Schengen Information System II**
 - **Surrender agreement similar to EU – Norway & Iceland agreement**



Negotiations (2)

- [18/03/2020](#) – EU publishes proposed Draft Agreement (EUDA)*
 - Surrender system similar to Norway & Iceland deal.
 - Political offence – not a theoretical issue (Assange / Catalan cases)
 - Nationality bar – UK not bothered about this, many EU states need it
 - Framework list of offending with dual criminality waiver – optional
 - Article 4a (trial in absentia) provisions from EAW FD imported
 - Procedural rights in the issuing / executing state reflecting post-EAW (“Roadmap”) measures – which UK had opted out of to date
 - Differences in interpretation on UK / EU sides → external, not CJEU
 - * This is one single agreement (association agreement style) – nothing is agreed unless everything is agreed.



Negotiations (3)

- [19/05/2020](#) – UK publishes proposed Draft Agreement (UKDA)*
 - Political offence exception (not currently available per se in UK law)
 - “Proportionality” bar – existing EAW refusal ground in UK law**
 - “Trial Readiness” bar – existing EAW refusal ground in UK law**
 - * *UK proposes a separate police & judicial coop. agreement*
 - ** *These are anglo-centric provisions at odds with current EU law*
 - ** *Surprising that compatibility of these with EU law never tested?*



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Negotiations (4)

- [30/06/2020](#) – Deadline to seek extension of transition period
 - This passed and the option was not taken to extend
 - People suggest alternative mechanisms exist: mostly unrealistic
 - So, pressure very much on to get something agreed (and ratified)
 - Time needed for ratification on EU side: crunch time in October...



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Negotiations (5)

- [14/08/2020](#) – EU publishes revised EUDA
 - Does not cover SIS II – *no adequacy decision yet*
 - ECRIS – first example of EU external cooperation on this
 - Extradition / surrender: proposed UK grounds do not feature...



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Negotiations outlook

- [11/09/2020](#) – As things stand
 - Possible outcomes from this:
 - EU / UK reach agreement on police and judicial cooperation (separate or as part of broader one)
- OR
- EU / UK do not reach such an agreement (“no deal”)
- Key issues
 - ECHR compliance of the UK (generally)
 - Safeguards and refusal grounds for extradition
 - UK departure from existing Withdrawal Agreement commitments
 - Potentially – whether discrete deal can be agreed if no global deal



Impact (“deal” scenario)

- 01/01/2021 –
 - Extradition processes would function much as they do now
 - Except (1) there will be an outcome on refusal grounds
 - UK confronted with compliance with existing EAW FD...
 - EU confronted with long-standing issues in EAW FD...
 - Either UK law changes, or SA departs from EAW FD
 - Except (2) if UK loses SIS II access, reliance on –
 - Bilateral transmission of arrest warrants
 - Reliance on INTERPOL red notices for arrest



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Impact (“no deal” scenario)

- [01/01/2021](#) –
 - Reliance on the 1957 Council of Europe Convention on Extradition
 - Part 1 (EU) territories re-categorised as Part 2 (non-EU) in the UK
 - De-judicialization of the extradition process
 - Return of dual criminality for all matters
 - Likely more significant delays (already long in UK)
 - Requirement for UK arrest warrant based on request, subject to new legal provisions dispensing with this requirement.
 - Regulations foresee continuity of EAW cases where arrest took place before 31/12/2020, in line with Withdrawal Agreement



Note on SIS II

- [31/12/2020](#) –
 - European Commission envisaged “adequacy decision” by end of TP
 - Serious issues: UK-US agreement; recent UK unlawful copying of data
 - Even more serious issues: UK departure from WA obligations
- [01/04/2021](#) –
 - If no adequacy decision, UK loses access to SIS II at this point
 - INTERPOL red notice could be used to replace SIS II alerts
 - If extradition agreement – Part 1 of Extradition Act allows this
 - If no extradition agreement – Extradition (Provisional Arrest) Bill
 - Shift to INTERPOL: more accessible remedies to challenge alerts



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Thanks

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