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## Extradition and Brexit

**What leaving the European Union may mean for crime and security**

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## Brexit means Brexit

- Brexit meant Brexit in 2016
- No deal was better than a bad deal until June 2017
- Now transition phase of 2, possibly more years after March 2019
- Prime Minister's position is not necessarily shared by the cabinet and she may not be the prime minister for the full five-year term
- Boris Johnson pressing for shortest transition phase possible

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## Government's Future Partnership Paper: Security, law enforcement and criminal justice

- Overview of what the EU does in the fight against crime and the bodies which have been created & why so important
- Refers to the EU law enforcement and justice toolkit, which help to:
  - prevent potential criminal activity and terrorism;
  - detect criminal activity and terrorism;
  - investigate criminal activity and terrorism;
  - prosecute those accused of terrorism and other serious crimes; and
  - administer justice.

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## The Toolkit

- **The European Arrest Warrant:** the primary means of bringing criminals to justice across the EU
  - 8,000 extradited from UK between 2004 - 2015
- **Schengen Information System (SIS) II**
  - real-time alert system active between all EU and Schengen area police forces
  - UK issued over 13,000 alerts between 2015-2016
- **Prüm Convention:** information exchange on fingerprints, DNA and Vehicle Registration Data)
- **Eurodac** - fingerprint database for identifying asylum seekers and 'irregular' border crossing

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### The Toolkit ctd

- **Directive on Passenger Name Records:** pan-EU approach to processing passenger data
- **Joint Cybercrime Action Taskforce (J-CAT) Internet Referral Unit (IRU):** detect and combat terrorist propaganda online
- **Exchange of Criminal Records Information System (ECRIS)**
- **Serious and Organised Crime Threat Assessment**
- **Joint Investigation Teams**
- **European Investigation Order**
- **Naples II Convention** on customs cooperation

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### What does the UK want?

- UK aims to maintain close cooperation with the EU in order to:
  - protect the safety and security of citizens and uphold justice in the UK and across the EU;
  - maintain the closest and most cooperative of partnerships, continuing the longstanding traditions of friendship between the 27EU and the UK; and
  - continue to cooperate on the basis of shared democratic values and respect for the rule of law.
- When the UK leaves the EU, the legal framework that currently underpins cooperation between the UK and the EU on security, law enforcement and criminal justice will no longer apply to the UK [15]

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### What we currently have: the European Arrest Warrant

- Intra-EU extradition operates via the European Arrest Warrant (EAW)
- This was established by the European Council Framework Decision, 2002 which created the EAW scheme:

*The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order*

- Given domestic effect via the Extradition Act 2003: Part 1

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### European Arrest Warrants: a streamlined process

- European arrest warrants '*shall be dealt with and executed as a matter of urgency*': Article 17 (1), FD 2002
- Final decision '*should be taken within a period of 60 days after the arrest of the requested person*': Article 17 (3)
- More often observed in the breach, but most Part 1 cases completed at first instance within 3 months.

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### Exponential growth in extradition

Extradition requests to the UK 1961 - 1973

Year	1963	1964	1965
Requesting country (number of requests)	France (1) Germany (1) Italy (1)	Belgium (1) Germany (2) USA (1)	Germany (1) Iraq (2) Italy (2) Netherlands (1) USA (2)
<b>Total</b>	<b>3</b>	<b>4</b>	<b>8</b>

  

Year	1972	1973
Requesting country (number of requests)	Belgium (1) Denmark (2) France (2) Germany (5) Iraq (1) Israel (1) Italy (1) Spain (1) USA (4)	Austria (1) Belgium (2) Germany (8) Iraq (1) Israel (1) USA (6)
<b>Total</b>	<b>17</b>	<b>19</b>

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### Exponential growth in extradition

Extradition requests to the UK 1997 - 2003

Year	Requests received	Surrendered
1997	107	43
1998	111	45
1999	101	38
2000	78	47
2001	133	55
2002	137	53
2003	114	55
<b>Total</b>	<b>781</b>	<b>336</b>

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### Volume of cases: National Crime Agency data

Part 1 EAWs - Calendar Year	2010	2011	2012	2013	2014	2015	Total
Requests	4,369	6,512	6,290	5,522	13,460	12,613	<b>48,766</b>
Arrests	1,307	1,332	1,331	1,775	1,519	2,041	<b>9,305</b>
Surrenders	1,038	1,079	1,025	1,126	1,097	1,149	<b>6,514</b>

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### EAWs: Arrests per offence (partial extract)

Part 1 arrests	2010	2011	2012	2013	2014	2015	Total
Fraud - under £100,000				15	230	329	<b>574</b>
Grievous Bodily Harm	97	102	129	204	52	48	<b>632</b>
Murder	30	28	32	33			<b>123</b>
Murder/Manslaughter				6	25	28	<b>59</b>
Rape	26	19	23	30	25	29	<b>152</b>
Robbery	172	162	146	126	119	127	<b>852</b>
Theft - under £100,000				21	247	320	<b>588</b>

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## Part 2 (non-EU) extradition

- All non-EU countries are considered to be Part 2
- Extradition operates either via bilateral or multilateral treaty or the European Convention on Extradition 1957 (ECE)
- Intergovernmental: Secretary of State certifies the request and orders extradition
- Process x3 longer than EAWs: on average 10 months, sometimes years: e.g. McKinnon v USA (6); Al Fawaaz v USA: (14); x4 more expensive
- If Part 1 cases became Part 2, there would be a massive and unmanageable log-jam of cases

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## Part 2 cases

Part 2 extradition requests to the UK		
Year	Arrests	Surrenders
2004	58	14
2005	59	25
2006	47	34
2007	27	24
2008	31	15
2009	49	35
2010	53	24

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## Brexit: the hard choices

- Government's intention is to leave the EU's legal framework
- Very little progress in the negotiations: see European Parliament resolution of 3 October 2017. Time is running out
- Post-Brexit transitional arrangements assume we would maintain what we have but could not apply to those treaties and agreements which are between EU member states
- What would a no deal, or hard Brexit mean for the UK's security relationship with the EU?

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## Hard choice ctd

- Part 1 of the Extradition Act 2003 may be repealed, and all EU states could be designated as Part 2 countries
- All EU member states were state parties to the European Convention on Extradition 1957 – default position?
- Doubtful: most EU states monist, treaty superseded by the Framework Decision 2002: UK would be asking EU states to reinstate repealed domestic legislation
- 1957 Convention clunky: long list of exemptions
- Pre-EAWs, 17 of the current 28 EU member states refused to extradite their own nationals

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### Court of Justice of the European Union

- The Court of Justice of the European Union (CJEU) interprets EU law to ensure uniform application in all EU countries. It settles legal disputes between national governments /EU institutions.
- It also deals with the interpretation and application of the Framework Decision 2002 and European Arrest Warrants
- Therefore, if the UK wishes to remain part of the EAW scheme, it is obliged to be bound by the rulings of the CJEU
- Express position of the UK government is Brexit will be the end of ECJ jurisdiction: very difficult to see how the EAW scheme could continue

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### The European Free Trade Association option?

- Four members of EFTA: Iceland, Norway, Liechtenstein and Switzerland, all non-EU members
- Members of the Schengen borderless travel area
- EFTA is not a customs union
- Members have full rights to enter into bilateral third-country trade arrangements
- Members have a co-ordinated trade policy, negotiating free trade agreements in common, speaking at the negotiating table with one voice.

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### Iceland and Norway's extradition arrangements with the EU

- European Council agreed to negotiate in 2001
- Council decision on extradition reached on 27 June 2006, largely mirrors the 2002 Framework Decision
- But, own nationals exemption: Article 7
- Dispute settlement:
  - Via meeting of government representatives within 6 months: Article 36
  - Parties to keep CJEU case law 'under constant review', along with national case law; regular mutual transmission: Article 37
- Agreement approved by the EU on 27 November 2014
- **Still not in force**

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### Conclusions

- Clear political will to maintain cooperation on security and law enforcement
- EU-UK cooperation on crime and security vital for public safety: ongoing and grave risk of terrorism
- Crashing out of the EU raises risk of the UK becoming a safe haven for serious criminals
- Courts could not cope with the volume of cases becoming Part 2

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### Conclusions ctd

- To maintain extradition relations, UK will have to accept adherence to the CJEU case law, either directly as now, or indirectly per the Iceland/Norway option, if ever implemented
- Serious doubts over the time available to install such arrangements before March 2019
- There is no discernible upside to Brexit in criminal justice and security terms
- Best case: retaining what we have with far less influence

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