

Mutual Assistance in Policing and Investigating Organised Crime

Executive summary

The United Kingdom's withdrawal from the European Union poses many challenges for the policing and investigation of organised crime. The preferred option of most experts and commentators is retention of the *status quo*, in terms of maintenance of access to key structures and tools. This paper sets out the most significant mechanisms that currently facilitate police cooperation between the UK and the EU in respect of such criminality. It considers these in turn, sketching out the desired objectives in terms of existing structures and mechanisms, the obstacles in terms of likely legislative, process or political barriers to the UK's ongoing participation, and the options available to the UK Government. It presents the proposed content of the strategic negotiations that should take place in respect of Brexit and mutual assistance in policing and investigating organised crime.

1. This is a discussion paper outlining the proposed content of the strategic negotiations that, it is argued, should take place in respect of Brexit and the policing and investigation of organised crime.¹

2. Currently the United Kingdom enjoys a “special status” in relation to European Union cooperation on Justice and Home Affairs matters, insofar as it has negotiated the right to “opt in” to provisions rather than being automatically bound. At the expiry in 2014 of the transitional protocols after the Lisbon Treaty, the UK opted out of all pre-Lisbon instruments, then opted back into 35 of these measures. When the UK leaves the EU in 2019, it will also leave these 35 measures.

3. The UK's “varied”² participation in some areas of EU criminal law has led to an increase in cross-border cooperation in term of extradition and the exchange of police information, all of which is of considerable benefit to the UK. As outlined below, Brexit will lead inevitably to a diminution in the level and nature of cooperation between the UK and remaining EU member states, for structural, legal, political, and practical reasons.

¹ This paper is the output from an inter-jurisdictional, practitioner-oriented workshop that was held under the Chatham House rule in Durham University on 2 March 2017. The workshop was academically chaired and informed but driven by policing and legal practitioners with operational and strategic expertise.

² See Valsamis Mitsilegas, ‘The Uneasy Relationship between the UK and European Criminal Law: From Opt-Outs to Brexit?’ [2016] Crim LR 517, 522.

4. The issues of policing and security in the context of Brexit and the challenges posed have been explored in a number of fora, and numerous expert practitioners and academics have expressed views on this. The House of Lords EU Committee noted considerable consensus among UK law enforcement agencies on the EU tools and capabilities that should be retained or replaced after Brexit, including Europol, Eurojust, the European Arrest Warrant (EAW), the Second Generation Schengen Information System (SIS II), and the European Criminal Records Information System (ECRIS).³ This unanimity was mirrored in our discussions.

5. The focus of this paper is on the implications of Brexit for the investigation and policing of organised crime specifically, and on the most significant structures and tools that currently facilitate police cooperation between the UK and the EU in respect of such criminality. It considers these tools in turn, outlining the desired *objectives* in terms of existing structures and mechanisms, the *obstacles* in terms of likely legislative, process or political barriers to the UK's ongoing participation, and the *options* available to the UK Government.

6. The significance of organised crime and the distinct challenges it poses lie in its durability, gravity and complexity, as well as the potential crossing of borders in its enterprise. It takes numerous guises, ranging from the trafficking of drugs, weapons, and people, through to cybercrime and corruption, and it varies in scope and complexity. Though sometimes local or 'homegrown', much organised crime involves the crossing of borders, as part of transporting and selling illicit goods or services. Beyond this, some organised crime groups exploit legal and policing differences between jurisdictions to develop criminal markets, and to evade justice. All of this underlines the importance of mutual legal assistance and cooperation in investigating and addressing it adequately.

7. This paper reflects the fact that current and potential future mechanisms for investigating and policing organised crime operate across international, State, devolved, and bilateral planes. In addition, the protections for the individual that apply in this context, whether as suspect, victim or witness, also operate on these dimensions.

8. It is important also to recall that the legal responses to organised crime in the UK are sometimes reserved matters for Westminster, such as regarding money laundering, illicit drugs or firearms, say, and in other instances devolved, such as in relation to substantive organised crime legislation and court proceedings. This interwoven and intersecting legal landscape underline the significance of Brexit for the distinct systems in Scotland and Northern Ireland, not least given that the nature of the organised crime threat as well as the responses differ in the constituent jurisdictions of the UK. The cooperation that is required to investigate and police organised crime sometimes will be sought and steered by the prosecution authorities in the constituent jurisdictions.

³ House of Lords European Union Committee, *Brexit: future UK-EU security and police cooperation* 7th Report of Session 2016–17 [25].

9. In addition, Brexit holds significant implications for other jurisdictions, in particular Ireland, due to the shared land border with part of the UK.⁴ These consequences are pronounced in relation to organised crime, which exploits differences in taxation on both sides of the border for instance, to dump illegally and to sell laundered fuel.⁵ To date, the domestic debate on Brexit and possible future arrangements has been largely introspective and somewhat limited. Little attention has been paid to the aims and wishes of other EU countries, not least those of Ireland, which could stymie or at least moderate the aspirations and objectives of the UK. As these coexisting interests and demands cannot be predicted with any certainty they are merely flagged up for consideration here.

10. If the UK wishes to continue co-operating with EU member states, which it will in fact need to do in respect of the investigation and policing of organised crime, the likelihood is that it will need to comply with the substance of EU law as a whole. This need for consistency inside and outside the EU in order to permit data sharing, for instance, and cooperation overall, appears to be overlooked in much of the political debate to date. Adherence to various schemes of cooperation will require the UK to recognise the jurisprudence of the Court of Justice of the European Union (CJEU), and this will trigger a strong scrutiny of UK domestic law, including jurisprudence, from the EU. Though oversight by the Court of Justice of the European Union is anathema to Brexit proponents, it will indeed occur if the UK wishes to maintain its current scheme of cooperation and access in this context.

11. Throughout this paper, cross-cutting themes emerge, relating to the timing and speed of negotiations and the related role of interim provisions, the need for consistency and continuity in law and practice, and the importance of due process protections. While Brexit could be re-framed as an opportunity for revision and for reflection on continued involvement in certain measures, the reality is that the UK will want to maintain a structure as close to the status quo as possible. The irony is that Brexit means that the UK will be required to adhere to EU law in this context without retaining its negotiating power and capacity.

12. This paper does not purport to be comprehensive; rather it focuses on two key structures and two tools. It does not contemplate the prospect that the UK will leave the European Convention on Human Rights, though this would also have fatal implications for co-operation with other states, which is possible only on grounds of equivalent rights protection by third countries. It also does not consider the implications of any future referendum on Scottish independence.

13. Europol, Eurojust, Joint Investigation Teams and the European Arrest Warrant are now considered in turn.

⁴ See Brian Doherty et al, *Northern Ireland and 'Brexit': The European Economic Area Option*, March 2017 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2933715

⁵ See OCTF, *Annual report and threat assessment 2015*.

Europol

14. Europol (the European Police Office)⁶ supports law enforcement agencies of the EU Member States through the provision of operational analysis and support, the exchange of information with Liaison Officers who are seconded to Europol as representatives of their national law enforcement agencies, and the generation of strategic reports and analysis on the basis of intelligence.

15. Europol provides a multi-lateral cooperation platform and involves liaison bureaux from member states and third countries, representing the interests of their own State. There are c.20 UK staff in Europol, that are attached either as Liaison Officers or Seconded National Experts from UK law enforcement agencies, including officers from Her Majesty's Revenue and Customs, the Metropolitan Police and Police Scotland. The UK comprises the second largest bureau, the biggest being the United States of America as a third country. Currently the UK benefits considerably from Europol and also has a strong impact in respect of its involvement.

16. Such multi-lateral engagement and cooperation are crucial in tackling fast-moving crime, especially cyber-crime and organised crime. Thus, the *objectives* in a post-Brexit setting must be to maintain access to and influence in Europol to the greatest extent possible.

17. One consequence of Brexit is that the UK will not influence to the same extent the strategic direction and priorities of Europol. The Europol Management Board comprises officials from each member state, and third countries are not involved other than as observers. The Board effectively determines how Europol is run on a day-to-day basis and shapes Europol's response to EU organised crime and counter terrorism priorities. These priorities are set by the Standing Committee on Operational Cooperation on Internal Security (COSI), which consists of high-level officials from each member state's Ministry of Interior and/or Justice, as well as Commission and European External Action Service representatives, and some EU agency observers.⁷ COSI sets the EU organised crime priorities within a four-year Policy Cycle, and these priorities are ratified at Council. Operationally these priorities are delivered through EMPACT (European multidisciplinary platform against criminal threats) groups.

18. At present, there is considerable strategic benefit from the UK's role in Europol. The UK has been able to drive the policy agenda towards crimes like people trafficking. Post-Brexit, other member states may place a stronger emphasis on acquisitive crime, say, with less focus on firearms, to the detriment of UK concerns. Currently the UK chairs four out of 13 EMPACT groups, and co-chairs another five, which is more than any other EU state. This will not continue past 2019. In addition, the UK will also no longer be able to have Seconded National Experts in Europol.

⁶ Convention drawn up on the basis of Article K.3 of Treaty on European Union, on the establishment of a European Police Office; signed on 26 July 1995 and entered into force on 1 October 1998.

⁷ Article 71 of the Treaty on the Functioning of the EU. COSI facilitates, promotes and strengthens coordination of EU member states' operational actions related to the EU's internal security.

19. The UK might have observer status at the Europol Management Board as envisaged by the new Europol Regulation,⁸ however there is no provision like this in respect of the Standing Committee on Operational Cooperation on Internal Security.

20. The only *option* in this respect appears to be the acceptance of observer status in the Board. There is no precedent for another role, and it is highly unlikely that anything else would be sanctioned.

21. Another consequence lies in the fact that the UK will not be able to join Europol Focal Points without unanimous invitation from other member states. A Focal Point is an area within Europol's information processing system which focuses on a certain phenomenon from a particular theme or angle. For instance, there is a focal point on firearms focussing on the traditional trafficking of firearms and supply through the dark web, access to which will be lost post-Brexit.

22. In terms of the legal framework, the UK's involvement in Europol currently is predicated on an operational agreement as a member state, but Brexit will mean the UK must get agreement as a third country. If the *objective* is to retain as much operational engagement and effectiveness as possible, a standard third country arrangement is unlikely to match the operational desires and needs of the UK. Moreover, though bilateral agreements can sometimes be useful, they are less effective and costlier, and in respect of certain offence like child sexual exploitation and cyber-crime, a multi-lateral response is needed. UK would have to be invited in by Europol with the agreement of the other member states.

23. As for potential *obstacles*, according to Article 218 of the Treaty on the Functioning of the European Union, the consent of the European Parliament is required for the conclusion of international agreements by the EU with third countries that cover fields to which ordinary legislative procedure applies. The negotiation will be carried out by the Commission and made by the Council on behalf of the European Union. This has significant implications in terms of timing. It often takes three to four years to get third country agreements, and there should be no assumption that it will be easy for the UK to replicate the existing structures. This underlines the need for urgency. In addition, it is difficult to ascertain other member states' priorities or likely objections.

24. Switzerland, Norway and the USA are third countries involved in Europol so there is a precedent for comparable participation by the UK. It also is instructive to recall the situation of Denmark which has negotiated an agreement with Europol, but it was costly, notwithstanding being a member state. It appears that Denmark will have officers located in Europol, with limited access to data and observer status in the Board.

⁸ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol), article 14. This new regulation updates Europol's governance structure, objectives and tasks, and took effect from 1 May 2017. The UK gave notice to opt in to this.

25. One *option* for UK negotiators in respect of Europol is to emphasise the UK's historical and on-going provision of intelligence, in particular respect of migrant smuggling, Human Trafficking and Cybercrime. British intelligence on migrant smuggling is valuable as a result of the UK's footprint in Africa and the strong presence of liaison officers worldwide. In return, the intelligence held by Europol helps the UK to cross-reference and check its own information. The present task is for the UK to present itself as a vital partner for other member states and Europol, thereby increasing the likelihood of the negotiation of a preferential arrangement. The US has been strategically shrewd in its offering of good intelligence to justify their presence. The UK should mirror this situation in terms of its provision of valuable intelligence.

26. A further *obstacle* may lie in the shifting terrain of data protection. Late last year the European Court of Justice ruled in *Watson*, in relation to GCHQ's bulk interception of call records and online messages under the Data Retention and Investigatory Powers Act 2014, that just targeted interception of traffic and location data in order to combat serious crime is justified.⁹ In addition, any data sharing after Brexit will be predicated on a positive data protection adequacy assessment of the UK from the European Commission.¹⁰ Further, the General Data Protection Regulation, which aims to strengthen and unify data protection for individuals within the EU, is yet to be implemented.¹¹ This means that the UK essentially is now negotiating against a moving target. Though concerns have been raised that post-Brexit the Charter of Fundamental Rights of the European Union will no longer curtail the UK Government in terms of expansive data collection, it seems more likely that the UK will be required to adhere to the substance of the extant scheme were any third country arrangement to be agreed.

Eurojust

27. Eurojust was established in 2002¹² as a "body of the Union" with legal personality, in an effort "to reinforce the fight against serious organised crime".¹³ Its mission is "to support and strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime affecting two or more Member States".¹⁴ Within two years of its creation, the House of Lords EU Committee noted that "[i]n a remarkably short time it has established itself as a highly effective means of facilitating cooperation between investigating and prosecuting authorities in Member States in serious criminal cases".¹⁵

⁹ Joined Cases C-203/15 and C-698/15, 21 December 2016.

¹⁰ The Council and the European Parliament have given the Commission the power to determine, on the basis of Article 25(6) of Directive 95/46/EC whether a third country ensures an adequate level of protection by reason of its domestic law or through its international commitments.

¹¹ Regulation (EU) 2016/679.

¹² Council Decision 2002/187/JHA of 28 February 2002.

¹³ European Council at Tampere in 1999.

¹⁴ Lisbon Treaty, Chapter 4, Article 85.

¹⁵ House of Lords European Union Committee, *Judicial Co-Operation in the EU* (2004) p6.

28. The Crown Prosecution Service is a “heavy” user of Eurojust, listing it among its top priorities for forthcoming negotiations on Brexit, and Eurojust’s value was similarly endorsed by Crown Office and Procurator Fiscal Service.¹⁶ The benefits of Eurojust lie in the ability to work multilaterally rather than bilaterally in real time with partners in the EU, the access to the Eurojust Case Management System, as well as the neutral physical space. Eurojust mediates jurisdictional conflicts of law, and serves as a vehicle for problem-solving. The general sentiment hinges on a concern that just as the use, value and experience of Eurojust are starting to increase, prosecutors are now faced with the likelihood of leaving.

29. The *objective* is to retain access for the UK (of course comprising its constituent jurisdictions) to Eurojust to the greatest extent possible, ideally with a closer relationship than would normally be envisaged by third country agreements. Such agreements have been concluded with Norway, Iceland, the USA, Switzerland, and the former Yugoslav Republic of Macedonia, and liaison prosecutors from Norway, Switzerland and the USA are based at Eurojust.

30. It is unquestionable that future arrangements regarding Eurojust will be “suboptimal” to the current situation.¹⁷ Post-Brexit, the UK is unlikely to have access to the Case Management System, which is a valuable resource as well as serving a cross-checking purpose in respect of case files and details.

31. The *obstacles* lie in the ability to negotiate agreements for the exchange of judicial information and personal data outside the EU. As noted in relation to Europol, the European Parliament needs to consent to this.

32. One *obstacle* lies in the political acceptability of this to other member states. Another *obstacle* lies in the fact that continued involvement will also entail oversight from the supranational EU institutions. According to Article 85 of the Treaty on the Functioning of the European Union, the European Parliament and national parliaments shall be involved in the evaluation of Eurojust’s activities, though no specific arrangements have yet been adopted. The Court of Justice of the EU retains ultimate oversight. Though it is questionable whether this will be acceptable from the UK-side, these dimensions cannot be circumvented.

33. One *option* is the use of Liaison Prosecutors situated in different Member States as a potential alternative to the status quo. Precedents already exist for third country agreement with Eurojust involving a Liaison Prosecutor, but these cannot replicate Eurojust’s capacity to facilitate multi-national co-ordination. In addition, any Liaison Prosecutors will not be part of the Eurojust management board, and therefore can not influence its strategic direction. This implies that in the longer term continental influence will grow, with implications for Ireland especially as the other adversarial justice system in the EU. There are issues of logistics and resource also, in terms of replacing prosecutors in all other Member States.

¹⁶ House of Lords European Union Committee, *Brexit: future UK-EU security and police cooperation* 7th Report of Session 2016–17 [74].

¹⁷ Hansard, House of Lords, UK-EU Security (EUC Report), 7 February 2017, Vol 778, Col 1669.

34. Another *option* is to consider the negotiation of an agreement that entails both the place of Liaison Prosecutors as well as access to the Eurojust Case Management System. It is questionable whether this is likely to be acceptable to other Member States.

Joint Investigation Teams

35. A joint investigation team (JIT) is a team consisting of prosecutors and law enforcement authorities of two or more States, established for a fixed period and a specific purpose by way of a written agreement, to carry out criminal investigations in one or more of the involved States.¹⁸ There is a direct link to the response to organised crime as it was the Decree of the Council Plan of Action for combating organised crime that had prompted the setting up of ‘joint teams’.¹⁹

36. JITs enable the direct gathering and exchange of information and evidence without the need to use traditional channels of mutual legal assistance. In addition, “seconded members” of the team (i.e. those originating from another State than the one on the territory of which the JIT operates) are entitled to be present and to take part in investigative measures outside of their State of origin. JITs are an efficient and effective cooperation tool, facilitating coordination of investigation and prosecution conducted in parallel in several countries. They help to increase operational capacity in dealing with serious and organised transnational crimes. The *objective* must be to retain involvement as it stands currently.

37. It is conceivable that the UK could opt for a bilateral or *ad hoc* arrangement with Eurojust, and/or with individual states. There are no legal *obstacles* to the continued use of JITs involving the UK post-Brexit. Indeed, JITs can be set up with and between competent authorities of States outside the European Union.²⁰ Thus, Brexit will not prevent the UK from participating in JITs. It appears that the UK remaining a party to the Council of Europe Mutual Legal Assistance Convention 1959 will permit it to continue benefiting from involvement in JITs.

¹⁸ Article 13 of the Convention on Mutual Legal Assistance between the Member States of the European Union, adopted on 29 May 2000, and in the Council Framework Decision 2002/465/JHA of 13 June 2002.

¹⁹ Decree of the Council d.d. 28 April 1997, Pb. 1997, C 251/01.

²⁰ See e.g. Agreement between the European Union and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the Convention of 29 May 2000 on Mutual Assistance in Criminal Matters between the Member States of the European Union and the 2001 Protocol thereto; Article 5 of the Agreement on Mutual Legal Assistance between the European Union and the United States of America 2003; Article 27 of the Police Cooperation Convention for South-East Europe (PCC-SEE), applicable between several Member States (Austria, Bulgaria, Hungary, Romania, Slovenia) and countries of the Balkans (Albania, Bosnia and Herzegovina, FYROM, Moldova, Montenegro, Serbia).

38. Under the existing framework a JIT can only be launched by a request from a Member State, so the UK's future role in these will be initiated elsewhere. Currently, the UK is party to 31 JITs, whereas there were just 12 applications for JITs involving non-EU Member States in 2014.²¹ That said, UK can be distinguished from other non-members in that it has been heavily involved in JITs historically. One *option* is for these previous contributions in the negotiations to be cited to carve out a special role for UK.

39. The Network of National Experts on Joint Investigation Teams observed in 2014 that there is limited practical experience in JITS involving non-EU member states.²² Nonetheless, the threats caused by organised crime represents a strong incentive for using swift and flexible cooperation tools with countries located outside the EU. This would suggest that the UK's involvement in JITs will continue, albeit in a different form.

40. While previous research indicated some concerns have been raised about the bureaucracy and lack of speed of JITs,²³ the alternative in terms of the use of parallel investigations would not be any different, and so it is not suggested that they be replaced or reconsidered.

European Arrest Warrants

41. The European Arrest Warrant (EAW) allows for the extradition of individuals between EU Member States to face prosecution for a crime of which they have been accused, or to serve an outstanding prison sentence.²⁴ It is based on the principle of mutual recognition of criminal decisions and enforcement of arrest warrants, and represented a move away from the conventional refusal of extradition on the grounds of nationality. In addition, the "dual criminality" requirement is not applicable to a list of offences, based on mutual trust between the judicial authorities of the Member States.²⁵

42. Once issued, EAWs are circulated on the EU-wide Second Generation Schengen Information System (SIS II) as an Art 26 alert,²⁶ via the National Crime Agency which act as a conduit for information/subsequent questions relating to the UK. Once the individual is arrested, the process is purely judicial with no involvement of political authorities/executive. There is also a speedy return of the requested person: ten days if defendant consents to his return, and up to 60 days otherwise.²⁷ The *objective* should be replacement with an equivalent scheme.

²¹ House of Lords European Union Committee, *Brexit: future UK-EU security and police cooperation* 7th Report of Session 2016–17 [75].

²² Conclusion of the Tenth Annual Meeting of National Experts on Joint Investigation Teams (JITs), June 2014 <https://www.europol.europa.eu/sites/default/files/documents/2526june.pdf>

²³ European Commission *Study on paving the way for future policy initiatives in the field of fight against organised crime* (2015) https://ec.europa.eu/home-affairs/sites/homeaffairs/files/e-library/docs/20150312_1_amoc_report_020315_0_220_part_2_en.pdf

²⁴ Council Framework Decision 2002/584/JHA, 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States, OJ L 190 (18 July 2002).

²⁵ Article 2.2.

²⁶ Article 26 of Council Decision 2007/533/JHA.

²⁷ Article 17.

43. If the UK withdraws from the EAW the European Convention on Extradition 1957 will apply in respect of those EU countries for which this remains in force. This is not unproblematic, as Ireland, for instance, has repealed the relevant legislation. The European Arrest Warrant Act 2003 in Ireland repealed Part III of the Extradition Act 1965 which dealt with extradition between Ireland and the UK. So, a new procedure for extradition between the two countries will have to be agreed.

44. Under the EAW, a request is sent via diplomatic channels unless other arrangements exist²⁸ and except in urgent applications regarding provisional arrest. The extradition process under the European Convention on Extradition 1957 usually involves in the first instance a judicial decision on the merits of a request, then a political decision taken by the Secretary of State (UK) before the handover of the requested person occurs.

45. Without the EAW and the EU framework of co-operation, the UK would revert to using mutual legal assistance, which continues to be used to obtain material that cannot be obtained on a police cooperation basis, particularly enquiries that require coercive means. Such requests are made by a formal international Letter of Request (LOR). All LORs on criminal matters from the UK are to be sent via the Home Office's UK Central Authority or the Crown Office in Edinburgh. The problem with such a process is that the execution of LORs is too haphazard and takes too long.

46. Linked to this, a further consequence of Brexit is that the UK will not be able to check and rely on the Second Generation Schengen Information System (SIS II), which allows competent national authorities to issue and consult alerts on persons who may have been involved in a serious crime, as well as information on certain property like banknotes, firearms and identity documents.²⁹ SIS II is critical in driving up success in relation to the identification of individuals wanted under EAWs.

47. One *option* would be the conclusion of an agreement between the UK and the EU as well as EU agencies whereby the UK would be a third country, to maintain the existing scheme. This is preferable to bilateral arrangements. There are precedents for this, in that there are now arrangements with Norway and Iceland regarding surrender for instance, but these countries are full Schengen members, and have strong co-operation with EU members such as Denmark and Sweden through the Nordic arrest warrant. That said, the UK may not be in the same position as those countries as it is already an EU member. It is important to recall that it took Norway and Iceland eight years to negotiate their admission to the EAW scheme, and with this comes the need for them to recognise the CJEU jurisprudence. Oversight by the CJEU applies as an EU *acquis* must be interpreted in accordance with CJEU decisions.

²⁸ Article 12.

²⁹ Although the UK is not a Schengen country it is a member of the SIS II.

48. Beyond the EAW, future co-operation lies in the form of the European Investigation Order (EIO).³⁰ The EIO will replace the European arrest warrant and the provisions of the EU Convention on Mutual Assistance in Criminal Matters 2000, which has both judicial and cross border active policing provisions. The EIO aims to supersede existing LORs for the gathering of evidence from another Member State, with a single comprehensive regime based on the principle of mutual recognition of judicial orders/decisions and use of a common template recognised by all. The EIO is an order, not a “request”, and is either issued or validated by a “judicial authority” (court, judge or public prosecutor). As with the EAW, the dual criminality requirement does not apply to a given list of offences. There are limited grounds to refuse to recognise or execute an EIO, and the executing State must try to execute the order in compliance with its own legislation. Akin to the situation for EAWs, the NCA is expected to work with the UK Central Authority and act as a conduit for information.

The Directive came into force on 21 May 2014, and participating member states (all except Denmark and Ireland) had three years to transpose and implement it into domestic law. As from 22 May 2017, this Directive will replace most of the existing rules on mutual legal assistance between Member States. However, there is no domestic legislation in place in the UK yet, and the implementation process has been postponed until after the general elections in June.

Summary table:

	OBJECTIVES	OBSTACLES	OPTIONS
EUROPOL	Maintenance of access and influence	Data protection concerns Consent of European Parliament	Acceptance of observer status Emphasis on provision of intelligence
EUROJUST	Retention of access to network and case management system	Political acceptability Consent of European Parliament	Use of liaison prosecutors Negotiation of agreement
JITs	Retention of cooperation	No legal obstacles	Citing of previous involvement in JITs
EAW	Construction of equivalent scheme	Repeal of precursor legislation in other jurisdictions	Negotiation of agreement as third country Use of EIOs

Prof Liz Campbell, Durham University, May 2017

³⁰ Directive 2014/41/EU of the European Parliament and the Council regarding the European Investigation Order in criminal matters

The Research Team



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Professor Liz Campbell is a Professor of Criminal Law at Durham Law School. She is the convenor of the Centre for Criminal Law and Criminal Justice. She has particular expertise in organised crime and corruption.

Her research looks at how and in what ways the criminal law and criminal process responds to politicised social problems. She is interested in how legal definitions are constructed, and how the politics of definitions determines and affects legal measures. She uses this lens to explore laws on organised crime, white collar crime and corruption, the presumption of innocence, and the trial process more broadly. Her research has been funded by the RCUK's Partnership for Conflict, Crime and Security, the Arts and Humanities Research Council, the Law Foundation of New Zealand, the Fulbright Commission, the Modern Law Review, and the Carnegie Trust for the Universities of Scotland.

She was appointed UK National Expert for the European Commission Study on paving the way for future policy initiatives in the field of fight against organised crime: the effectiveness of specific criminal law measures targeting organised crime (2015).

Liz has published widely in leading international and domestic journals. Her publications include a research monograph on *Organised Crime and the Law* (Hart, 2013).

Relevant publications include:

Campbell, Liz (2016). 'Corruption by organised crime' – a matter of definition?. *Current Legal Problems* 69(1): 115-141.

Campbell, Liz (2016). Organised crime and corruption in the UK: responding through law. *Criminal Law Review* 2016(1): 20-34.

Campbell, L. (2015). The offence of participating in activities of organised crime group: Section 45 of the Serious Crime Act. *Archbold Review* 10: 6-9.

Campbell, Liz (2014). Organised Crime and the Criminal Justice And Licensing (Scotland) Act 2010. *Edinburgh Law Review* 18 (2): 225-244.

Campbell, Liz (2013). *Organised Crime and the Law: A Comparative Analysis*. Oxford: Hart.

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“[I]ndividuals and groups involved in organised criminality are not limited by State borders, and ... often exploit national differences in laws, regulations, and taxes to establish illegal markets and generate profits”

(Liz Campbell, Organised Crime and the Law 2013)

