



Τμήμα Διεθνών, Ευρωπαϊκών και Περιφερειακών Σπουδών

Department of International, European and Area Studies

***“Judicial cooperation in criminal matters between the EU and the UK
according to the Trade and Cooperation Agreement: Overview of general
features and Fundamental Rights issues”***

Dr. Dominikos Arvanitis

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EU and UK reaffirm “*their commitment to democratic principles, to the rule of law, to human rights...*” (recital 1 of the preamble of the Trade and Cooperation Agreement)

EU and UK consider “*that cooperation between the United Kingdom and the Union relating to the prevention, investigation, detection or prosecution of criminal offences and to the execution of criminal penalties, including the safeguarding against and prevention of threats to public security, will enable the security of the United Kingdom and the Union to be strengthened*” (recital 23 of the preamble).

Part Three of the Agreement: “LAW ENFORCEMENT AND JUDICIAL COOPERATION IN CRIMINAL MATTERS” (articles 522 - 701)

- TITLE I “GENERAL PROVISIONS”
- TITLE II “EXCHANGES OF DNA, FINGERPRINTS AND VEHICLE REGISTRATION DATA”
- TITLE III “TRANSFER AND PROCESSING OF PASSENGER NAME RECORD DATA”
- TITLE IV “COOPERATION ON OPERATIONAL INFORMATION”
- TITLE V “COOPERATION WITH EUROPOL”
- TITLE VI “COOPERATION WITH EUROJUST”
- TITLE VII “SURRENDER”
- TITLE VIII “MUTUAL ASSISTANCE”
- TITLE IX “EXCHANGE OF CRIMINAL RECORD INFORMATION”
- TITLE X “ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING”
- TITLE XI “FREEZING AND CONFISCATION”
- TITLE XII “OTHER PROVISIONS”
- TITLE XIII “DISPUTE SETTLEMENT”

Article 524 of the Agreement: “§1. *The cooperation provided for in this Part is based on the Parties' and Member States' long-standing respect for democracy, the rule of law and the protection of fundamental rights and freedoms of individuals, including as set out in the Universal Declaration of Human Rights and in the European Convention on Human Rights, and on the importance of giving effect to the rights and freedoms in that Convention domestically.*

§2. Nothing in this Part modifies the obligation to respect fundamental rights and legal principles as reflected, in particular, in the European Convention on Human Rights and, in the case of the Union and its Member States, in the Charter of Fundamental Rights of the EU.”.

Title VI “SURRENDER”:

- Instead of the EAW → "arrest warrant"
- Instead of the principle of mutual trust → principle of proportionality
- Extradition of a national of an EU member state to the UK and vice versa
- The arrest warrant is transmitted mainly between judicial authorities
- The “ne bis in idem” principle is applied between the EU member states and the UK as a mandatory reason for the refusal to execute an arrest warrant

Article 604 **“Guarantees to be given by the issuing State in particular cases”**

The execution of the arrest warrant by the executing judicial authority may be subject to the following guarantees:

(a) if the offence on which the arrest warrant is based is punishable by a custodial life sentence or a lifetime detention order in the issuing State, the executing State may make the execution of the arrest warrant subject to the condition that the issuing State gives a guarantee deemed sufficient by the executing State that the issuing State will review the penalty or measure imposed, on request or at the latest after 20 years, or will encourage the application of measures of clemency for which the person is entitled to apply under the law or practice of the issuing State, aiming at the non-execution of such penalty or measure;

[...]

(c) if there are substantial grounds for believing that there is a real risk to the protection of the fundamental rights of the requested person, the executing judicial authority may require, as appropriate, additional guarantees as to the treatment of the requested person after the person's surrender before it decides whether to execute the arrest warrant.

Article 609 **“Rights of a requested person”**

1. If a requested person is arrested for the purpose of the execution of an arrest warrant, the executing judicial authority, in accordance with its domestic law, shall inform that person of the arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing State.
2. A requested person who is arrested for the purpose of the execution of an arrest warrant and who does not speak or understand the language of the arrest warrant proceedings shall have the right to be assisted by an interpreter and to be provided with a written translation in the native language of the requested person or in any other language which that person speaks or understands, in accordance with the domestic law of the executing State.
3. A requested person shall have the right to be assisted by a lawyer in accordance with the domestic law of the executing State upon arrest.
4. The requested person shall be informed of the person's right to appoint a lawyer in the issuing State for the purpose of assisting the lawyer in the executing State in the arrest warrant proceedings. This paragraph is without prejudice to the time limits set out in Article 621.
5. A requested person who is arrested shall have the right to have the consular authorities of that person's State of nationality, or if that person is stateless, the consular authorities of the State where that person usually resides, informed of the arrest without undue delay and to communicate with those authorities, if that person so wishes.

Article 612 **“Hearing of the requested person”**

Where the arrested person does not consent to surrender as referred to in Article 611, that person shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing State.

Article 617 **“Hearing the person pending the decision”**

1. The requested person shall be heard by a judicial authority. To that end, the requested person shall be assisted by a lawyer designated in accordance with the law of the issuing State.
2. The requested person shall be heard in accordance with the law of the executing State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.
3. The competent executing judicial authority may assign another judicial authority of its State to take part in the hearing of the requested person in order to ensure the proper application of this Article.

Article 636 **“Conditions for a request for mutual assistance”**

1. The competent authority of the requesting State may only make a request for mutual assistance if it is satisfied that the following conditions are met:
 - (a) the request is necessary and proportionate for the purpose of the proceedings, taking into account the rights of the suspected or accused person; and
 - (b) the investigative measure or investigative measures indicated in the request could have been ordered under the same conditions in a similar domestic case.

2. The requested State may consult the requesting State if the competent authority of the requested State is of the view that the conditions in paragraph 1 are not met. After the consultation, the competent authority of the requesting State may decide to withdraw the request for mutual assistance.

TITLE XI “FREEZING AND CONFISCATION” (in Articles 656 etc.), is provided –among others– that cooperation “may” be refused if:

- the request would be contrary to the principle of ne bis in idem;
- or the offence does not constitute an offence under the domestic law of the requested State;
- or the confiscation results from a decision rendered in absentia of the interested person and the proceedings did not satisfy the minimum rights of defence. Moreover, each State shall ensure that individuals affected by specific measures have effective legal remedies in order to preserve their rights...” (according to Article 689).

Court of Justice of the EU,

Judgment of 2016 in the cases “Aranyosi and Caldaru”

The Court has ruled that:

- *Where there is objective evidence with respect to **detention conditions** in the issuing Member State that demonstrates that there are **deficiencies**, which may be **systemic or generalised**, or which may affect **certain groups of people**, or which may affect certain places of detention,*
- *the executing judicial authority must determine, specifically and precisely*
- *whether there are **substantial grounds** to believe that the individual concerned by a European arrest warrant, will be exposed, **because of the conditions for his detention** in the issuing Member State,*
- *to a **real risk of inhuman or degrading treatment** in the event of his surrender to that Member State.*

In conclusion:

- “Traditional” mutual legal assistance and extradition systems
- The ECHR continues to be binding for the UK (but no EUCFR – no CJEU)
- The application of the EU acquis (namely the “Aranyosi” case law) is crucial
- The fundamental rights have been considered
- There is room for improvement (e.g., the “ne bis in idem” principle as a mandatory reason for refusal of surrender, the refusal of execution of any request that could result the violation of the articles 2, 3 or 6 of the ECHR etc.).