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A response to the Prime Minister's speech in Munich for an EU security treaty in relation to police and criminal justice matters

On 17th February the Prime Minister made a speech in Munich outlining her view on the UK's 'co-operation' with the EU on security, justice, home affairs, defence and foreign affairs after Brexit – "to retain the co-operation that we have built and go further". In particular on criminal justice – or to



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use the EU's and Mrs May's preferred term, on "internal security" – she wants a comprehensive new treaty preserving the *status quo* – including, but not limited to, the **European Arrest Warrant**, the **European Investigation Order**, the **SIS-II database**, and the UK's membership of **Europol**.

According to Mrs May, her new treaty "must be respectful of the sovereignty of both the UK and the EU's legal orders. So, for example, when participating in EU agencies the UK will respect the remit of the European Court of Justice".

This might be defended as a pragmatic proposal to work together with foreign partners to advance the laudable goal of preventing and punishing serious crime – but only until you consider the things she wants to preserve in some detail. What exactly is the European Arrest Warrant and what are the other instruments of the EU's 'internal security'?

The European Arrest Warrant has replaced

extradition of suspected criminals between EU member-states with a system of an automatic '**judicial surrender**'. Every member states' police, criminal justice and penal systems are considered to be of equal standing, which of course is an obvious fiction. A warrant issued by a designated authority in any EU member-state is legally binding in the UK. Our courts no longer have power to consider the merits of the case or see the *prima facie* evidence against the accused. In principle, all they can do is check that the EAW form is filled in correctly. They have no power to prevent obvious miscarriages of justice, even where they stare the court in the face.

Any British citizen can thus be sent, on the strength of a piece of paper, to a foreign prison, to be kept in such conditions as he may find there, for as many months or years as their justice system allows; and enjoy as fair a trial as may be normal in that part of Europe.

Since this system was introduced in 2003, it has led to many outrageous cases of injustice and ruined many innocent peoples' lives. The most notorious are the cases of Andrew Symeou, 'Patrick Connor'¹, Garry Mann, Deborah Dark, Edmond Arapi and Ashya King, to name just a few.

In theory, section 21 of the Extradition Act allows UK courts to refuse to execute a European Arrest Warrant on human rights grounds; but it has proved to be an ineffective safeguard in practice, and only led to a further perversity. It is sometimes used

¹ The pseudonym given by Fair Trials International to a young man, unwilling to be named after being stigmatized by an unfair criminal conviction in Spain, where a guilty plea was extorted by unlawful pressure and threats of lengthy pre-trial detention in poor prison conditions

by EU immigrants, wanted at home to answer serious charges, to resist extradition on the grounds that it would 'disproportionately interfere' with their 'family life' in the UK. At the same time, it is virtually impossible to rely on poor standards of justice, risk of torture or mistreatment, or prison conditions in the state where the EAW was issued. The courts are bound, by the EU principles of '**mutual recognition**' and '**mutual trust**', to 'assume' that every EU state complies with its obligations under the European Convention on Human Rights.

Another supposed safeguard is a '**proportionality test**', introduced by Theresa May when she was Home Secretary in 2014, which allows the courts to reject an EAW on the grounds that the alleged offence is too trivial (e.g. failing to pay a parking fine). That was celebrated at the time as a major reform which fixed all the flaws of the system and made it fit for purpose, but it is self-evidently less than that.

The British Courts are still obliged to execute EAWs which allege serious crimes but are based on flimsy or fabricated evidence; and send British citizens to countries where they risk mistreatment or unfair trial. It is strange reasoning to say that it is wrong for a British citizen to be judicially surrendered without evidence for the accusation of a minor crime but perfectly in order to be judicially surrendered without evidence for a serious one. Not only strange but contrary to several hundred years of English legal tradition and practice.

The European Investigation Order, which Mrs May's government 'opted in' last year, extends the principle of 'mutual recognition' to criminal investigations and broadly defined 'investigative measures', including (but not limited to) covert surveillance, interception of communications, monitoring of bank accounts, search warrants, interrogation of suspects, witnesses or "third parties", etc.

Previously, for over half a century, law enforcement authorities assisted their investigations of their foreign colleagues on a voluntary case-by-case basis under the flexible system of '**mutual legal assistance**'. Since last year, there is a legal obligation to recognise and execute an EIO issued by any ex-communist prosecutor or judge in Eastern Europe. UK police authorities have no discretion to refuse. **Mrs May now wants to continue that system in perpetuity.**

There is a whole range of other 'mutual recognition instruments' similar to EAW and EIO: orders for 'freezing' of assets, confiscation of assets, the **European Supervision Order** (which can impose on British citizens things like curfew or electronic

tagging) have all been transposed into UK law.

The Schengen Information System II (SIS II) represents the system of 'mutual recognition' in a digitalised, and further simplified, form. It is a database of individuals and objects of interest to law enforcement authorities anywhere in the EU, updated in real time. A mere hit on that database operates as a legally binding European Arrest Warrant which must be executed without any additional formality. SIS II is run by **SIRENE** ('Supplementary Information Request at the National Entry'), a little known but powerful EU police agency with a central office and national bureaux in each member-state.

Europol is the EU's criminal intelligence agency, similar to the FBI in the United States. All its officers enjoy immunity from prosecution or civil lawsuits in relation to everything they do or say as Europol officers, with one technical exception.² This is of course totally contrary to centuries of English law where every police officer, officers of the Crown, or even government ministers have no immunity and are subject to the criminal law just the same as anyone else.

Europol is very secretive about its operations, and even the names of its staff are kept secret, except a few figureheads at the very top. **All we know about Europol's work is what Europol itself may choose to tell us from time to time.**

That list may be continued on and on. The EU has been busily building its own system of criminal justice for some decades now. What has emerged as a result is euphemistically styled the '**area of freedom, security and justice**' in the EU's own documents, but to those who cherish the traditional English constitutional liberties, it looks more like a perfect toolkit of an emergent police state.

If it is a 'partnership' between the UK and the EU, it has been a very unequal partnership. For example, as the Prime Minister herself acknowledged in her speech, "**for every person arrested on a European Arrest Warrant issued by the UK, the UK arrests eight on European Arrest Warrants issued by other Member States**". She does not explain why. In fact, one of the reasons is that, unlike most other EU member-states, **UK prosecutors only issue a European Arrest Warrant when they have the case ready for trial; whereas some continental legal systems allow suspects to be imprisoned without charge for long periods while under investigation.**

The UK might as well issue a traditional extradition request, backed up by *prima facie* evidence

² If a Europol officer takes part in a Joint Investigative Team between member-states, his actions as a member of JIT are not covered by the immunity

which would satisfy any foreign court; indeed, they successfully do so to secure extradition of fugitives from many non-EU countries. It is the EU's prosecutors and courts who sometimes found it difficult to substantiate their case against the accused to the satisfaction of the British court, and now find it so much easier just to fill a simple EAW form.

Yet, this does not stop the Prime Minister from asking for UK's readmission to 'the area of freedom, security and justice' after Brexit. As she puts it: *"Europe's security is our security. And that is why I have said – and I say again today – that the United Kingdom is unconditionally committed to maintaining it."*

What Mrs May apparently fails to grasp is that the British people have voted against remaining a member of the European Union. People have rejected her argument that it was better to stay and enjoy the advantages of European Arrest Warrants. She was elected into office on her promise to implement the Referendum decision. **Her job is not to preserve the legacy of the EU rule in this country, but to dismantle it.**

Nowhere is this task more urgent than in restoring the ancient liberties of the British people which have been treacherously sacrificed to the EU in the past. Mrs May, who was Home Secretary at the time when crucial decisions were taken, has played no small part in the process, and has a personal responsibility to mitigate the damage she has done. Her 'unconditional commitment' should have been to the liberty of the British people, not to the 'security' of the EU.

Instead of begging the EU for more arrest warrants after Brexit, the government should take the opportunity to restore the vital safeguards of liberty, reform the unfair and unreliable extradition system, and take a lead in developing a genuine international system of equal cooperation in fighting crime.

Exiting the European Union must also mean the following:

1. Abolishing the **European Arrest Warrant** and reverting back to the fairer system under the Council of Europe Extradition Convention.
2. Abolishing the **European Investigation Order**, and continuing to rely on the existing, fair and flexible system of mutual legal assistance.
3. In the longer term, **reforming the UK extradition laws** and renegotiating extradition treaties to restore a sound extradition system based on the requirement to present *prima facie* evidence against the accused in UK courts, and other time-tested safeguards.
4. Withdrawing from **Eurojust, Europol, SIRENE**, and other EU crime agencies.
5. Working with international partners to reinvigorate and strengthen Interpol, as the proper forum for global (not just European) co-operation in fighting crime on an equal and pragmatic basis.

Alas, there is little hope of anything like that happening under Mrs May's leadership.

UKIP is the only party which genuinely wants to leave the EU in reality, not just in name; and to reverse the damage the EU rule has done to our ancient and cherished liberties.

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