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NOTE

From: General Secretariat of the Council
To: Delegations

Subject: First considerations regarding the practical cooperation between the EU and UK as of 1 January 2021: The experience from the European Judicial Network
- Paper by the European Judicial Network (EJN)

Delegations will find attached the above-mentioned paper.

First considerations regarding the practical cooperation between the EU and UK as of 1 January 2021:

The experience from the European Judicial Network

With the entry into force of the new rules for the judicial cooperation set in the **Trade and Cooperation Agreement between the European Union and the United Kingdom¹** (TCA) on 1 January 2021, the EU countries were required to quickly adapt the procedures described in the agreement, particularly for:

- surrender;
- mutual legal assistance;
- exchange of criminal records; and
- freezing and confiscation.

In principle, the TCA is of direct application to the Member States and provides for procedural rules that could seem already familiar to practitioners, for example, the simplified procedure for surrender. However, not all legal systems could incorporate directly some of its particularities and therefore it has been challenging for some Member States to apply immediately the new procedural mechanisms.

EJN in practice: sharing questions and finding the way forward

Following their goal to support authorities with the application of the TCA, the European Judicial Network Contact Points launched a short survey and ten Member States exchanged information concerning the following topics:

¹ Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland (OJ L 444, 31.12.2020, p. 14–1462) Available here:

<https://www.ejn-crimjust.europa.eu/ejn/libdocumentproperties/EN/3341>

Direct application of the TCA

EJN Contact Points who replied to the questionnaire stated that the provisions of the TCA are directly applicable. However, some Member States, e.g. Austria, Belgium, Czech Republic, Finland, Germany, Italy, Portugal, Sweden, indicated the possible need to adopt additional law that would complement the procedure at a national level, especially regarding surrender.

For instance, EJN Contact Points from Finland pointed out that without implementation of the additional legislation, the extradition with the UK might be put on hold. In Czech Republic it was analysed that an amendment to the Act on International Judicial Cooperation in Criminal Matters will be needed concerning surrender and freezing and confiscation as well as an amendment to the Act on Criminal Register for the exchange of information from criminal registers. In turn, although the TCA is considered directly applicable in Austria, the surrender procedure with the UK is going to be included in the Federal Law on surrender with Iceland and Norway.

The form in which the requests between the EU Member States with the UK are being handled

The Contact Points from Austria, Belgium, Czech Republic, Portugal and Spain indicated that, at the moment, for the MLA requests with the UK, including those for freezing and confiscation, the TCA is used in addition to the Council of Europe instruments.

Some Member States have also analysed on how to proceed if they would have received EIOs after the entry into force of the TCA. To this question, some Member States responded that would just notify the issuing authority that they would proceed to execute them as MLA requests as prescribed in the TCA. Instead other Member States would require the UK authorities to issue a new request in line with the new provisions.

Channels of communications

The Contact Points also indicated that as of 1 January 2021, more formal channels for transmissions of the requests for legal assistance are in use with regards to the UK as it is foreseen in the Council of Europe conventions. For example, in Germany the ministerial channel for the transmission of MLA requests is used; however, it is planned to change the German reservation to the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters regarding direct transmissions of requests to and from the UK.

2

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The same situation is in Spain, where central authority channel is used. The Contact Point from Portugal replied that INTERPOL channel now is used now for the transmission of the arrest warrants.

Currently, the EJM Contact Points indicated that they continue to solve their questions and establish best practices directly with the UK authorities and/or liaison magistrates established in their countries.

Practical application issues and solutions envisaged


Contact Points from Greece have informed that to-date no practical problems were found in the application of the TCA. However, a number of Member States have been facing some legal issues. For example, in Portugal, the temporary absence of the national legislation would hamper the surrender procedure only if a UK national would be located in Portugal; the TCA would then only be applicable for requesting of a surrender from the UK.

Additionally, there is also the requirement to nominate the competent authorities for the issuing and execution of the requests and languages to the TCA. As it is the case in Finland, legislation is needed to nominate the competent authorities for surrender and possibly for freezing orders. Especially issuing arrest warrants has been identified as a problem, as to-date there is no national law on competence in connection to the TCA.

Since relatively short time has passed since the TCA came into force, the Contact Points have indicated that the further practice would most likely bring up additional questions. Therefore, a number of EJM Contact Points have requested to integrate the “Specialised Committee on Law Enforcement and Judicial Cooperation” to provide feedback on several questions, particularly with regards to article LAW.MUTAS.115, which relate to the form for a request for mutual assistance.

Information on the EJM website

To address the needs of practitioners, the EJM Secretariat has created a **BREXIT dedicated area** on the EJM website, as well as a section in the **Judicial Library** where practitioners would find all legal and practical information related to the judicial cooperation between the EU and the UK as of 1 January 2021:

-  text of the TCA (in all EU languages). Additionally, for the practical convenience, the provisions on judicial cooperation have been extracted from the full text and are available in a separate file (at the moment only in English);

- TCA forms for surrender. Easy-to-fill Microsoft Word templates are available in all EU languages;
- TCA forms for freezing and for confiscation. Easy-to-fill Microsoft Word templates are available in all EU languages;
- UKCA document on handling the EIOs received after the transition period, requests for communications data and competent authorities for freezing and confiscation (password protected);
- UKCA information on how to access the vehicle keeper information and on electronic transmission of requests (password protected);
- EJN document on the First considerations regarding the practical cooperation between the EU and UK as of 1 January 2021; and
- Eurojust note on Judicial cooperation in criminal matters between the European Union and the United Kingdom from 1 January 2021.

In summary, the EJN website remains addressing the needs for practitioners and providing all available legal and practical information in the area of judicial cooperation in criminal matters. The EJN website is continuously updated and with the course of time, other relevant documents and practical information will be included, for example:

- notifications from the Member States regarding competent authorities and accepted languages (will be published as soon as available); and
- The EJN Atlas, Fiches Belges and Compendium will be adjusted accordingly.

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4