



“Pros for the Cons – European Arrest Warrants post-Brexit for Ireland and the UK”

HUGH DOCKRY

CHIEF STATE SOLICITORS OFFICE



Purpose of EU Criminal law policy:

As most serious types of organised crime are committed across borders the developing EU law attempts to address this to:

- ▶ Prevent criminals from misusing those EU countries with the most lenient legal systems and 'safe havens' from appearing
- ▶ Strengthen mutual trust
- ▶ Ensure mutual recognition
- ▶ Foster citizens' confidence
- ▶ Ensure a consistent and coherent system of legislation
- ▶ Prevent and punish serious offences

History:

- ▶ The special EU Summit meeting in Tampere, Finland in October 1999 agreed to establish the so-called “Area of freedom, security and justice”, one of the primary objectives of the EU.
- ▶ Previously extradition and judicial and legal cooperation were founded on bi-lateral treaties or international Conventions such as:
 - 1957 Convention (European Convention on Extradition)
 - 1959 Convention (European Convention on Mutual Assistance in Criminal Matters between Member States of the European Union)
 - 1977 Terrorism Convention (European Convention on the Suppression of Terrorism)
 - 2005 Convention (European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and the Financing of Terrorism)



Legislation:

- ▶ Criminal Justice Act 1994

2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant

- ▶ European Arrest Act 2003

- ▶ Criminal Justice (Terrorist Offences) Act 2005

- ▶ Criminal Justice (Mutual Assistance) Act 2008

2009/299/JHA: Council Framework Decision of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2008/909/JHA and 2008/947/JHA (enhancing procedural rights and fostering the application of the principle of mutual recognition to decisions in absentia)

- ▶ Criminal Justice (Miscellaneous Provisions) Act 2009

- ▶ European Arrest Warrant (Application to Third Countries and Amendment) and Extradition Act 2012

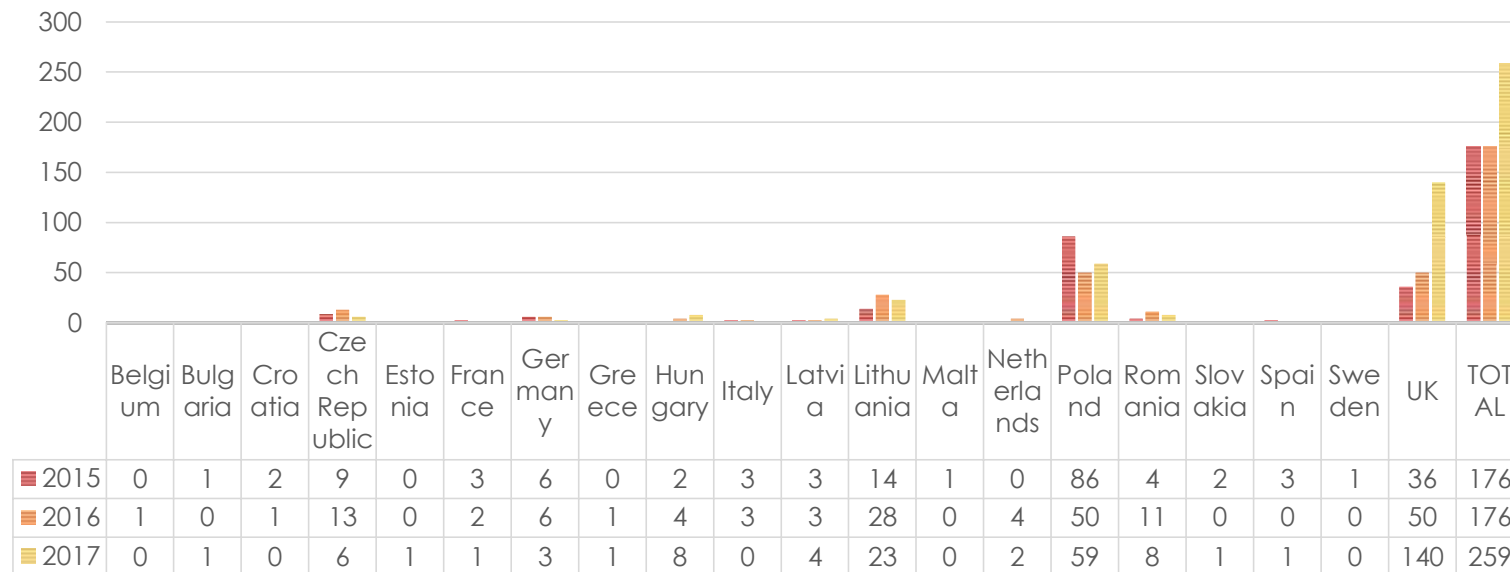


Effect:

- ▶ Agreed strict time limits – 60 days unless exceptional circumstances up to 90 days allowed
- ▶ Double criminality – 32 categories of offences punishable by a maximum period of at least 3 years imprisonment in Issuing State
- ▶ No political involvement
- ▶ Surrender of own nationals
- ▶ Guarantees – right to review with life sentence/right to serve detention in executing country
- ▶ Limiting grounds for refusal
- ▶ Ne bis in idem – double jeopardy rule
- ▶ Minors
- ▶ Amnesties available

Where we are now – Statistics:

(i) Number of cases issued to Ireland by Member States -





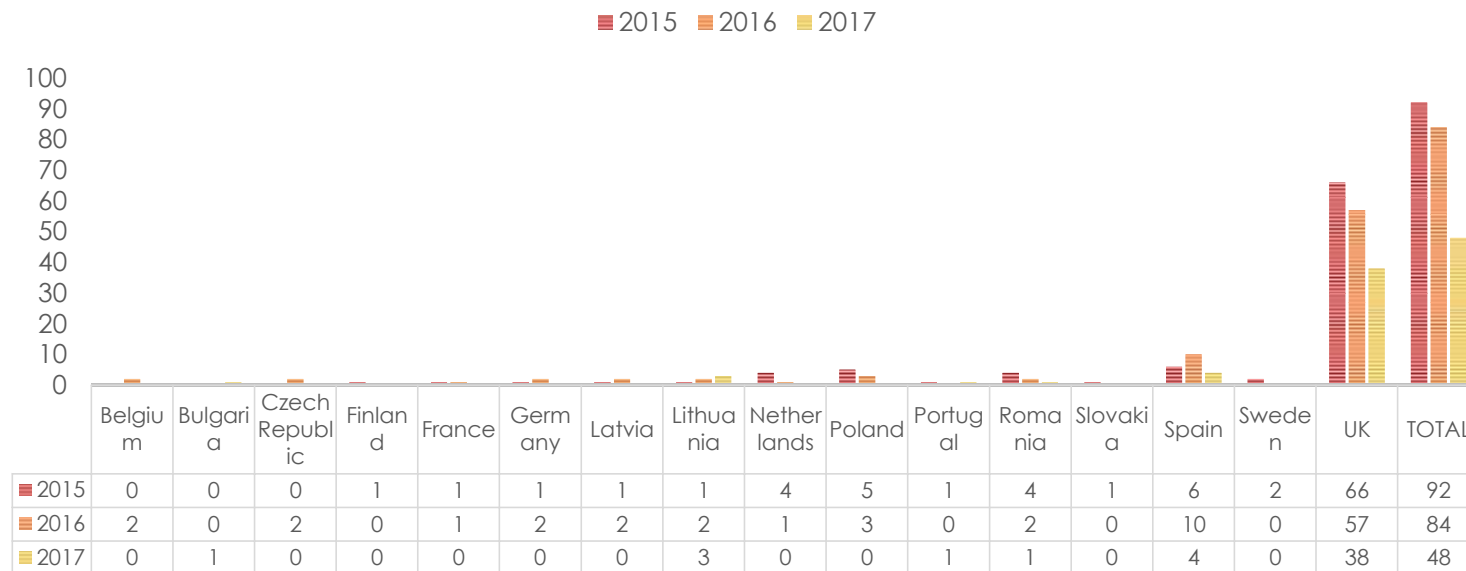
Where we are now – Statistics:

(ii) Average length of time -

- ▶ S.16 Order – 6-7 months
- ▶ S.15 Order – 3 months

Where we are now – Statistics:

(iii) Number of cases transmitted by Ireland to Member States -



Brexit & the ECJ:

- ▶ https://www.theguardian.com/law/2017/oct/05/uks-new-supreme-court-chief-calls-for-clarity-on-ecj-after-Brexit?CMP=share_btn_link
- ▶ The Risks:
- ▶ On foot of the Common Travel Area, linguistic, social and cultural similarities, there is a serious risk of “lawyered-up” criminals establishing themselves in places they perceive to be beyond the control of their pursuing policing and judicial authorities. The risk in ROI is for an influx from the UK. The risk to the UK is an influx from the EU generally
- ▶ Generally ROI is likely to be more isolated in Criminal Justice matters as the only Common Law jurisdiction of note
- ▶ UK coming out of Schengen Information System as Ireland enter it
- ▶ Eurojust relationship – UK observer status like Norway but no influence?
- ▶ Effect of European Investigation Order ...
- ▶ The Border?



Fall Back?:

- ▶ Recourse to ECJ – Prison Conditions/Suspects Rights & Fundamental Freedoms
- ▶ European Convention on Human Rights (Act 2003)



Remedies available:

- ▶ Harmonisation of Laws?
- ▶ Bi-lateral agreements?
- ▶ Extradition Act 1965 Part III?
- ▶ Competency Issues?