

Brexit and its Implications on Extradition to the UK

20 Dec 2018 Josie Welland.

There is little doubt that there has recently been a number of remarkable rulings regarding the extradition of alleged white-collar crime offenders.

The issue of Brexit and its implications for the UK and the European Arrest Warrant scheme present another set of challenges for the authorities. This was shown by the Irish Supreme Court's decision in February not to extradite back to Britain a man who was convicted of fraud there in 2007.

Rahman Ravelli's Josie Welland outlined the issues in an article for the Young Fraud Lawyers Association's winter newsletter 2018.

This year has seen a number of remarkable rulings in the extradition of alleged white collar crime offenders: Monaco refused to extradite Unaoil's chief executive to the United Kingdom (UK), Frankfurt prosecutors declined to extradite the Euribor traders and the High Court of England and Wales would not extradite a HSBC trader to the United States.

However, with the Brexit Withdrawal Agreement (the "Withdrawal Agreement") currently being debated in Parliament, our attention should turn to the Irish extradition case of Mr Thomas Joseph O'Connor ("Mr O'Connor"), and what the Brexit 'deal' really means for the European Arrest Warrant ("EAW") and the policing of white collar crime.

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The case of Thomas Joseph O'Connor

Back in February, Ireland's Supreme Court declined to extradite Mr O'Connor to the UK, where he had been convicted of fraud, because by the time he would have finished his prison sentence the UK would have left the EU.

Mr O'Connor, a construction company director, had been convicted in his absence of tax fraud (for more information on the subject of HMRC - Tax and VAT investigations click

here

) back in 2007. At the time, Mr O'Connor had absconded on bail and fled to Ireland.

In 2009 he was arrested on an EAW and, in 2014, Ireland's High Court ordered his extradition to the UK. Following a succession of challenges, the Irish Supreme Court declined in February to extradite Mr O'Connor to the UK. Instead it ruled that his case should be referred to the European Court of Justice (ECJ) in Luxembourg for resolution.

The ECJ has since said in an explanatory note to the test case, identified only as "RO": "Mere notification by a member state of its intention to withdraw from the European Union is not an 'exceptional' circumstance capable of justifying a refusal to execute an EAW issued by that member state."

European Arrest Warrant (EAW) after Brexit

So what is the impact of Brexit for extradition requests from EU Member States? Unhelpfully, the Withdrawal Agreement puts this question along with the Irish border into the 'to do' list and allows the status quo to continue, more or less.

Article 62 (c) of the Withdrawal Agreement envisages that the EAW scheme will continue to apply during the transition period. This implies no change to existing arrangements as of March next year, but that is not quite the full picture. Turning through to Article 185 of the

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Withdrawal Agreement, this contains a significant provision, which allows, even in the transition period, for EU states to refuse to extradite their own nationals to the UK.

On this view, the UK is not so much leaving the EU as the EU is withdrawing from the UK.

This could pose a real problem for the UK government's crime-fighting hopes and, in particular, for the SFO; which wants to present itself at the forefront of policing white-collar crime in Europe.

It is difficult to imagine that any replacement to the EAW regime in the UK will include as many advantages as the EAW does to law enforcement. And any replacement could signal an end to the free movement of suspects between the UK and the EU.

Read our related article: Brexit may yet pose a number of challenges for the Financial Conduct Authority.



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Josie Welland is a highly-rated associate solicitor specialising in the defence of white-collar crime cases who has carved a reputation for insightful representation of both corporates and individuals facing allegations of global economic wrongdoing or financial impropriety. She is also known for being especially adept at managing cases involving worldwide asset tracing and recovery.

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