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13 January 2011

Dear Scott,

REVIEW OF EXTRADITION – BRIEF SUBMISSION

Many weeks ago I received an invitation to send a submission to the review. I meant to do this in the gap between Christmas and New Year, but a family crisis threw all my plans out of gear. It is now two weeks after the deadline and I imagine I have missed the boat. But in case I have not, I thought it might be still be worth while writing a brief letter, as an alternative to the more detailed submission I originally hoped to send.

In this letter I would just like to make two points. Both concern the European Arrest Warrant, rather than the wider issue of extradition generally.

The first thing to say is that I believe, on balance, the European Arrest Warrant has actually been a big success. Seven years after the UK implemented it, it is easy to forget what a running sore extradition between the UK and the rest of Europe was. The EAW has enabled us to recover, simply and easily, a lot of very nasty people whom previously we would only have recovered, if at all, with great delay, expense and difficulty. As Lorna Harris, then in charge of judicial co-operation in Edinburgh, put it graphically to me in conversation: "It used to take us years to get criminals back from Spain – but now they are on the plane home before they've even finished their paella!" And the same is true, undoubtedly, in reverse.

The perceived problems with the EAW are two: (i) the surrender of wanted persons to criminal justice systems in other parts of Europe where there are serious grounds for thinking they will not have a fair trial, and (ii) the over-use of it by certain countries, notably Poland, which have been using it in what appear to us to be trivial cases, causing what we see as needless trouble for our authorities and expense to our public purse.

I think problem (i) must be seen in context. "If you send me there I won't get a fair trial" is, of course, what a great many suspects say, usually when there is no truth in

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it. (I noticed with a wry smile that it was the argument with which the 21/7 terrorist, Husain Osman, tried unsuccessfully to persuade the Italian *Corte di Cassazione* to block his return to the UK in response to the EAW we had issued.)

But regrettably, there are some cases in where you do not have to be a reader of the *Daily Mail* to get the feeling that there may some truth in the complaint. My feeling about this is that we can, and should, in general rely on other Member States of the EU to give wanted persons justice. But there may, most regrettably, be some Member States whose criminal justice systems are really not "fit for purpose" (to use the phrase of former Home Secretary). And where this is so, my feeling is that the UK government ought to investigate the matter, with a view to using its power under the Extradition Act to remove the country in question from the list of countries to which the Part I of the Extradition Act applies. We should not, in my view, try to deal with the problem by amending Part I of the Extradition Act to insert new guarantees, which are not really necessary in the context of most of the criminal justice systems with the EU, and the effect of which would be to turn extradition back into the expensive and inefficient circus it was before the EAW.

I think that what lies behind problem (ii) is that there is, at present, no efficient system within the EU for dealing with "disorganised crime" across borders, as against organised crime. In consequence, countries like Poland are using the EAW because there is nothing else.

At a meeting I heard the problem explained by an obviously intelligent Polish judge. To paraphrase what he said, when Poland joined the EU, every Polish "Del Boy" drove his Reliant car to the nearest airport and set off for the UK, imagining that he had left his petty criminal past behind him. Polish prosecutors would, in principle, have been very glad to deal with most of them by their equivalent of section 11 of the MCA 1980, under which our magistrates' courts, where the defendant fails to appear, can usually hear the case in his absence; but in order to do this they had to serve summonses on them, and they could not persuade the authorities in the UK to help them trace the defendants in order to serve them. The message they got from SOCA, the Polish judge told us, was "Get lost! – we will only help you where there is an EAW, when by law we have to do so." Polish prosecutors then worked out that, thanks to the combined repressiveness of Polish and English substantive criminal law, even relatively trivial offences fall within the scope of the EAW; and so, quite understandably, they started issuing EAWs in these cases.

What is really needed here, surely, is not so much a statutory limit on the availability of the EAW, but some procedure to enable these cases to be dealt with appropriately. Part VI of the Criminal Justice and Immigration Act 2008 contains provisions enabling fines imposed in other countries to be enforced here, and these provisions are in force. If we were prepared to be more co-operative in enabling other EU countries to serve summonses in cases likely to lead to the imposition of a fine, I believe we would find the problem of excessive use of the EAW would largely disappear.

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A final point to mention (though one that I suppose is not of central importance to your review) is that I believe the drafting of Part I of the Extradition Act 2003 is quite unnecessarily complicated. Last year I wrote a piece about this which appeared in the Statute Law Review. On re-reading it, I have some regrets at the strength of the language I used to denounce the draftsman's work, but I think the basic points I made were sound. I'm sending you an offprint in the post.

With all good wishes,

Yours sincerely,

