

## **Police and Criminal Justice: Call for Evidence (Balance of Competence Review)**

***Please note that this response comprises the views of individual prosecutors and their experiences in specific cases and situations and does not reflect the corporate view of the Public Prosecution Service of Northern Ireland.***

Prosecutors felt that it was important to communicate at the outset that there was a real lack of awareness about policy/legislation/powers of various institutions and the powers of the EU in this area of law. It was suggested that the Ministry of Justice and/or the Home Office should embark on an awareness programme and dissemination of all the relevant information. Information is not accessible nor is it easily found and there is no local point of contact in Northern Ireland in respect of EU competences.

### **Questions in Chapter 1:**

The work carried out trans-nationally under the aegis of the EU has contributed significantly to the proper prosecution of cases in Northern Ireland. As the various EU schemes are adopted both police and prosecutors become accustomed to dealing with police and prosecutors in other countries. There is a considerable and noticeable difference in our High Court and International Section dealings with countries outside the EU framework – there is a lack of expectation of assistance and delay and expense to establish a common basis for proceeding.

It has been the case that the development of EU police and criminal justice competence has not only has specific benefit in the relevant areas but has led to a general improvement in relationships and co-operation, removing suspicion and providing a common mutual understanding of investigation and prosecution. This has led to significant success in the prosecution of cross-border crime and internet crime and directly to prosecutions which previously would not have been possible because persons or evidence or information was unobtainable from another jurisdiction.

One improved area is that of mutual legal assistance, which is still very slow but has become more effective where Member States are willing to co-operate. It was noted that where Member States were not willing to co-operate there was no effective sanction.

There was a suggestion that dual criminality should be extended to all offences – it was often difficult for prosecutors to establish whether there was an equivalent

criminal offence in another Member State therefore why not extend the principle to cover all of them?

The main cross-border relationship in this jurisdiction is with the Republic of Ireland and it was felt that the success of that relationship was down to the people working in those areas in terms of their willingness to co-operate, and not because of EU influence.

Those prosecutors who had experience in relation to the opt-out discussions felt they were done with integrity and therefore there was no particular adverse consequence. It was felt that it was in the UK's interest to retain the Schengen opt-out – it is common sense where it is justifiable and does not undermine the wider policy context.

### **Questions in Chapter 2:**

The only matter here directly relevant to our High Court and International Section work is the EU-Japan MLA agreement and that has not as yet been used in Northern Ireland. It is expected to be an efficient and effective method of getting evidence which was in Japan to Northern Ireland for use in a prosecution. Similar MLA has been vital in several prosecutions for serious offence such as murder, rape, financial crime and terrorist offences. Without these developments such cases could not have been prosecuted and individuals would have evaded court.

Prosecutors expect the EIO and EPO will be significant weapons in the investigation of crime and enforcement of court orders. There are currently long and expensive methods for obtaining such assistance with some countries but the growing globalisation of organised crime will ensure that such improvements will be vital tools in the protection of the public.

For example closer judicial co-operation within the EU has allowed the progress of an on-going criminal investigation into the murder of a woman in Belfast with regard to obtaining evidence from abroad – in this particular case there is a marked contrast in the time and expense taken to obtain the necessary material from the USA as compared to the quicker and more efficient process with the Republic of Ireland.

In another on-going criminal investigation a number of successful cases were brought in Sweden, and more will follow in Northern Ireland for human trafficking of women for the sex industry. The Joint Investigation Team and the work of Eurojust and the Mutual Legal Assistance between three European Union countries would simply not have been possible without the work of the EU in the area of criminal justice.

It is considered that there is a difficulty which arises due to the difference in civil and common law judicial systems. Whilst co-operation does exist it is often difficult to

know where to go to get it, what processes need to be followed and the delay that follows after requesting it. Prosecutors felt that contacts they would use would be Eurojust, an Embassy, a liaison magistrate but never “the EU” or one of its institutions, due to the fact they did not know who to approach.

With regard to the training aspect it was felt that this mostly took place in central Europe and was therefore not accessible to those in Northern Ireland.

With regard to extradition cases it was considered these were done by jurisdictions dealing directly with one another. In Northern Ireland any such requests were always actioned at our own cost and on a goodwill basis.

It was felt that the EU could use its existing competence to deliver more if greater awareness as to the services available was provided, for example, if there was an EU funded resource to train a lawyer to be the “EU lead” within the organisation.

Future challenges identified in this field were the trans-national nature of crime (more crime is now online or remote) and the issues involved in tackling drug and financial crime. The population here is now increasingly diverse and so links are now in place for this type of crime to increase – open borders are very attractive to organised crime operations.

### **Questions on Chapter 3:**

Responses to this section were limited as it was considered that investigators were best placed to comment on these issues.

Some comments that were made were queries as to whether investigators were aware of the existence of UK/EU action in these fields. It was also felt that in terms of cybercrime, investigators were behind the curve in keeping up with offenders and new methodologies. Sometimes it was unclear who exactly was responsible for responding to and investigating various crimes, for example local police or organised crime branch.

### **Questions on Chapter 4:**

With regard to EU action in the field of minimum standards in criminal law and procedure it was considered there was very little issue as the UK almost always adheres to minimum standards so therefore this field was of negligible use. Some prosecutors felt the minimum rule needed to be more ambitious.

The only point of difficulty foreseen in this area was the opt-in with regard to translation – this jurisdiction cannot resource translation into Irish or Ulster Scots on

request and it is considered this area is expensive, time consuming and subject to abuse.

With regard to raising standards the previous comments in the first paragraph in this section apply and it was suggested that this applies more to other Member States who do not currently conform to the minimum rules.

In respect of future challenges it was felt that the UK was always going to be leading the field with regards to human rights and compliance with EU directives and so this will not present a large risk.