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**Policing the European Arrest Warrant
an empirical study of a transnational policing tool**

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**Policing the European Arrest Warrant:
An empirical study of a transnational policing tool**

Presented to The School of Law
King's College London
Doctor of Philosophy in Laws

Estelle Marks

May 2020

Abstract

The European Arrest Warrant transforms cross-border criminal law enforcement cooperation between EU member states, replacing bilateral extradition processes with a system of quasi-automatic surrender based on the principle of mutual recognition. The EAW radically transforms the power of the state to enforce criminal law, freeing it from its territorial moorings to co-opt the law enforcement structures of another state in pursuit of a fugitive. Most of the literature conceptualises the EAW as a system of judicial cooperation, focusing on the problems of imposing a unified system across a diverse range of legal systems. The police are largely absent from accounts of the EAW in practice, but this study demonstrates that the police play a vital role. Indeed, it is the power to police through the legitimate use of force that is being mutually recognised. Using a theoretically informed case study – based on 63 interviews in 38 organisations in the United Kingdom, Ireland, Poland, Spain and the EU – this thesis fills a gap in the literature by providing an empirical account of the police role and explaining how the power to police traverses national boundaries. The central argument is that the EAW is a transnational policing tool which strengthens and formalises European cross-border police relations. Conceptualising the EAW as a transnational policing tool invites an exploration of mutual trust between policing actors which potentially rests on different foundations than trust between political or judicial actors. Viewing the EAW in this way sheds new light on the issues of proportionality, uneven rights protection and democratic legitimacy raised by the literature. This thesis provides the missing account of the police role that is required to understand the system as a whole.

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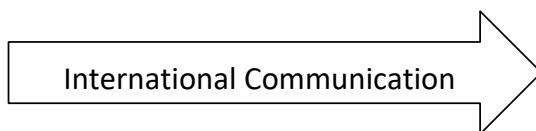
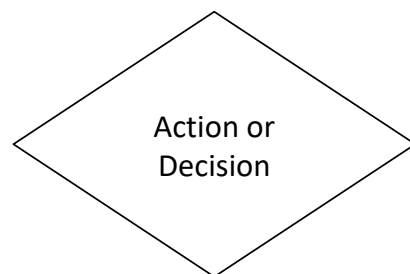
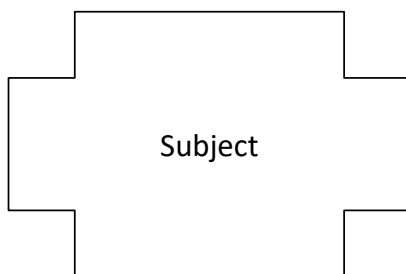
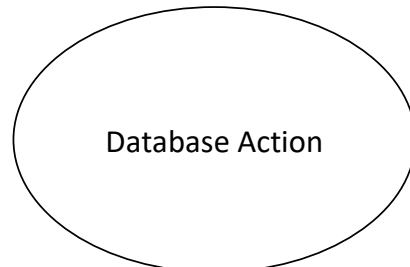
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Key for Institutional Maps and Flow Charts

Key: shapes in maps and flowcharts



Key: colours

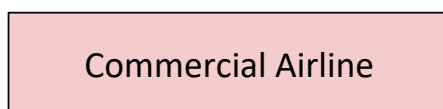
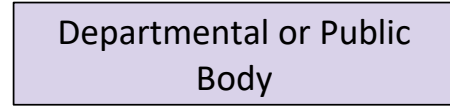
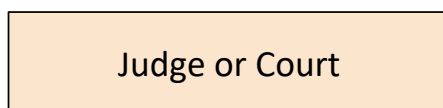
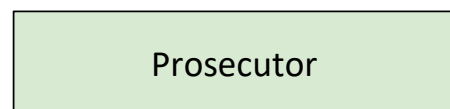
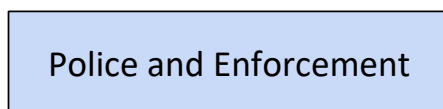


Table of Abbreviations

ACRO	APCO Criminal Records Office
AFSJ	Area of freedom, security and justice
APCO	Association of Chief Police Officers of England, Wales and Northern Ireland
CEPOL	European Union Agency for Law Enforcement Training
CJEU	Court of Justice of the European Union
CSE	Child Sexual Exploitation
CSONI	Crown Solicitors Office of Northern Ireland
CSSO	Chief State Solicitor's Office (Ireland)
DG Home	Directorate General for Migration and Home Affairs
EA 2003	Extradition Act 2003 (UK)
EAW	European Arrest Warrant
EAW Act	European Arrest Warrant Act 2003 (Ireland)
ECRIS	European Criminal Records Information Exchange System
ECtHR	European Court of Human Rights
EIO	European Investigation Order
EJN	European Judicial Network
EN-FAST	European Network of Fugitive Active Search Teams
FCT	Fugitive Coordination Team
FLEC	Foreign Law Enforcement Community
FWD	Framework Decision
ICB	International Cooperation Bureau (Poland)
ICIS	INTERPOL Criminal Information System
IJA	Issuing Judicial Authority
ILO	International Liaison Officer
ILOR	International Letter of Request
IO	Investigating Officer
ISEC	Prevention and Fight against Crime programme
JHA	Justice and Home Affairs
JIT	Joint Investigation Team
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MPS	Metropolitan Police Service
NBCI	National Bureau of Criminal Investigation
NBTC	National Borders Targeting Centre
NCA	National Crime Agency
NCB	National Central Bureau
NicheRMS	Niche Records Management System
NPCC	National Police Chief's Council
OCG	Organised Crime Group
PACE	Police and Criminal Evidence Act 1984
PNC	Police National Computer
PND	Police National Database
PPSNI	Public Prosecution Service of Northern Ireland
PSNI	Police Service of Northern Ireland
RCT	Randomised Control Trial
ROCU	Regional Organised Crime Unit
SIENA	Secure Information Exchange Network Application
SIO	Senior Investigating Officer
SIRENE	Supplementary Information Request at the National Entries Bureau
SIS II	Second Generation Schengen Information System
SOAP	Specialist Operations Aviation Policing
SOCA	Serious and Organised Crime Agency
SPOC	Single Point of Contact
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
UKICB	UK International Crime Bureau

Terminology

Stage of Process	State or Organisation	Officer / Prosecutor	Individual EAW Subject
Investigation	Investigating	Investigating	Suspect
Charge	Charging	Charging	Accused
At all stages post issue	-	-	Subject Fugitive
Issue of EAW	Requesting Issuing	Requesting Issuing	Requested person
Receipt of EAW	Requested Receiving	Requested Receiving	Requested person
Execution of EAW	Executing	Executing	
Validation at Court	Ordering		Ordered
Accusation warrant			Accused
Post sentence warant			Offender
On remand			Prisoner
On bail			Bailed Subject
Surrender	Surrendering Collecting	Surrendering Collecting Escorting	Surrendered
from prison			Prisoner
from bail			Prisoner
At airport, on plane		Escorts	Passenger under escort

1. Introduction

Global forces are changing the nature of state power. The sovereign power to enforce the law within the territory of the nation state is undergoing radical changes in response to the challenges posed by increasingly mobile populations and transnational threats. The power to police – to use coercive force and intrusive surveillance to enforce the law and maintain social order – was once bound tightly to national boundaries. Now this power is shaking loose and extending out across borders relatively unimpeded, to apprehend fugitives and return them to face justice in the courts of the country where their crimes were committed. In the European Union the traditional means of extraditing fugitives through political and judicial channels has been overhauled and streamlined by the introduction of the European Arrest Warrant (EAW) which creates a quasi-automatic system of surrender between member states based on the principle of mutual recognition.

The EAW has been in force across the EU for fifteen years. It is the first of many law enforcement cooperation tools that utilise the principle of mutual recognition. The system is ostensibly one of judicial cooperation and most of the scholarly literature on the EAW conceives of it as a judicial tool. However, the system could not function without the involvement of policing actors who are almost entirely absent from the literature. This PhD thesis addresses this lacuna. It argues that adjusting our empirical lens to focus on the EAW as a transnational policing tool gives us a more comprehensive view of the arrest warrant in practice. Refocusing also helps to illuminate the European transnational policing field, where cross-border police cooperation is developing rapidly and “academic research lags behind the practice it seeks to understand” (Bowling and Sheptycki 2015c:4). Viewing the EAW as a transnational policing tool provides a novel window into the field of transnational policing and helps to untangle the interconnected, complex and overlapping relations that constitute it.

1.1 Recognising the use of force

The central argument in this thesis is that the European Arrest Warrant is at its heart a policing tool. What is being recognised through the principle of mutual recognition in EAW cases is the criminal law enforcement power of the issuing state. When a state issues an EAW it authorises the use of force in the executing state, engaging the unique capacity of the police to legitimately apply coercive force and intrusive surveillance (Bowling et al. 2019:7; Brodeur 2011:130) to track down, apprehend and surrender the individual subject of the warrant. Scholars have recognised that in executing an EAW the executing state puts its law enforcement structures and capacity to use force at the service of the issuing state (Chaves 2012:188; Lavenex 2007:766). Whilst the literature is clear that an EAW authorises police action (Hodgson 2011b:617) it is not clear exactly what this action entails. Furthermore, the literature sheds little light on the transnational police cooperation involved in issuing and executing an EAW or surrendering subjects across borders. The national and supranational infrastructure (Sheptycki 1998) which facilitates the transfer of the sovereign power to enforce the law across borders is obscured by the focus on the EAW as a judicial tool. This study describes and explains these processes and explores the criminal justice infrastructure that supports transnational police cooperation in Europe.

The thesis asks two overarching questions: What is the police role in the EAW system? What are the implications of viewing the EAW as a transnational policing tool?

Using a case study design (Yin 2014) the empirical work focuses on the police processes related to the EAW in the UK and compares the relationships between the UK and Ireland, Poland and Spain. These jurisdictions are some of the UK's primary partners in the EAW and each relationship has unique features as well as many similarities that are typical of criminal justice cooperation in the EAW throughout the EU. The empirical work took place between March 2016 and June 2017 across all four jurisdictions and in some EU criminal justice institutions. The bulk of the data

included in the project is the product of 63 interviews with 92 participants. I also conducted a small number of observations and collected over 100 documents and this data is drawn on in the empirical chapters where relevant.

The theoretical discussions link the literature related to the EAW with the literature related to transnational police cooperation and contributes to debates in both fields. The EAW literature raises issues of proportionality, human rights protection and mutual trust, which flow from the complexity of managing relations between diverse legal systems with a unified scheme based on the principle of mutual recognition. It also discusses the impact that the tools of mutual recognition, including the EAW, have on state sovereignty. The transnational policing literature raises a number of issues which are touched on in this thesis including theoretical typologies relating to the architecture of transnational policing, questions relating to the supposed dichotomy between formal and informal cooperation, the role of police discretion and its relationship to law and risk, the existence of a transnational policing culture and its relationship with mutual trust, and important questions of accountability and legitimacy.

The thesis explores all of these issues to some degree but many of the conclusions are tentative, particularly relating to accountability and legitimacy. These issues were not the main focus of the fieldwork which, given the complete absence of the police from accounts of the EAW, was focused on describing and explaining the police role in the system in detail and seeking to understand the implications of viewing the EAW through this lens.

1.2 EAW subjects and terminology

Another lens I could have used to explore policing in the EAW system would have been to approach the research from the perspective of fugitives; that is, the individuals wanted, arrested and surrendered under these particular warrants. Several police officers that I interviewed suggested that I speak with subjects, either in prison or at court. To my knowledge there is no academic research on EAW

subjects to date so this would be an interesting avenue of inquiry. However, this is not something I could do alongside exploring the role of policing from the perspective of criminal justice practitioners. Something I was aware of during the data collection is the absence of actual fugitives in accounts of the process although they are ever-present in the background. So much of the work that criminal justice practitioners do in relation to the EAW is one step removed from fugitives; therefore, they appear more as the subject of a drama rather than as one of its main characters. Throughout much of the research, individuals subject to EAWs are present only as the subjects of the police practices and processes that this thesis is focused on. Individuals are interchangeably referred to by police as *offenders*, *suspects*, *prisoners*, *fugitives* and *subjects*. The nomenclature changes depending on the stage of the process being discussed. For example, police tended to refer to *prisoners* during the surrender operation but were not always clear that they had a power to detain an individual officially making them a prisoner. It also depends on the perspective of the particular officer. For example, officers in SIRENE bureaux tended to refer to individuals as *fugitives*, because they categorised their own work as “fugitives work” while local officers tended to use *suspect* or *offender* as a catch-all term.

Whether someone is an *offender*, because they have been convicted, or a *suspect* because they have yet to face trial, further complicates the picture because it has almost no impact on the police process when receiving and executing warrants. Individuals could also be an *accused person* at the post-charge, pre-trial stage. Added to this complicated picture the status of an individual can change throughout the process. They can be a *requested person*, an *arrestee*, a *prisoner* or a *defendant*. They can be a *remand prisoner* and then a *bail subject*, at some stage they become the *individual ordered for surrender*. I have therefore settled on using the term EAW *subject* as consistently as possible throughout the thesis because it avoids confusion arising from the complexity of the individual’s changing status. It also places the individual in the background of the police processes which are the focus of this research. For the most part, this is how I experienced subjects during the research

process, except for short observations of surrender operations when individuals came more clearly into view.

It was clear throughout the research that the EAW brings the policing power of the state to bear on individual subjects. When you zoom out, however, to see the transnational police cooperation involved as a complete system, it looks more like a logistics supply-chain designed to move subjects from one state to another with as little friction as possible. Individuals are the subjects of this system of cooperation; they are the subject of the requests and the information exchange, of the risk assessments and the operational plans. In the end, the subject is like a consignment that is shipped (or flown) to the requesting state. Referring to these subjects in this way is perhaps a little abstract and dehumanising. However, for most of the process, subjects seem like abstract objects - a kind of police property being moved from one place to the next. This is especially true from the perspective of the officers that do most of the cross-border information exchange who rarely, if ever, come into contact with the human beings who are the subjects of the warrant.

There is also a great deal of complexity in the terminology that could be applied to the state, the police, the prosecutors, the judicial authorities and others involved in the process. Through different stages of the process states, institutions or official actors could be *issuing*, *requesting*, *receiving*, *certifying* or *executing* warrants. They could be *arresting*, *surrendering*, *collecting* or *escorting* the subjects of those warrants. Without being deeply involved in this process, following this constantly changing status is confusing, especially when reading a birds-eye view account of the processes presented in this thesis.

I have therefore attempted to use the terms *issuing* and *executing* as consistently as possible in relation to the state, the institution or the individual official being discussed. At the final stage, I also use the terms *surrendering* or *collecting* as consistently as possible. Other terms are used at times and there is a table of terminology on page 11 which aims to resolve any confusion.

1.3 Structure of the thesis

The thesis presents a detailed account of the police processes involved in issuing and executing EAWs and surrendering individuals. All of the data presented are drawn from the empirical work conducted throughout the case study. The account is focused on “thick description” (Geertz 1973) which contextualises, interprets and draws theoretical meaning from the data presented here.

Chapter 2 situates the study within the existing literature related to the EAW and transnational policing. It presents an argument for conceptualising the warrant as a transnational policing tool and highlights the potential benefits of viewing the EAW system through this lens. It explores the prominent issues raised in the legal and governance literature on the EAW and gives an overview of the relevant transnational policing literature. The chapter sets the EAW in the context of structural theories of the transnational policing field and explores other theoretical issues that this thesis addresses. It concludes by outlining the focus of this study and laying out the detailed research questions.

Chapter 3 describes the methodology, explaining the methodological decisions made throughout the project. It lays out the research design, sampling methods and ethical considerations and describes how the fieldwork unfolded. The chapter outlines the data analysis process and explains how I arrived at my final set of research questions.

Chapter 4, the first of four empirical chapters, provides critical context for the police role in the EAW system by exploring the criminal justice infrastructure that facilitates the mutual recognition of law enforcement power. This infrastructure is made up of criminal justice institutions, law, databases and networks of criminal justice practitioners, which are established at the global, regional, national and local level. The chapter begins by describing the infrastructure at the global and regional European level before moving on to explore the national and local infrastructure in each of the jurisdictions included in the study. This includes all three UK jurisdictions as well as Ireland, Poland and Spain. The EAW is exposed as a policing tool, clearly

demonstrating that the system could not function without the involvement of the police. The chapter also lays the groundwork for a detailed exploration of other theoretical issues raised throughout the thesis.

Chapter 5 focuses on the police processes involved in receiving, certifying and executing incoming EAWs in the UK which is entirely in the hands of the police. The chapter explores the processes in detail highlighting the role of police discretion, the different channels for formal and informal cooperation and issues relating to mutual trust between police during the executing phase. The relationships between the UK and Ireland, Poland and Spain provide concrete examples of criminal justice cooperation relating to the EAW, these relationships illustrate both the typical pattern of cross-border cooperation and provide examples of exceptions to the norm.

Following on from this discussion, chapter 6 looks at the police role in issuing EAWs from the UK. Police initiate requests for EAWs. This chapter explores the role of police discretion and the influence of law, risk and other considerations on the decision to request an EAW. Again, formal and informal routes for cross-border cooperation are discussed and the relationship between the UK and Ireland, Spain and Poland are used to illustrate how these routes are utilised in specific relationships. The role of mutual trust in supporting cross-border cooperation is highlighted and the diplomatic nature of transnational policing is also discussed.

Bringing the use of force clearly into focus, chapter 7 explores the surrender process, outlining the police processes involved in planning and conducting physical surrender operations. Here police officers from the executing state handover the EAW subject to the agents of the issuing state and he or she is transported back to the issuing state. This chapter explores the planning process, the transnational relationships between national police forces during surrender and the role of commercial airlines in transporting subjects to and from the UK. This chapter is where subjects come clearly into view as individual human beings. It includes narrative accounts of surrender operations that were observed during the fieldwork. The chapter discusses

the role of risk-based thinking on police operations and the idea of police as knowledge workers in the process. It also explores the unique capacity of police to use coercive force within their own jurisdiction but also in the transnational spaces of airports and aeroplanes. The issue of mutual trust is also touched on in this chapter and the implications of unsuccessful handovers and other practical failures are highlighted.

The final chapter concludes the thesis with a discussion of the theoretical implications of viewing the EAW as a transnational policing tool. It outlines the empirical finding that the EAW could not function without the police, highlighting their role at every stage of the process. It argues that the EAW is a law enforcement tool in the hands of police and other criminal justice actors who authorise the police to utilise their unique capacity to employ force and intrusive surveillance in the service of the law enforcement goals of the issuing state. The role of police discretion in shaping national practice is also highlighted in support of this claim.

The chapter goes on to explore other theoretical issues raised by the thesis, setting the EAW infrastructure within theories of transnational policing and exploring the socio-spatial dimensions of the mechanisms which move the power to police from one state to another. The question of the dichotomy between formal and informal policing is discussed and the conclusion argues that the EAW has succeeded in largely formalising police cooperation within the EAW system. The thesis also explores the issue of mutual trust between policing actors, providing tentative evidence that trust between police rests on foundations that differ from those that enable trust at a political level. It makes an argument for further research in this area and suggests that a relationship exists between distrust at the political and judicial level and trust between police officers on the ground. The thesis concludes by explaining the implications for the accountability and legitimacy of the coercive and intrusive powers of the sovereign state once the EAW is understood to be a transnational policing tool.

2. Theorising the European Arrest Warrant as a transnational policing tool

2.1 Introduction

The European Arrest Warrant (EAW) was the first and is the most far-reaching of the law enforcement cooperation instruments that utilise the principle of mutual recognition in a bid to create an Area of Freedom, Security and Justice (AFSJ) across the European continent. Billed as a judicial measure to foster direct cross-border judicial cooperation in extradition cases, it is not surprising that the scholarly literature focuses on the EAW from this perspective. However, the system could not function without the active involvement of the police, and yet they are almost entirely absent from the scholarly literature. This chapter develops the argument that adjusting the empirical lens to focus on the EAW as a transnational policing tool may reveal a more comprehensive view of the EAW in practice. This modified focus could also help illuminate the European transnational policing field. Cross-border police cooperation is developing rapidly and “academic research lags behind the practice it seeks to understand” (Bowling and Sheptycki 2015c:4). Researching the EAW as a transnational policing tool may also shed new light on the interconnected, complex and overlapping relations that constitute this field of police practice.

The EAW legal and governance literature contemplates the problems of managing diverse legal cultures through mutual recognition. It identifies the key problem of mutual trust between participating states and questions the legitimacy of detaching criminal law from the territory of the nation state, exploring the effect this has on sovereignty. Researching the EAW from the perspective of the transnational policing actors that facilitate its operation provides new insights. This chapter sets this research in context, reviewing the issues raised by the EAW literature and situating the EAW within transnational policing literature.

The first section explains the basic structure and implementation of the EAW. The second section discusses the available statistical data and existing literature, highlighting key themes and problems with the warrant. The third section delineates the concept of transnational policing and attempts to situate the EAW within an analytical framework. The chapter goes on to address some key issues in transnational policing and policing research generally as they apply to the arrest warrant, asking whether this alternative lens offers a different view of the problems raised by the literature. The final section argues that viewing the EAW as a transnational policing tool may offer a more complete picture of the EAW itself, and that using the warrant as a lens through which to view the field of transnational policing can illuminate a sliver of this field in a coherent and analytically satisfying way. The chapter concludes by setting out a range of questions this study could explore and identifying those it seeks to answer.

2.2 The genesis of the European Arrest Warrant

The EAW swept away the traditional system of intergovernmental extradition¹ between EU member states and replaced it with an inter-judicial system of surrender based on the principle of mutual recognition (Kaunert 2007). The mutual recognition of judicial decisions across member states streamlines formal processes of law enforcement cooperation within the EU, extending the reach of the national criminal law of issuing states into the territory of executing states and limiting the sovereignty of the executing state over its own nationals and other persons present in its territory (Sievers 2007:9–10). This “horizontal transfer” of power (Lavenex 2007:767) radically reconfigures sovereignty “by delinking the exercise of sovereign power from its territorial anchor” (Nicolaïdis 2007:685).

The political development of mutual recognition in criminal matters has its roots in the Maastricht Treaty of 1993,² which created the JHA ‘third pillar’ of EU competence

¹ Formerly governed by the European Convention on Extradition 1957.

² Signed 7 February 1992. In force 1 November 1993.

and declared judicial cooperation in criminal matters a subject of common interest.³ The Treaty of Amsterdam 1999⁴ renamed the third pillar Police and Judicial Cooperation in Criminal Matters (hereafter Police and Judicial Cooperation) and announced a commitment to creating an AFSJ, based on closer cooperation between national police forces and between judicial authorities, and approximation, where necessary, of national rules relating to criminal matters.⁵ These developments signalled member states' commitment to greater law enforcement cooperation and resistance to alternative approaches, namely legal harmonisation or the transfer of sovereignty over criminal matters to EU institutions (Kilmek 2014:15).

At the time that the Treaty of Amsterdam was signed, the EU was progressing towards fully open borders between European countries and entering talks regarding enlargement of the EU to Eastern European states. These developments gave rise to concerns about a perceived growth in transnational organised crime and the benefits of open borders to criminals and terrorism, and drove efforts to offset the free movement of criminals with the free movement of criminal law enforcement (Sievers 2007:2). A commitment to developing a framework for mutual recognition was made by the JHA Council in December 1998. In the Presidency Conclusions of the Tampere 1999 Council meeting, European heads of state declared that the principle of mutual recognition "should become the cornerstone of judicial cooperation in criminal matters" (1999:33).

Despite this endorsement, and the Commission's efforts to push the EAW forward (Kaunert 2007; Mégie 2014), the prospect of compromising national sovereignty hampered final agreement on a framework until European leaders came under pressure to act following the World Trade Center terror attack on 11 September 2001. Capitalising on the sense of urgency triggered by 9/11, the Commission tabled an ambitious proposal for the EAW which went beyond those already being considered (Kaunert 2007:396–97). After just three months of negotiations "under

³ Article K.1(7).

⁴ Signed 2 October 1997. In force 1 May 1999.

⁵ Article K.1.

extreme political pressure” (Blekxtoon and Van Ballegooij 2005:5), the final text of the Council Framework Decision⁶ (FWD) was agreed on 13 June 2002. The EAW became the first mutual recognition instrument in the area of police and judicial cooperation; EU criminal law took a first step “beyond its focus on Euro-crime” to become applicable to criminality more generally (Chaves 2012:184).

The FWD came into force on 1 January 2004. It was binding on all member states but required national legislative implementation. The form in which the EAW would be enacted in national law was left to the discretion of national legislatures. Several states failed to meet the January 2004 implementation deadline;⁷ Italy was the final state to enact legislation in April 2005. Slightly different schemes have been implemented in each state, some including grounds for refusal not anticipated by the FWD.⁸ This has exposed fundamental differences in criminal justice systems, particularly between civil and common law jurisdictions. EAW implementation faced constitutional challenges in Germany, Poland and Cyprus Germany temporarily withdrew from the scheme to enact constitutionally compliant legislation (Bureš 2010). The EAW has been fully operational in all states since the end of 2005.

An EAW can be issued to bring suspects to trial for crimes carrying at least a 12-month maximum sentence, or to execute a sentence passed by a court of at least four months. Generally, warrants can only be issued for offences criminalised in both the issuing and the executing state. This double criminality requirement is waived for a list of 32 offences, which are not specifically defined, if they are punishable in the issuing state by a maximum of three years imprisonment or more. There are limited grounds on which states can refuse to execute warrants, including the *ne bis in idem* principle, but there are no due process or fundamental rights grounds for refusal included in the FWD.

⁶ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Annexe 6)

⁷ e.g. Germany’s national legislation came into force six months late on 21 July 2004.

⁸ e.g. UK includes Human Rights obligations as a ground for refusal under s.21 of the Extradition Act 2003; Poland and Germany reserve additional grounds to refuse to surrender their own nationals.

EAWs can be transmitted directly to the judicial or central authorities in a specific state if the whereabouts of the wanted person is known. Warrants can also be issued as alerts in the Schengen Information System (SIS) (now replaced by second-generation system SIS II), or transmitted via Interpol. Wanted persons arrested in executing states may consent to or contest their surrender. In cases with consent, judicial authorities have 10 days to make a final decision regarding surrender, raised to 60 days when surrender is contested. Wanted persons must be physically surrendered within 10 days of the final decision.

In part the EAW is a horizontal system of judicial cooperation enacted through the vertical structure of the EU. The existing literature rightly focuses on the promises and pitfalls of judicial cooperation between member states (Christou et al. 2010; Marin 2014; Murphy et al. 2014), the implications for national sovereignty (e.g. Sievers, 2007), individual rights (e.g. Thunberg Schunke, 2013) and the levels of mutual trust required to support mutual recognition (e.g. Sievers, 2008). However, it is possible to view the EAW from another perspective: supporting, through a formal vertical structure, horizontal police cooperation in criminal law enforcement. It is this neglected aspect that this thesis addresses.

Policing agents are completely absent from the FWD and play only a marginal role in the academic literature. However, it is possible to view the EAW as a transnational policing tool, which uses mutual recognition of judicial decisions to further transnational policing goals and formalise and thicken police cooperation. After all, it is generally police officers who investigate crimes, gather evidence and locate suspects. They request, transmit, receive and certify arrest warrants and arrest suspects. Once the surrender of a wanted person is judicially approved it is the police who physically transport the person across borders.

The view that the EAW is not simply an inter-judicial system is supported by information from the European Judicial Network (EJN) (2015) regarding the national authorities competent to receive EAWs. Of the 24 countries listed, only five designate district or central courts as contact points, four of which also list other

authorities. The point of contact in 16 countries is a regional or central prosecutor's office, and 10 countries list government ministries, despite the EAW aim of depoliticising extradition by reducing it to a purely judicial exchange. Most telling is that six countries list police agencies as direct points of contact, most commonly for urgent or specific cases, but as contact for England and Wales the UK lists only the National Crime Agency (NCA), a centralised policing agency that processes all EAWs. This provides clear indication that the scheme entails direct transnational police engagement, culminating in the issue or execution of an EAW and the surrender of a subject.

The British enactment of the EAW explicitly acknowledges the role of the police. The Extradition Act 2003⁹ gives a significant role to the 'designated authority' in receiving, reviewing, transmitting, and executing warrants. This role is reserved for the NCA, where staff review and certify all incoming warrants before they are listed in the Police National Computer (PNC). The NCA also summarise and transmit all outgoing EAWs and liaise between UK and other national forces when arranging physical extradition. The SIRENE Bureau at the NCA is linked, via SIS II, to a network of other bureaux across the EU. All SIRENE bureaux are staffed by police officers and play a key role in the EAW system. This indication of policing actors' key role in the functioning of the EAW provides ample justification for exploring whether and to what extent the EAW can be seen as a transnational policing tool.

Before examining how the EAW might fit into theories of transnational policing, the next section outlines some existing EAW literature. It considers the available statistical data and discusses the interrelated issues of diversity, proportionality, rights protection and the assumption of mutual trust that underpin the system.

⁹ Annexe 7

2.3 The European Arrest Warrant literature: Practice, problems and cautious promise

At a very early stage commentators noted that the FWD “is difficult to apply in practice” (Blekxtoon and Van Ballegooij 2005:5), whilst others lamented the lack of rights protection, suggesting that in the absence of approximation of criminal law and procedure, the EAW might be a “step too far too soon” (Alegre and Leaf 2004). The heterogeneity of European legal systems generated concern about disproportionate use, and the divergence of national practice is said to threaten the mutual trust needed to support the system (Sievers 2008). Some researchers are cautiously optimistic about the potential for mutual recognition to informally encourage approximation (Murphy et al. 2014), but others are more sceptical, suggesting that mutual recognition privileges security over freedom in the AFSJ (Lavenex and Wagner 2007). It is clear that the system is a “work in progress” and there are still problems to be resolved (Marin 2014; Murphy et al. 2014:9).

Nevertheless, statistics demonstrate that the EAW has been successful in streamlining extradition (Fichera 2009:223; Marin 2014:346). A process which previously took months, or even years, has been reduced to a matter of days in most cases. Between 2005 and 2011 78,785 EAWs were issued and 19,841 persons surrendered. Between 2005 and 2009 a little over half of arrestees consented to their surrender; average time between arrest and surrender was 15.7 days for those who consented and 48.3 days for those who did not. In 2017 the surrender took place on average 15 days after arrest for those who consented and 40 days for those who did not. The EAW does not make surrender fully automatic: 3,455 refusals to execute EAWs were reported between 2005 and 2011. Member states have reported steady increase in EAW use since 2005, and in 2017 over 17,000 issued EAWs and over 7,000 surrenders were reported to the Commission (2005–2011 data The European Commission, 2011; 2017 data The European Commission, 2019; 2005–2011 data Carrera, Guild and Hernanz, 2013).

Although these statistics provide an overall indication of EAW use, the Commission (2011:10) notes that “there are considerable shortcomings in the statistical data”. Not all states have provided data systematically;¹⁰ they interpret questions in the Council reporting questionnaire differently and use different statistical tools. There has also been underreporting of time delays to Eurojust. Data relating to the number of EAWs received is problematic; since EAWs can address more than one state or no specific state, more EAWs are reported as received than have been issued (Carrera et al. 2013:36). The absence of reliable statistics constitutes a major obstacle to accurate research and effective oversight. The Commission (2011:10) and academics (Carrera et al. 2013:36) agree that more accurate and detailed data is desirable and necessary. Even so, the EAW significantly streamlines the surrender process and practitioners agree that as a “necessary corollary to the free movement of persons” (Murphy et al. 2014:3) the EAW makes the Union more secure (McSweeney et al. 2011; Murphy et al. 2014:8). Commentators cautiously conclude that the provisions are “widely used by national judges and prosecuting authorities and have proved efficient” despite evidence of residual mistrust between states (Pérignon and Daucé 2007:204).

Use is not evenly distributed across member states. The most comprehensive analysis of available statistics (Carrera et al. 2013) suggests that Poland issued 31% of all EAWs between 2005 and 2011, followed by Germany (13%), France (11%) and Romania, Spain, Hungary and Austria (5% each). Spain surrendered the highest number of persons in this period (5,279), followed by Germany (4,280), the UK (3,775), France (3,580) and the Netherlands (1,639). Two suggested reasons for the disparities are higher migration rates into Western Europe (Murphy et al. 2014:9) and the geographic proximity of issuing and executing states (Carrera et al. 2013:25). A third reason relates to the heterogeneity of national legal systems. The disproportionate EAW use of some states is a significant challenge to the scheme and impacts negatively on mutual trust, which “is the necessary adjunct, the key to success” (Guild and Geyer 2008:8) of the EAW system. The inconsistencies and gaps in

¹⁰ For example, Italy has not provided data since 2005.

the European-wide data have prompted the use of only UK statistics in subsequent chapters of this thesis. Although the UK authorities do not collect and collate data on all relevant issues, such as the reasons for courts discharging individual EAWs, the statistics do provide a consistent picture of EAW traffic to and from the UK over time.

The EAW and other tools, including the European Evidence Warrant (EEW) (Murphy 2011) the European Supervision Order (ESO) (Blackstock and Tinsley 2015), and more recently the European Investigation order (EIO), utilise mutual recognition to support horizontal law-enforcement cooperation and manage the interaction between heterogeneous legal orders whilst protecting national sovereignty. Member states' legal systems are diverse; the EU includes states with both civil and common law systems with inquisitorial and adversarial judicial arrangements (Blackstock et al. 2014). The penal systems of some states seem more punitive than others and the definition of specific offences varies dramatically.

The issue of proportionality is raised in much of the literature. The FWD does not allow the refusal of EAWs simply because executing courts disagree with issuing authorities' decisions, as this would defeat the purpose of the scheme. Treating judicial decisions as equivalent necessarily involves accepting them "without many questions being asked" (Mitsilegas 2012). As the FWD abolished the double criminality requirement for 32 offences and minimum sentence requirements are based on the laws of the issuing jurisdiction, EAWs can be issued for offences which would not meet the requirements for an EAW in the executing jurisdiction. This problem is pronounced in Poland and Romania, where penalties for relatively minor offences can be high and prosecutors operate under the principle of legality, rather than proportionality as in other member states, resulting in many EAWs being issued for minor offences (Marin 2014). There is also evidence that some states issue warrants on the basis of "strong suspicion", using EAWs to further investigations (Marin 2014). Warrants are often issued in cases where pre-trial detention is only justified by the cross-border nature of the process, resulting in disproportionate burdens on individuals. Executing EAWs is costly, and allegations of disproportionate use support claims made by some states that they are unduly burdened (Lavenex

and Wagner 2007:120). Disproportionate use undermines the purpose of the system, damages mutual trust and can negatively impact the public's view of the scheme's legitimacy.

The problem of diversity is also pronounced in relation to some offences for which double criminality is abolished. Because these offences are not specifically defined, activities that are legal in one state may be illegal in another. Rape is defined differently in different jurisdictions (Blekxtoon and Van Ballegooij 2005:10); a xenophobia offence may attract a lengthy prison sentence in Germany or a fine in Denmark (Lavenex and Wagner 2007:119); and a proscribed terrorist organisation in one state may be a legal organisation in another. This can be problematic for transnational activity, where it can be unclear in which jurisdiction the activity took place.

As Lavenex and Wagner (2007:236) argue, “there is a thin line between making existing criminal law more effective on the one hand and making it less liberal on the other.” Extending the reach of all member states' legal systems means that citizens are potentially subject to the most repressive measures in all cases. Subjecting citizens of one nation state to the legal system of another nation state—which they have no opportunity to influence through democratic means—raises questions of legitimacy and foreseeability of sanctions (Sievers and Schmidt 2015:124).

The extension of national criminal law beyond state borders decouples jurisdiction from territory (Sievers and Schmidt 2015:114) and raises questions about the effect of this on national sovereignty. Some authors (e.g. Sievers 2007:9), argue that the horizontal transfer of sovereignty through mutual recognition limits national sovereignty by subordinating it to foreign criminal law, and that some sovereign power is transferred to the EU because the FWD obliges states to implement its provisions. Lavenex and Wagner, by contrast, argue that mutual recognition in JHA actually strengthens the power of national executives, because Council decisions are made in the context of horizontal relations. This forum frees executive authorities to act in the name of security, unrestrained by democratic checks and balances at the

domestic level (Lavenex and Wagner 2007:229). This leads to the prioritisation of security over freedom in the AFSJ, where mutual recognition has rapidly increased law enforcement cooperation “from a prosecutorial standpoint”, significantly outpacing development of procedural protection for individuals (Alegre and Leaf 2004:213; see also Chaves 2012).

Mutual recognition eliminates gaps in jurisdiction and closes down transnational spaces which criminals can exploit; however, as the criminal law crosses boundaries individual rights protection does not, creating transnational gaps in state liability (Padfield 2007:268). All participating states are signatories to the ECHR, and the FWD explicitly assumes that this provides sufficient protection for fair trial rights.¹¹ However, comprehensive studies of defence rights across the EU have confirmed that this is insufficient (Blackstock et al. 2014; Fair Trials International 2012; Hodgson 2011b; Thunberg Schunke 2013). Rights under the ECHR are implemented differently in each state and are intended only to establish minimum standards. Some states go beyond this minimum whilst others fail to meet it. There are “wide discrepancies in basic safeguards”; basic rights in some countries are not protected in others (Cape et al. 2007; Thunberg Schunke 2013:5).

The House of Commons (2007:62), the European Commission (2011:9) and the European Council (2009) have acknowledged that this situation is unsatisfactory, and in November 2009 the Council adopted a roadmap for strengthening procedural rights of suspected or accused persons. Progress in implementing the roadmap has been slow (Thunberg Schunke 2013:15). Whilst agreements on evidence-sharing and mutual recognition of criminal law enforcement measures have been forthcoming building consensus around basic safeguards for suspects “has seemed, until recently, impossible to achieve” (Hodgson 2011b:663). The effectiveness of measures recently adopted by the Council “remains to be seen in practice.” (Marin 2014:343).

¹¹ FWD preamble para 10 and 12

Alegre and Leaf (2004:216) argued that “if the pursuit of criminals across borders is an EU issue, the protection of individual rights in criminal proceedings must equally become an EU issue.” Fifteen years later, this is still pertinent. The Lisbon treaty somewhat strengthened the position of the individual (Mitsilegas 2012), but there are calls for the roadmap to be completed and for EU institutions to take more responsibility for individual rights (Marin 2014; Mitsilegas 2012; Thunberg Schunke 2013).

Concerns about rights, proportionality and the diversity of legal cultures affect the development of mutual trust between criminal justice actors and between states and individuals (Marin 2014). Sievers (2007:8) argues that “mutual recognition can only work effectively in a climate of trust among the participating states.” This applies not only to judicial and political institutions, but to all law enforcement actors involved in the implementation and operation of the scheme. The limited number of grounds on which judicial authorities can refuse to execute EAWs, the relative automaticity of surrender, and the direct cooperation that the system anticipates indicate that the presence of this mutual trust is more or less presumed (Efrat 2019). As Lavenex and Wagner (2007:239) argue, however, this “trust cannot be taken for granted”. Some scholars argue that “distrust is caused by the view that national standards of penal and procedural law...differ too much to be mutually recognised” (see also Bureš 2010:35; Sievers 2007:29). This view is supported by evidence that “cooperation is best among countries which are most similar such as Austria and Germany or Ireland and the UK” (Sievers 2007:29).

Practitioners agree that disproportionate or inappropriate use of the EAW might harm its legitimacy (Marin 2014; Murphy et al. 2014:19). As Lavenex (2007:771) states, “the horizontal transfer of sovereignty implied by applying mutual recognition is only possible if a high degree of trust exists among the participating countries.” But these problems have prompted concerns that “the presumption of mutual trust is no longer helpful in understanding and addressing the dual conundrum [of diversity and proportionality] affecting the application of the EAW mechanism” (Carrera et al. 2013:26). Diverging practices in implementing the EAW suggest that mutual trust is

“more evident in declarations than the practices of the member states” (Guild and Geyer 2008:10). Distrust is visible at both parliamentary and judicial levels; additional grounds for refusal of EAWs have been included in the implementing legislation of several states;¹² national courts have insisted on additional grounds for refusal;¹³ and some states request additional evidence to support warrants, none of which was anticipated by the FWD (Lavenex 2007). There is even some empirical evidence that judges are more likely to surrender subjects to states “whose norms and institutions they consider satisfactory” (Efrat 2019:672).

The Union is not blind to the problem of mutual trust and the need for effective rights protection. The Lisbon treaty granted EU institutions more oversight power, and measures recently adopted relating to defence rights will be subject to improved oversight at supranational level (Mitsilegas 2012). This legislative intervention may reverse the subordination of “individual rights to an undefined [and subjective] concept of mutual trust” and “lead to a legal landscape of earned, rather than perceived, trust.” (Mitsilegas 2015:480). Some authors hope that stronger judgements will be issued by the EU Court of Justice (CJEU) (Thunberg Schunke 2013:133) and Human Rights Court in Strasbourg (Mitsilegas 2012) following the implementation of the procedural rights directives. There is some evidence of this in recent judgements from the CJEU¹⁴ which concede that there are limits to a presumption of blind trust (Mitsilegas 2012; Xanthopoulou 2018).

Some of the problems with proportionality are being addressed at national level (Ostropolski 2014) and the European Commission introduced guidance on proportionality in its most recent handbook (Marin 2014:337). This “soft law” approach has drawn criticism for failing to involve the European Parliament, undermining the democratic legitimacy of the reform (Marin 2014). Some practitioners hope the EAW scheme will contribute to improved “trust by law enforcement officials of each other’s criminal law and criminal procedure” (Murphy

¹² Footnote 8.

¹³ e.g. In the German Constitutional Court July 2005; for discussion see Thunberg Schunke 2013.

¹⁴ Joined Cases C-404/15 and C-659/15 PPU

et al. 2014:23), possibly providing an informal route to the convergence of legal cultures and approximation of laws. Other authors see the diversity problems as intractable, arguing that “mutual recognition as an operative tool is not satisfactory” (Guild and Geyer 2008:15) and calling for greater harmonisation or approximation at supranational level (Fichera 2009:227; Lavenex 2007).

Whichever view is correct, any action to address these problems must take account of all the institutional actors involved in the operation of the EAW. The scheme cannot be addressed in isolation. The EAW is “the end piece” (Murphy et al. 2014:15), of cross-border policing, the culmination of a process that begins with investigation and ends in the physical surrender of a suspect, activities that could not take place without direct police involvement. What is being recognised in the EAW system is the state’s monopoly on the use of coercive force. States are not only recognising criminal justice norms and principles as equivalent; they are accepting “the need to cooperate in the enforcement of another states’ system of law” (Lavenex 2007:765). When the executing state arrests a subject on a EAW, it “puts its monopoly of force into the service of the [requesting state]” (Lavenex 2007:766). An EAW requires “police action [and] a court judgement” (Hodgson 2011b:617). It involves the executing state using its “law enforcement structures for the sake of the effectiveness of another State[’s] sovereign power” (Chaves 2012:188).

The EAW has transformed transnational relations between judicial authorities, opening up a previously non-existent space for direct cooperation. But it is unclear what effects the scheme has had on transnational relations between national policing actors, relations that were developed before the enactment of the EAW (e.g. Anderson et al. 1996). The principle of mutual recognition seeks to manage diverse legal cultures and preserve national sovereignty, but the EAW scheme has encountered issues of proportionality and fundamental rights protection, both of which impact upon the mutual trust needed to support the system. Could focusing on the policing actors involved in EAW operation provide a new perspective on these issues? Does trust between transnational policing actors rest on different foundations? Policing cooperation is not new but has been newly formalised by the

EAW. To what extent has the EAW formalised or thickened transnational police relationships? Does viewing the warrant as a transnational policing tool raise different questions about the system?

2.4 The idea of a 'policing tool'

Before situating the EAW in the context of transnational policing, it is important to explain how I view the important concepts of police and policing and what it means to identify the EAW as a transnational policing tool.

The police are popularly conceived of as uniformed, warranted officers, employed by state-run institutions to patrol the streets, respond to emergency calls and exercise law enforcement powers. This limited conception does not incorporate the multitude of non-uniformed officers engaged in criminal investigation and the growing number of civilian staff who do not exercise the broad range of law enforcement powers vested in warranted officers but still play key roles in policing.

Scholars who strive to develop a working definition of the police and policing functions have to grapple with an ill-defined remit: "the service of last resort." The people that you call when you encounter "something-that-ought-not-to-be-happening-and-about-which-someone-had-better-do-something-now!" (Bittner 1990:249). In modern society a functional definition of the police as primarily concerned with law enforcement, crime control and investigation, or peacekeeping and order maintenance (Newburn and Jones 1998:18–19) immediately encounters the issue of pluralisation. That "it is now virtually impossible to identify any function within the governance of security in democratic states that is not, somewhere and under some circumstances, performed by non-state authorities as well as by state ones" (Johnston and Shearing 2003:32).

Moving beyond a functional definition of the police, the use-of-force paradigm helps to separate police organisations from other institutions of social control. This paradigm sees the police as the "mechanism for the distribution of situationally

justified force in society” (Bittner 1990:39). Here what separates the police is their monopoly on the legitimate use of force in an almost unlimited range of circumstances. This definition also encounters problems as police forces modernise and their methods of coercive control move beyond the use of physical force and are supplemented with extensive surveillance powers. Brodeur offers this helpful reformulation:

Policing agents are part of several connected organizations authorized to use in more or less controlled ways diverse means, generally prohibited by statute or regulation to the rest of the population, in order to enforce various types of rules and customs that promote a defined order in society, considered in its whole or in some of its parts (Brodeur 2011:130)

Here what separates the police is not their use of coercion per se, since in most situations police seek to resolve conflict without resorting to force. What makes them unique is that behind any police encounter lies “their bottom-line power to wield legal sanctions, ultimately the use of legitimate force and intrusive surveillance” (Bowling et al. 2019:7).

Researchers of police custody have noted that in some circumstances civilian staff are endowed with the right to use force in a particular setting and sometimes use force in a “way which made them nearly an equal to the police” (Skinns 2012b:239). But it is important to note that this use of force goes beyond the powers with which they are legally endowed and is therefore illegitimate. Unlike civilian custody officers or other private actors, the police’s remit to legitimately use the necessary force applies in almost all circumstances and settings (Brodeur 2011:122).

For the purposes of this study it is not necessary to explore the concept of policing as any activity with social control at its heart (Marenin 1982). Such a broad conception of policing potentially encompasses institutions from social services to schools and even families, which is so overinclusive that it renders the social control definition of policing almost meaningless (Cohen 1985).

For this thesis, a definition of policing need not go beyond the core aims of the police themselves, in particular crime control and investigation, law enforcement and peacekeeping or order maintenance (Newburn and Jones 1998:18–19). It is useful to understand that policing may include a diverse range of activities in support of these aims, including knowledge exchange and risk management (Ericson and Haggerty 1997), undertaken by multiple organisations whose aims align with core policing functions, incorporating both public and private agencies with warranted officers, civilian staff or both.

From the perspective of the EAW system this definition of policing is perhaps still too broad, capable of encompassing even commercial airlines involved in the transport of EAW subjects across borders. However, a functional definition is instructive in understanding policing as an activity. Crime control and investigation, peacekeeping and order maintenance are all core policing goals. But it is the most fundamental policing function of law enforcement that this study is most concerned with: the power of state institutions to use, or order the use of, coercive force and intrusive measures to physically enforce the criminal law against an individual. In the EAW scheme it is the power to authorise the use of force that is being mutually recognised (Lavenex 2007). Police in executing states are authorised to use force and intrusive methods to seek out and apprehend an individual and return them to the requesting state, again using physical force if necessary.

Comparative studies of the criminal justice process have noted that police, prosecutors and judges across the EU may share the same name but that depending on the jurisdiction “their functions, status, professional relationships and training differ considerably” (Cape et al. 2007). This is especially true in the investigative and charging stages of the process, and it is possible that when issuing arrest warrants, prosecutors and judges may be actively engaged in policing as an activity, with law enforcement as their primary goal. Especially when investigating prosecutors and judges issue EAWs after being active participants in the criminal investigation stage of a case. Here, judges and prosecutors may not be discharging their traditional

functions of adjudication (i.e. judging guilt and innocence and passing sentence), legal representation and case presentation. They may be using the EAW as a tool, requesting law enforcement action across national boundaries to deliver a subject into their jurisdiction.

A tool is “an instrument” to be used as a “means of effecting something” (Oxford English Dictionary 2019b). By conceptualising the EAW as a transnational policing tool I suggest that this warrant - a specific legal device - be understood as an instrument in the hands of police and other criminal justice actors used to pursue law enforcement goals. The EAW facilitates the transfer of sovereign power to utilise or authorise the legitimate use of force transnationally. That is, the EAW is a tool that facilitates the use of sovereign power beyond the territorial boundaries of the issuing state.

The next section situates the EAW within the literature on transnational police cooperation and defines some key concepts this thesis will explore. The concluding section returns to some of the questions already raised and sets out the aims of the empirical work.

2.5 Situating the EAW within transnational policing theories

“Policing is globalising!” (Bowling and Sheptycki 2015b). This is not a new trend. Indeed, it has been three decades since Anderson (1989) observed that “the contact between police forces has been intensifying to the point where there is a qualitative shift in its nature.” Nowhere is cross-border police cooperation more advanced than within the EU, where it occupies “the space between sovereignty and solidarity” (den Boer 2013:60). The enactment of the EAW marked a significant step in formalising this cross-border cooperation. Defining policing becomes even more difficult when stepping into the transnational realm. The transnational policing field comprises a “complex inter-institutional nexus” (Bowling and Sheptycki 2012:22) involving a multitude of actors from different jurisdictions with different divisions of institutional competence. This requires a broad definition that can encompass this diversity.

Transnational policing is better defined as an activity than by attempting to describe the role of any particular institutional actor. Bowling and Sheptycki (2012:3) describe it as “any form of order maintenance, law enforcement, peacekeeping, crime investigation, intelligence sharing, or other form of police work that transcends or traverses national boundaries.” It is “multilateral, incorporating many other ‘police-like’ organisations including secret intelligence, military, customs, immigration, border protection and private security agencies” (Bowling and Sheptycki 2015a:57). Especially in the European context, policing is interconnected, multi-layered and polycentric, characterised by informal relationships and information-sharing. It flows from different levels of governance and operates at different levels, which are associated with, but not defined by, the levels of governance from which they flow (Benyon 1996).

This broad description of the transnational policing field is reducible to more precise and analytically useful frames of reference, but it cannot be understood in isolation from the global structures “of power that it helps to constitute” (Bowling and Sheptycki 2012:22). The globalising of policing is a response to, and part of, changes taking place at government level—local, national and international. Globalisation, interconnected markets, mass mobility, globalised threats and the conditions of late modernity place both downward and upward pressure on the power of the Westphalian nation state. Against this backdrop the globalising of policing is both evidence of, and a contributor to, the emerging transnational-state-system of governance (Bowling and Sheptycki 2012:29–32).

The concept of the territorially bounded sovereign nation state as the sole locus of global power “has become increasingly anachronistic” (Bowling and Sheptycki 2015a:60). This is not to say that nation states are no longer central actors on the global stage; “the power of national governments to claim and exert sovereignty, to rule within national boundaries and to project power beyond them has hardly withered away” (Bowling and Sheptycki 2015a:60). But the effects of globalisation

have “hollowed out” the power of the nation state from below and from above (Bowling and Sheptycki 2015a:60).

Power flows from below into the hands of corporations, especially transnational corporations, who have increasing financial power and sometimes behave as political actors in their own right. Other non-state actors put pressure on state power from below, including political pressure groups, non-governmental organisations, individuals empowered by the rise of human rights, and technological advances that facilitate the mobilisation of transnational networks of otherwise unconnected individuals around common political aims (Bowling and Sheptycki 2015a:60).

The “hollowing out” of state power from above is most evident in the establishment of supranational institutions of governance. The UN, WTO, IMF, and OECD are supranational institutions operating at the global level. At the regional level the African Union, ASEAN, the Council of Europe and the EU are examples of supranational power structures which “hollow out” the power of the state from above. Authors argue that that pressure on the power of states from above and below has transformed “an international-state-system to a transnational-state-system” (Bowling and Sheptycki 2015a:61). This idea is drawn from the New World Order identified by Slaughter, where a shift from national to global and from government to governance has transformed “the unitary state to the disaggregated state” (2004:12). A new global order is emerging that is characterised by the disaggregated governance of networked sub-state actors. These networks are both horizontal and vertical and work towards “collecting and sharing information of all kinds, for policy coordination, for enforcement cooperation, for technical assistance and training, perhaps ultimately for rule making” (Slaughter 2004:15).

The polycentric structure of disaggregated governance in the transnational-state-system is mirrored by the global and regional policing bodies, transnational networks and officer-to-officer relations that make up the field of transnational policing. Transnational policing is closely linked to, constituted by and constitutive of the transnational-state-system. It has grown in response to the conditions and threats of

globalisation to shore up and protect the new power structures emerging in our rapidly changing “runaway world” (Giddens 1999:2).

The EU is the quintessential supranational structure that constitutes the transnational -state-system, hollowing out state power from above. It is the most developed of all regional governance structures and significantly impacts the sovereign power of member states, traditionally in the area of trade but increasingly in relation to police and judicial cooperation. The EAW, born of this structure, extends the jurisdictional reach of a member state beyond its territory and simultaneously subordinates it to that of other member states within its own borders. The FWD represents a compromise “between the wish to collaborate against perceived threats and decided aversion (particularly by some states) to surrender any [more] sovereignty” (Benyon 1996:353). The EAW sits within the vertical power structure of the EU but facilitates and thickens horizontal relationships between judicial bodies and policing actors, contributing to the transnational-state-system by creating and strengthening networks of disaggregated governance.

Authors writing about European governance note that the tools of mutual recognition in the AFSJ emphasise “transgovernmentalism” as a mode of governance. This style of governance focuses on operational cooperation, giving a prominent role to “bureaucrats and state officials below the level of government representatives in establishing networks with their counterparts in other member states that develop a certain degree of autonomy in decision-making and implementation” (Lavenex 2007:769). In the EAW system, these networks of disaggregated governance include policing actors who form operational and policy committees or steering groups, cooperating at a technical level but also writing and implementing regulations.

The structure of transnational policing is “polycentric, fluid and complex” (Bowling and Sheptycki 2015f:63) but it is possible to apply theoretical typologies which indicate distinct spheres for analysis and investigation. There are not bright lines

between these spheres as “they fade into one another” (Bowling and Sheptycki 2015f:63) yet applying these typologies can provide an illuminating analytical lens. Viewing the EAW through this lens not only situates the EAW within the transnational policing field; it also sharpens the view of the field itself, building a picture of the intersections between different operational spheres.

Benyon (1996:357–58) suggests a three-level typology of European police cooperation through which police action, or in this case the EAW, can be analysed. These are: the political macro-level, at which institutional competencies and operational frameworks are negotiated and agreed; the meso-level, which concerns structural and procedural frameworks, as well as the specialist support structures and shared databases that facilitate law enforcement cooperation; and the micro-level, specific investigations and instances of cooperation between individual or groups of officers.

Figure 2.1 - Levels of European Policing

Level	Description	Actors and Instruments	The EAW
Macro-level	Constitutional and international legal agreements and the harmonization of laws and regulations.	The Council, the Commission and National Governments. The FWD on the EAW. The Schengen Agreements. The treaties, especially Maastricht, Amsterdam and Lisbon. The Tampere 1999 presidency conclusions. National implementing legislation.	Negotiation and enactment
Meso-level	Operational structures, practices and procedures of the police and other law enforcement agencies.	The operational support structures including the EAJ, EN-FAST, EUROPOL, Eurojust. Information sharing systems (SIS II and i24/7), national Interpol and SIRENE Bureaux.	Operational framework
Micro-level	Investigation of specific offences and the prevention and control of particular forms of crime.	National and local police forces. National and local prosecutors and judges. Competent authorities at a national level.	Operational application

Drawn from: Benyon The Politics of Police Co-operation in the European Union (1996) 24 International Journal of the Sociology of Law 353, 357

Figure 2.1 illustrates an application of this typology to the EAW. The FWD was facilitated by macro-level instruments, in particular the treaties and the Tampere 1999 conclusions, which paved the way for the application of the principle of mutual recognition within the AFSJ. The FWD was proposed, negotiated and agreed by political actors at the macro-level; the European Commission playing an instrumental role (Mégie 2014) and the European Council negotiating and agreeing the final text. National governments implemented the FWD at the macro-level, creating the domestic law needed to bring the EAW into force.

The EAW creates a formal operational framework for cross-border law enforcement cooperation at the meso-level. Although the literature gives the impression that this is a purely judicial process, policing agents are heavily involved. The criminal justice institutions (Eurojust and EUROPOL) created at the macro-level within the EU operate at the meso-level supporting cross-border cooperation. Networks established at the meso-level (EJN and EN-FAST) link micro-level actors and facilitate practical cooperation, assisting in locating competent authorities, transmitting warrants and providing a route for operational support. SIS II and the Interpol database operate at the meso-level, transmitting data about wanted persons between policing agents operating at the micro-level. These databases are operated by national policing actors in National Bureaux whose role crosses the boundary between meso-level general operational support and information exchange and micro-level investigation of specific cases.

At the micro-level, national and local police officers investigate crimes, gather evidence, issue and receive EAWs and search for, arrest and surrender suspects. According to Benyon (1996:358), “many micro-level initiatives occur through the various formal, and particularly the informal, police networks which exist between officers of different countries.” He suggests that the most successful of these networks are “established at the meso-level.” The EAW establishes exactly this kind of network, thickening pre-existing informal relationships and creating new links through networks established at the meso-level. Judges and prosecutors form part of

the micro-level cooperation in the EAW; although not strictly ‘police’ cooperation, their role in issuing EAWs could be seen as ‘policing’.

Benyon’s typology is useful when thinking about how the EAW fits into European power structures and contributes to the creation of networks of disaggregated governance. It illustrates how relinquishing operational regulation to the meso-level opened up a gap in understanding between political actors at the macro-level and practitioners at the micro-level (Guille 2010a); the goals of political actors do not necessarily cater to the needs of practitioners on the ground. But given the multitude of actors across all member states at the micro-level, this typology lacks the specificity needed to fully understand the mechanics of police cooperation and illustrate the processes that move the power to enforce the law from one state to another.

Bowling and Sheptycki (2012:24) offer a more complex picture of the architecture of transnational policing using functional and socio-spatial typologies. The functional typology in figure 2.2 distinguishes between high and low policing (Brodeur 1983), between private and public policing, and between policing aimed at securing territory on the one hand and securing populations on the other. Analysing the EAW in the context of these distinctions reveals its broad potential to support transnational cooperation across the spectrum of policing forms and functions.

Figure 2.2 – Conceptual field of transnational policing

	Police work aimed at securing territory		Police work aimed at securing populations	
	Private forms	Public forms	Private forms	Public forms
High Policing	Corporate security guards	Guardians of the state apparatus	Corporate security specialists	State security and the public service
Low Policing	Private security guards	Uniformed patrol officers	Private eyes and private spies	Police detectives and undercover cops

Source: Bowling and Sheptycki (2012) *Global Policing*. London: Sage, p24.

High policing “aims to secure the interests of the state and political elites” (Bowling and Sheptycki 2012:16). Its focus is protecting existing and developing constitutional orders and identifying, controlling and eliminating threats to existing power structures. The original proposal for an EAW to combat terrorism was entirely focused on this area of policing. The final FWD includes high policing aims to protect state interests and shore up the transnational legal order; the 32 offences for which double criminality is abolished include terrorism, corruption, currency counterfeiting, sabotage, forgery, trafficking of nuclear or radioactive materials and crimes within the jurisdiction of the ICC. At the other end of the scale, low policing targets the general needs of social order, including public order policing and crime investigation or prevention in the “general interest” (Bowling and Sheptycki 2012:16). The 32 offences also include low-policing crimes such as rape, arson, swindling, murder, grievous bodily injury, racism and xenophobia. That numerous warrants are issued for relatively minor crimes also attests to the broad scope of the EAW to operate at both ends of the high/low policing scale.

Equally the EAW can be seen as operating to secure both territory and populations. The EAW eliminates gaps in jurisdiction, removing safe haven for criminals within the territory of the Union (Murphy et al. 2014:8). At the same time the EAW contributes to the surveillance of a mobile population; the perceived need to offset the benefits that free movement afforded criminals was a significant driver behind the scheme and authorities are often alerted to EAWs, as SIS II or Interpol alerts, when subjects cross borders.

The EAW is most obviously a tool of public policing. EAWs are transmitted between courts, magistrates, prosecutors and state police agencies. Only public police forces have the legal powers of search and seizure needed to investigate crimes and confirm identities, or the power to arrest and detain suspects. Only public agencies have access to the information systems that allow them to check EAWs and locate suspects. The surrender process does involve private actors; airlines, ferry operators, train companies and other transport operators. But as mentioned earlier it is a step too far to define these private companies as engaged in policing; their goals in

transporting police and prisoners are commercial. As one airline security professional put it, “they pay for tickets so we get revenue from police forces moving prisoners on our aircraft”.¹⁵

Viewed in this way the EAW can be seen as a public transnational policing tool, contributing to a wide range of policing functions and supporting horizontal transnational cooperation between public policing actors with the ultimate aim of enforcing the law of the issuing state against an individual subject.

When Bowling and Sheptycki’s socio-spatial typology in figure 2.3 is added to the picture, the vertical structures that facilitate the operation of the EAW and the large number of meso- and micro-level actors involved come clearly into view, especially when national and local structures are multiplied across 28 member states.

Applying Michael Mann’s (1997) view of socio-spatial networks of interaction, and adding to it Hobbs and Dunningham’s (1998) concept of “glocalisation”, in which globalisation creates “glocal” networks where locally situated police officers are globally connected and aware, Bowling and Sheptycki (2012:25) delineate four socio-spatial levels of policing power in transnational policing. The typology simplifies the picture, giving the impression that rank-structured police bureaucracies are limited to their locus of action, but “in the transnational knowledge society, hierarchical organisations are continuously cross-cut by networks of communication that bind them together” (Bowling and Sheptycki 2012:25). The functional remit of each organisation is different and the channels of communication between them vary. Actors at “glocal” level may make direct contact with one another across national boundaries without any intermediary or may be connected via a national, regional or global agency. “There is a good deal of complexity in how the various levels co-articulate in practice” (Bowling and Sheptycki 2012:26).

¹⁵ Transcript 22 - Airline Security

Figure 2.3 - A socio-spatial typology for transnational policing

Locus	Networks	Policing actors relevant to the EAW
Global	Policing entities that have a global reach	Interpol
Regional	Regional security structures and associations	EUROPOL, CEPOL, SIS II, JITs, EN-FAST, SIRENE
National	National security structures created to be able to coordinate a national response and to work with international partners and liaison officers posted in overseas diplomatic missions	National SIRENE bureau Interpol NCBs National police forces National fugitive units National border enforcement
Local/ Glocal	Local policing agencies and units transnationally linked	Liaison officers, specific crime units, CID, local police forces, municipal police, Metropolitan Police, customs, immigration, airport security

Adapted from: Bowling and Sheptycki (2012) *Global Policing*. London: Sage, p25.

Without empirical investigation it is unclear how these connections manifest within the EAW scheme. Some countries have centralised systems; in the UK the NCA, a national agency, receives and transmits all EAWs (Sievers and Schmidt 2015:120). However, local police forces initiate investigations that may lead to the issuing of EAWs, and it is local police forces that will execute arrests in most cases. UK authorities may go to some lengths to locate subjects during the issuing process (Sievers and Schmidt 2015:120) and this may require cooperation with national or local agencies in other states. Other countries operate decentralised systems with EAWs being transmitted to and from prosecutor's offices at a local level, often via national policing hubs or national central authorities. In these cases EAWs can be transmitted directly between local actors or via national or regional networks. Again, without empirical evidence it is unclear how the communication flows operate. EAWs can also be transmitted directly with help from regional support networks like the EJN, via the regional SIS II system, or even via the global Interpol system.

Figure 2.3 provides some examples of the types of police agencies and information systems involved in the EAW. Clearly, an enormous number of institutional actors are

potentially empowered by the scheme. In 1996, before EU enlargement, there were 120 police agencies operating in 15 countries (Benyon 1996:374). The picture is now considerably more complex; the EAW has 28 participating states, each with different policing actors operating locally and nationally, each with different divisions of institutional competence (Guild and Geyer 2008:14). On top of this the recent “Europeanisation” of (in)security, involving the conflation of internal and external aspects of security, resulted in the fusion of military, security services, policing and border control objectives, drawing actors into the transnational policing field who may previously have been thought of as occupying separate social universes (Bigo 2006). For example, the Polish military play a role in the EAW scheme, transporting wanted persons to be surrendered in Poland (McSweeney et al. 2011:60). The present empirical study of the EAW as a transnational policing tool seeks to shed more light on the networks and information channels that link these agencies transnationally.

Viewing the EAW through the lens of transnational policing theories shifts the focus of inquiry from the formal structure of the FWD and its application by judicial authorities to the links it creates or strengthens between supranational, national and local policing agents. These links were already developing rapidly before the principle of mutual recognition was imported into the EU’s AFSJ. The tools of mutual recognition do not reveal the extent of European police cooperation, because so much activity happens outside official frameworks (McDaniel 2015:202). But the EAW and “the kaleidoscope of new measures” (Walker 2008:136) that utilise the principle of mutual recognition represent a commitment by member states to strengthen “horizontal cooperation among police professionals” (Bowling and Sheptycki 2015d). Prior to the development of mutual recognition in the field of EU criminal law, research identified the “lack of coordination between national laws, national police services and national criminal justice systems” (Swallow 1998:247) as the biggest problem facing the development of police cooperation in the European Union. Mutual recognition under the EAW side-lined any attempt to harmonise national legal systems but led to the development of more streamlined routes for formal cooperation.

Research into transnational policing suggests that “police prefer to work through informal networks based on ‘horizontal contacts’ held together by the bonds of interpersonal trust and a fraternal sense of common professional identity” (Bowling and Sheptycki 2015f; Swallow 1998:243). The EAW established a formalised system to support these relationships, which “boosts the transnational enforcement capacity of governmental actors” (Sievers 2007:7) and has a tangible effect on operational police practices (den Boer 2013:53). This research provides a detailed examination of the policing relationships that support the EAW, investigating policing practices and asking whether they are legitimate and accountable.

2.6 Formal and informal cooperation

Work on transnational police cooperation tends to emphasise practitioner preference for informal cooperation (Anderson et al. 1996; Bowling and Sheptycki 2015f; Guille 2010b:66; Swallow 1998) over more formal channels, which are often seen as “time-consuming and ineffective” (Bowling and Kopf 2017:11).

Scholars in the first wave of research on international police cooperation (e.g. Anderson et al. 1996:74) highlighted a dichotomy between informal cooperation and more formal mechanisms. They noted practitioner concerns that the development of formal mechanisms “might endanger the working of informal arrangements” (Anderson et al. 1996:75). On the other hand, even though informal networking was seen as key to developing and maintaining trust, practitioners hoped that establishing formal forums for cooperation would provide better continuity by reducing reliance on individual relationships. There was also acknowledgement of the potential to improve accountability and legitimacy by increasing the visibility of police cooperation. (Anderson et al. 1996:76)

Much of the literature assumes a self-evident distinction between formal and informal cooperation, but exploring this supposed dichotomy might help to elucidate the difference. Sheptycki (2002) offers three distinctions for thinking about the

formal-informal nexus: First, Formal practices with a capital 'F', which are time-consuming and often slow; these might include routes for legal cooperation in evidence exchange. Second, formal with a small 'f'; these practices work faster than most formal routes but are still subject to some formal accountability within an organisation. Third, informal practices, which are not subject to a formal chain of accountability.

Whether a practice is subject to formal accountability is only one way of thinking about this distinction between Formal, formal and informal cooperation. Another would be to consider the formality required to initiate and respond to requests. Much work on informal cooperation stresses direct contact and reliance on personal relationships (Anderson et al. 1996:74). This kind of cooperation could be initiated through a simple phone call with no formality requirements. At the most formal end of the formal-informal scale the institutionalised nature of arrangements is stressed (Bowling and Kopf 2017), suggesting a prescriptive legal basis for a request. At its extreme this may require judicial approval, prescribed content and transmission through designated channels. In between these extremes lie systems for information exchange that do not require approval and place little restriction on the format of requests but provide a prescribed route, for example into and out of a national bureau.

Although much work on transnational policing focuses on either end of this formal–informal scale, some scholars acknowledge that they are not mutually exclusive (Bowling et al. 2019:196). Some even suggest that informal cooperation persists even after formal institutions are created (Herschinger and Jachtenfuchs 2012). Other scholars note that “informal EU practitioner forums” have inspired and supported formal developments (Hufnagel 2016, 2017) and that one is unlikely to replace the other. This is because “the two forms are complementary, and are both required to achieve success” (Anderson et al. 1996:76).

Whether the formal is distinguished from the informal by level of accountability, reliance on direct contact, or degree of formality, there is no clear line separating the

two forms of cooperation. As more formal methods of cooperation become more prevalent and the volume of cooperation increases, so do opportunities for informal contact and relationship-building. Examining the police's role in the EAW provides a unique opportunity to explore this supposed dichotomy. A request for the executing state to physically surrender a subject represents the most formal end of police cooperation. Does cooperation in EAW cases rely on informal practices, as some views of the transnational policing field would suggest? Or does the nature of the request mean that only formal routes are used? Perhaps there is not so much a dichotomy between formal and informal cooperation as a sliding scale. Where on this scale do police cooperation practices in the EAW system lie?

2.7 Law and discretion

The question of how transnational policing agents share information, conduct cross-border investigations and track and retrieve suspects leads to further pertinent questions: when do policing agents utilise formal tools of transnational policing? And when do they choose not to?

Bowling and Sheptycki (2012:18) note that “a primary source of police power and legitimacy are the enabling legal provisions” that policing agents invoke to get the job done. They argue that “transnational policing is carried out in a largely unregulated fashion in the name of the law without being constrained by the rule of law” (Bowling and Sheptycki 2015c:2). Policing power transgresses national boundaries, but “human rights protections do not” (Bowling and Sheptycki 2015c:9); this means that transnational policing is more concerned with effectiveness and expediency than with “claims about legitimacy, human rights and the rule of law” (Bowling and Sheptycki 2015c:10).

This problem is evident in the European policing literature, although it is only tangentially related to the EAW. The abolition of double criminality in the scheme opens up a ‘transnational space’ for law enforcement agents to use the EAW to extend the reach of their national jurisdiction. Surrender can now be requested in

cases where extradition would previously have been refused. It is clear that policing is highly discretionary: law enforcement agents can choose whether to pursue suspects across national boundaries. It is less clear when and why they will make such decisions. Given the broad discretion available to policing agents, “rather than a constraint, law is a tool that *enables*” (Bowling and Sheptycki 2015c:36). The EAW and other cooperation mechanisms supported by mutual recognition are exactly these sorts of tools. McDaniel (2015:143) argues that “an important litmus test of the quality of the EU’s measures can be gauged by questioning whether and to what extent the member state police forces are ‘co-opting’ them in practice.”

Elsewhere, Bowling and Sheptycki (2012:19) argue that “from a global point of view it is possible to see the ‘transnational space between’ where both legal and non-legal actors can ‘jurisdiction shop’”. The possibility that the EAW opens up this kind of “transnational space” is very real; activities punishable in one state may be legal in others, and crimes punishable with short sentences in one state may attract lengthy jail time in others or be subject to lower burdens of proof. It is easy to see how law enforcement agents, determined to ensure that a particular individual or crime is punished, could exploit this system in conjunction with the authorities in another state, especially in terrorism cases or others attracting universal jurisdiction (Lavenex and Wagner 2007:236). No evidence has emerged that this is happening, but given the low visibility of transnational policing networks, it might not be immediately obvious.

As Bigo (2000:89) notes, “the police world is, in part the creator of its own norms which derive from internal processes and institutional stakes.” The role of policing agents is highly discretionary; understanding how law is utilised even at local level is a fraught exercise. Transnational policing seems less restrained by the oversight mechanisms that operate at national level; “gauging the extent of officers’ autonomy in the transnational realm is therefore crucial to understanding how subcultural norms and values fill the ‘transnational space’ within which policing decisions are taken” (Bowling and Sheptycki 2015c:15).

These questions should also be considered in the light of research into the role of law in policing and the exercise of police discretion in a national context. There are significant pieces of empirical work that explore these issues in domestic policing (Dixon 1997; Goldstein 1960, 1963; Grimshaw and Jefferson 1987; McBarnet and Whelan 1991; McConville et al. 1991) but few in the transnational realm.

Policing, both domestic and transnational, is inextricably bound up with the law. As Skinns (2012b:225) notes: “law is the surrounding frame for all police work [...] to varying degrees [it] structures, regulates and governs police decisions and behaviour.” Law enables policing; it endows the police with powers of arrest and investigation and delineates a legal framework for the use of force and coercion. The criminal law denotes situations in which the police may dispense legal sanctions and penalties or deploy a range of law enforcement tools.

A formalistic understanding of the law and legal control foresees police applying clearly defined law in predictable, consistent and uniform ways (McBarnet and Whelan 1991:849). In reality, few legal rules lend themselves to such formalistic enforcement; many laws are indeterminate, and as a ‘system of rules’ the law is internally incoherent, contradictory and indeterminate. The chaotic reality of social life means that uniform law enforcement is not possible, realistic (Goldstein 1960:555–62), or even desirable (Goldstein 1963:142). Laws must be applied to a range of circumstances on a case-by-case basis and formulating specific rules to capture all possible unwanted behaviours is impossible. Broad rules must therefore be created that can apply to a range of cases. This leaves scope for discretionary decision-making by police, prosecutors and judges (Dixon 1997; McBarnet and Whelan 1991), and means that “policing is [...] inevitably *selective* law enforcement” (Bowling et al. 2019:22).

Law enforcement is “characterised by discretion and autonomy” (McBarnet and Whelan 1991:872), with police and prosecutors exercising wide discretion in most jurisdictions, especially during criminal investigations (Hodgson and Roberts 2010:2). Major policing studies have highlighted the discretionary nature of the police role

(Goldstein 1960; Lustgarten 1986), which influences the interpretation of law and its application (Dixon 1997:274). Police discretion shapes individual officers' interpretations of broad legal rules in specific cases but, more importantly, police have discretion over whether to invoke the law at all.

There is complex interplay between law and police discretion. On the one hand, the law shapes police discretion, delineating situations when police may act and specifying which actions they may take or designating which law enforcement tools they may use. On the other hand, police discretion shapes the application of law though interpretation and the decision to invoke it. This means that understanding "police discretion and its application is of primary importance to understanding the role of law" in policing (Skinns 2012b:240).

In the context of the EAW, exploring the role of the police in issuing and executing warrants is vital for understanding the role police discretion plays and whether differences in national practice can be understood through this lens. As Goldstein (1960:543) explains:

Police decisions not to invoke the criminal process largely determine the outer limits of law enforcement. By such decisions, the police define the ambit of discretion throughout the process of other [criminal justice] decisionmakers.

Discretionary decisions about whether and when to invoke the law or utilise legal tools are shaped by a range of external factors, such as law and the political environment (Grimshaw and Jefferson 1987), and internal ones, including organisational structure and occupational culture (Chan 1997; Loftus 2012). If law is the determinant rather than dominant structure of police work (Grimshaw and Jefferson 1987:15–22) it can dictate whether the police can utilise a particular tool, but only understanding the operation of police discretion and the factors that contribute to its exercise can reveal whether the police will pursue a certain course

of action in particular circumstances (Bowling and Marks 2017:69). Seen in this way, “policing takes place *under* the law, but is not *driven* by it” (Sheptycki 1998:61).

This leads to an interesting set of questions about the role of policing actors in the EAW system. When will police or prosecutors request an arrest warrant? And when won't they? Does policing discretion play a role in the refusal of EAWs? Do different actors in different jurisdictions and different functional roles have differing levels of discretion within the EAW scheme? What shapes this discretion? Are there circumstances in which policing agents collaborate in deciding which jurisdiction should request an EAW? Although the EAW cannot illuminate the entire sphere of European police cooperation, because only a minority of cases will involve surrendering a suspect across borders, investigating what prompts policing actors to invoke the EAW could provide a broader understanding of the relationship between law and discretion in a cross-border context.

2.8 Risk management and police as knowledge workers

A key feature of policing in the late-modern age is the reshaping of police practices around the management of risk. The rise of the ‘risk society’ (Beck 1992) has generated many claims about new modes of governance, including the claim that policing is being reconfigured due to its infiltration by risk-based logic and practices (Bayley and Shearing 1996; Ericson and Haggerty 1997).

The major trends related to risk assessment are a reorientation towards intelligence-gathering and a focus on pre-emptive prevention (Ashworth and Zedner 2014; Ericson and Haggerty 1997). Neither is “new to the system but [both are] in some way ‘newly systemic’” (Feeley and Simon 1992:450) and come at a cost. Risk assessment is used to legitimise the development of tactics and regimes that radically depart from traditional understandings of the limits of state power, eroding individual rights and other principles that limit the reach of the criminal law. This has an obvious relationship to the development of the EAW itself when, in the wake of

9/11, governments scrambled to enact cross-border law enforcement frameworks in the face of a new and unquantified threat.

The pursuit of security under risk-based and precautionary principles inspired claims of a 'new penology' and a new era of policing (Bayley and Shearing 1996). On the one hand, actuarial justice licenses preventative action on the basis that risk assessment can identify who poses what future risk (Zedner 2009:35). This has driven a rise in the punishment of pre-crime, early intervention, and preventative justice (Ashworth and Zedner 2014). On the other hand, the obsession with risk management and assessment drives a frenetic search for perfect knowledge. Ericson and Haggerty (1997:18) argue that, "in a risk society the traditional police focus on deviance, control and order is displaced in favour of a focus on risk, surveillance and security". Bayley and Shearing (Bayley and Shearing 1996) claim that "future generations will look back on our era as a time when one system of policing ended and another took its place".

These grand claims of the emergence of a risk society, a new penology or a new era of policing are all contested (Kemshall 2003; O'Malley 2004). In the field of criminal justice, commentators question whether the rise of risk is really a paradigm shift rather than a renewed focus on preventative goals (Ashworth and Zedner 2014; Garland 2001; Jones and Newburn 2002; Kemshall 2011). Even the grand theorists do not contend that preventative goals are new to the system. Rather, they "are in some sense newly 'systemic'" (Feeley and Simon 1992:450) and are not yet a "hegemonic strategy for crime and crime policy" (Feeley and Simon 1992:451). Nevertheless, there is no doubt that policing has been influenced by risk-based logic (O'Malley 2004:133), and that this logic is manifested in new policing and crime-prevention technologies, strategies and legal regimes. As Johnston and Shearing (2003:76) note, "risk is a way of thinking before it becomes a set of deployable techniques". This thinking was evident in policing (Johnston and Shearing 2003:66) and criminal justice (Ashworth and Zedner 2014:28–37) even before the modern police force was established.

Ericson and Haggarty (1997) see police as “knowledge workers”, seeking perfect knowledge for the management of potential risks and exchanging information with each other and outside agencies at an increasingly furious pace. Over 20 years ago, Sheptycki noted that “so far as police work is transnational it is virtually pure knowledge work” (Sheptycki 1998:64) with legal and technological infrastructure facilitating the sharing of “knowledge” in the form of intelligence or information and formal requests for coercive or intrusive measures by domestic policing actors.

Viewing the EAW as a policing tool involves assessing how the EAW itself contributes to risk management from the perspective of the police and how the management of risk shapes police practice. What is the relationship between risk management and police discretion? What role does risk management play in the decision to request or execute an EAW? How do police use risk assessment to plan operations and deploy resources? How do policing actors share risk information with transnational counterparts? Does the police role in the EAW support the contention that transnational policing is knowledge work?

2.9 Shared culture and mutual trust

Building mutual trust and respect to support the principle of mutual recognition is the biggest single challenge facing the EAW. For cooperation tools based on mutual recognition, mutual trust “offers the potential to bridge the procedural distinctions between various legal traditions and cultures in each national jurisdiction” (Warren and Palmer 2015:323). In the context of EU criminal law this “socio-political premise” (Marin 2011:705) focuses on trust between states at a macro-level; states view each other’s legal orders as providing equivalent, if not identical, procedural protections and safeguards.

As the EAW literature suggests, at a political and to some extent a judicial level, diverse legal traditions and cultures engender mutual distrust, especially in issues of proportionality, rights protection, legitimacy and accountability. Viewing the EAW

and other tools of mutual recognition as transnational policing tools can offer a different perspective on this problem.

As (Guille 2010a) notes, much of the scholarly work on effective police and judicial cooperation assumes that the aims of political actors are the same as police and prosecutors on the ground. Yet this is far from clear empirically. The legal literature on the EAW makes a similar assumption in relation to mutual trust, assuming that micro-level actors, including judges, prosecutors and police, are as concerned with rights, proportionality and sovereignty as political actors at the macro-level. Block also notes that EU policies and the literature on trust between states utilising mutual recognition “appear to use trust at the macro-level” (Block 2017:18) as the touchstone. Although there is some evidence that judges are indeed concerned with the problems discussed above (Efrat 2019; Lavenex 2007:774), the overwhelming tendency for judges to order surrender in cases that come before them suggests that they are also conscious of the need for reciprocity in a system that relies on requests being accepted with minimal review. The question of what mutual trust means for those endowed with the legitimate use of force remains unexplored because the police are absent from empirical accounts of the EAW in practice.

Writing in the field of international relations, Nicolaïdis distinguishes between blind trust, “based on separateness at best [and] mutual ignorance at worst”, and binding trust, which “requires prior and continued knowledge about [each] other” (Nicolaïdis 2007:683). She argues that in an environment of mutual recognition, “trust needs to be predicated on identifying and strengthening ties that bind in order to be sustainable” (Nicolaïdis 2007:683). From a public policy perspective, inter-organisational trust is seen “as the expectation that a cooperating partner will act in a predictable, reliable, and fair manner” (Efrat 2019:663). In this context, similarity in institutional arrangements and legal systems provides “explicit and tacit knowledge” on which to base predictions about future behaviour, strengthening the ties that bind (Efrat 2019:663).

In the field of international police cooperation, research has confirmed that transnational policing agents prefer informal relationships (Bigo 2000:80; Walsh 2011) and that having built up mutual trust informally they tend to characterise the development of bureaucratic legal mechanisms as “getting in the way” (Bigo 2000:78). Although Hufnagel (2017) notes that informal relations built on trust can lead to the development of formal mechanisms and increase the external legitimacy of cooperation efforts, trust is often referred to in the literature as underpinning informal relationships in international police cooperation. Nevertheless, what trust means in this context and how it is established, developed and maintained is largely unexplored (Block 2017). Hufnagel and McCartney (2017:1) suggest that trust is based on “expectations and predictions of future behaviour”, allowing individuals at a micro-level to take a “leap of faith” in conditions of uncertainty.

In the context of police cooperation, trust is both a noun meaning “a firm belief in the reliability, truthfulness or ability” (Oxford English Dictionary 2019c) of a policing partner and a verb meaning “to have faith or confidence in a person, quality, or thing; to rely on” (Oxford English Dictionary 2019d). Trust is not just an act of reliance; it is a belief or feeling of confidence in so acting. Much of the literature conflates the act of cooperation with the feeling of trust, but truly understanding trust means identifying not only why actors cooperate but why they feel confident in doing so.

Block notes that while the European Union has identified trust as a key feature in police cooperation, it has not clearly identified what it means by trust or “who should be trusting whom, and why” (Block 2017:13). Referencing the sociological literature on trust, Block explores the relationship between trust and risk, pointing out that that investing time and resources in cooperating, or conveying information, entails risking the cooperative partner failing to fulfil their side of the bargain. They may fail deliver on a reciprocal commitment or deviate from a mutually understood set of norms. A decision to cooperate despite this risk therefore requires trust that the partner will deliver on their commitment.

Linking Block's (2017) conception of trust as risk management, which allows police to cooperate in conditions of uncertainty, to Nicolaïdis' (2007) conception of binding trust sustained through prior and continued knowledge, trust can be seen as a qualitative sociological notion that allows micro-level actors to take a leap of faith and feel comfortable doing so. Exploring trust between policing actors in the EAW system involves not only understanding why police cooperate in particular ways but if, or why, they feel confident doing so.

Walker (2008:123) suggests that "police officers can find solidarity, trust and empathy with foreign colleagues born of similar working conditions and priorities." Scholars speak of a transnational policing subculture, "a global civil society in the policing sector" (Walker 2008:142) that "provides the oil and glue of international law enforcement" (Andreas and Nadelmann 2006:232). There may be differences between the feelings of fraternity felt towards officers from other nation states by nationally rooted officers cooperating transnationally on the one hand, and by those officers whose role is fundamentally transnational on the other (Bowling and Sheptycki 2012:84–85).

In discussing the possibility of a transnational policing subculture, Bowling and Sheptycki (2015e) refer to eight archetypal characters in global policing. Of particular interest here is the "diplomat", who has good communication skills and is easily able to see things from another's point of view, with a policing style that is "attuned to the nuances of the legal, bureaucratic and political difference embodied in the many institutional settings in which policing takes place" (Sheptycki 1998:68). If transnational police officers do indeed act as "police diplomats" (Bowling et al. 2019:193), managing international relationships through their transnational interactions with other criminal justice practitioners (Nadelmann 1989), can this foster a transnational policing subculture? Is the diplomatic identity a key part of this subculture? If so, what is its relationship to building and maintaining trust?

Walker (2008:142) describes a " 'transnational policy community' of policing experts who have become accustomed to sharing knowledge and best practice." These

relationships are based on a trust that has been built informally and seems to be rooted in shared understanding of the role of police, threats to security, and hostility to the formalised structures that obstruct efficient policework. When the EAW is viewed as networks of cooperating policing agents, the diversity of legal cultures, which poses such an obstacle to trust at a political or judicial level, may be less important than shared understanding of policing imperatives. This suggests that mutual trust may be more stable at the level of operational policing and that issues of legitimacy and accountability might be more pressing. Incidentally, addressing these issues could positively impact mutual trust at the judicial level.

Observation of a transnational police subculture “has led to speculation about the emergence of a shared ‘constabulary ethic’” (Walker 2008:142). Some commentators are hopeful that transnational police cooperation can foster “a ‘constabulary ethic’ capable of guiding (police) practices...towards social peace and good ends with just means” (Sheptycki 2007:32). Others are more sceptical, arguing that “personal relations and networks are important precisely because of the strength of cultural differences between police” (Hills 2009:313). This is supported by a study of policing culture amongst Frontex staff, which found that although some sense of fraternity was present, it could not be taken for granted when confronted with differences in nationality, professional and cultural proximity or different understanding of gender roles (Aas and Gundhus 2015:179). The possibility of developing a constabulary ethic in line with a transnational policing subculture may be higher within the EU than in a global context because there are fewer differences to overcome, cross-border relationships are highly developed, and meso-level organisations and networks provide support.

Viewing the EAW as a policing tool creates an opportunity to explore trust and shared police culture. What impact do issues that undermine trust at a macro-level have on trust between micro-level actors? What are the shared goals or values that support trust between policing actors across border? This project indirectly explores these issues by interrogating why police choose particular methods of cooperation in

particular relationships and investigating officers' experiences of transnational cooperation.

2.10 Accountability and legitimacy

Related to many of the issues discussed above are important questions about legitimacy and accountability. The literature on the EAW raises issues of legitimacy - the scheme subjects citizens to legal systems they have no democratic influence over - and of disproportionate and inappropriate use. Viewing the EAW as a transnational policing tool compounds these issues as the legitimate basis of transnational policing power is controversial. Traditional notions that anchor coercive policing power in the relationship between state, citizen and territory "simply no longer make sense." (Bigo 2000:84). Forms of policing that traverse state boundaries, such as issuing, receiving and executing European arrest warrants, challenge the notion that sovereignty is territorially bounded and based on a democratic contract between state and citizen.

Transnational policing relationships exist in a low-visibility environment and a "persistent preference for horizontal, direct and informal co-operation places democratic, legal and social legitimacy under pressure." (Bowling and Sheptycki 2015d). A lack of transparency and oversight means that "we are forced to take on trust the expertise, efficiency and effectiveness of transnational policing operations and their legality, integrity and proportionality" (Bowling 2009:158). The EAW and other tools of mutual recognition may contribute to this problem by increasing the opportunity for policing agents to foster informal cross-border relationships, and increased emphasis on formal routes for information-sharing may increase the visibility of police activity and restrict the scope of police discretion.

The inclusion of the judiciary in the process may increase legitimacy by subjecting policing action to improved accountability at a domestic level. Of course, surrender is quasi-automatic and very few options are available to judges to refuse warrants, so it is unclear whether this is true. However, it is certainly worth investigating whether

judicial involvement does subject police action to increased scrutiny. Bigo (2000:81) suggests that the involvement of judges could have a positive effect on the legitimacy of transnational policing, but given the concerns raised about rights protection it is not clear that mutual recognition leaves sufficient scope for judges to establish an effective accountability mechanism.

Bowling (2009:158) contends that “the present legal framework for cross-border police accountability is inadequate, the result of which are troubling gaps through which human beings can fall”. These gaps are left by an over-reliance on national accountability mechanisms (Walker 2008:141) and the low political priority given to institutional accountability in police and judicial cooperation (den Boer 2002:277). In relation to the EAW, the European Commission now shares the right of initiative with the European Council; this is gradually having a positive effect on the development of basic standards of procedural protection. The European Parliament has a marginally increased oversight role under the Lisbon Treaty, as does the CJEU, but it remains “prohibited from ruling on the validity and proportionality of the operations of domestic police forces and other law enforcement agencies.” (Walker 2008:128). This leaves accountability for transnational police cooperation almost entirely in the hands of national authorities that have insufficient power to control policing practice.

Loader (2002:303) argues that there is a need to develop a range of accountability “mechanisms and sites of governance, operating at different levels each differently orientated to questions of rights protection, equitable resource distribution, and maximising citizen involvement.” This could assist in generating “a European policing capacity that is simultaneously effective *and* democratically legitimate.” But a lack of transparency in informal police relations and the complexity of the transnational policing field will frustrate efforts to design and build these mechanisms unless effective and targeted research can illuminate policing practice. Cases of injustice can inform reveal gaps in individual protection, but only when they come to light. It is also necessary to understand what cross-border policing looks like when it works well, so that best practice can be encouraged. One route into this is to examine the

operation of the EAW and other mutual recognition instruments from the perspective of the policing agents using them.

While not addressing accountability and legitimacy in detail, this thesis brings the police, the main players in the EAW scheme, clearly into view and examines the cooperation process in detail.

2.11 The focus of this study

Although policing agents are largely absent from the EAW literature, viewing this legal measure through typologies of transnational policing can illuminate its function as a policing tool, raising the possibility that research into the EAW can make a valuable contribution to mapping the transnational policing field. A major hurdle for transnational policing research is the sheer complexity of the terrain. The EAW provides a manageable and potentially analytically satisfying route into this field. This research provides empirical evidence to support and develop theories of transnational policing where academic research struggles to keep pace with rapid developments in practice (Bowling and Sheptycki 2015c:4).

The limited empirical research previously conducted into EAW use focused on statistical analysis (Carrera et al. 2013); comparative analysis of procedural rights (Fair Trials International 2012; Thunberg Schunke 2013); practitioner impressions of the impact, effectiveness and legitimacy of the scheme (Murphy et al. 2014); and on evidence of mutual trust in judicial decisions (Efrat 2019). The existing literature contributes to an emerging picture of the EAW in practice (Christou et al. 2010) but only two studies include policing actors (McDaniel 2015; McSweeney et al. 2011).

Despite the success of the EAW, mutual recognition in the AFSJ is not without problems, so much so that Fichera (2009:227) dubbed the EAW “the cornerstone of an incoherent system.” The existing EAW literature highlights issues of diversity, proportionality, rights protection, legitimacy and mutual trust and raises questions about the effect of mutual recognition on national sovereignty.

Returning to some of the questions posed so far, I have argued that viewing the EAW as a transnational policing tool shifts perspective on the issues raised in the existing literature, that the problem of legitimacy is compounded by a lack of effective supranational accountability, and that the problem of mutual trust may be less significant at the policing level. Trust between transnational policing actors seems to rest on different foundations than the trust among judicial and political actors. It is possible that addressing the linked issues of legitimacy and accountability at the policing level could positively affect trust at the judicial level.

This tentative suggestion links to questions about the effect the EAW has already had on policing relations. It is hard to design accountability mechanisms without knowing what cooperation looks like on the ground. Setting the EAW within theories of transnational policing reveals its extremely broad scope and the wide range of policing actors that are potentially empowered by the scheme, but which actors, in which states, in which roles, remains unclear. How these actors communicate through horizontal and vertical networks is also unclear and close examination of information flows and direct communication is needed to illuminate the process. This research investigates the different institutional competences and roles of policing actors in four states: the UK, Ireland, Poland and Spain. It describes how these actors communicate across borders, how they decide which channels to use and the effects that national contexts have on these processes.

Questions arise about the EAW as an enabling or restricting mechanism, linking to questions about the role of law in police practice and the exercise of police discretion. All these issues link to the problems of proportionality and accountability. It is unclear whether the involvement of judges in the scheme has improved the accountability of transnational policing, or whether mutual recognition has reduced judicial oversight of the police. It is also unclear whether the EAW creates a “transnational space between”, allowing law enforcement actors to jurisdiction-shop. This research attempts to investigate these issues by asking when policing actors invoke the EAW and, more importantly, when they choose not to. Are

operational practices scrutinised by national judges or does the relative automaticity of surrender result in reduced oversight?

This research contributes to theoretical questions about the EAWs place in the emerging transnational-state-system of disaggregated governance and its contribution to transgovernmental practices. It illuminates the processes of communication, information-sharing and cooperation and describes some of the networks of disaggregated governance involved in the scheme.

This study contributes an account of police practices based on detailed research “on the ground” and hopes to develop a more complete view of the EAW’s operation. It is the first study to empirically examine the role of the police in the EAW. Given that there is no existing research on police use of arrest warrants across borders, this project’s primary aim is to explore and describe the police processes in detail. Examining police practice from the perspective of the UK and comparing relationships between the UK and three of its closest partners, Ireland, Poland and Spain. With this broad descriptive goal in mind, the following chapters aim to answer these questions:

- What is the police role in the EAW system?
- What processes do police follow when issuing, receiving, and executing EAWs?
- What role do police play in the surrender process?
- What methods of cross-border communication and cooperation do police use and why?
- When are formal routes or informal routes for cooperation used and why?
- How can the differences in cooperative relationships between states be explained?
- What is the role of police discretion in issuing and executing EAWs?
- How does risk management shape police practice?

- Does mutual trust between police officers differ from mutual trust between political actors at state level?
- To what extent is the EAW a transnational policing tool, and what are the implications of this?

3. Methodology: A case study of police practice

3.1 Introduction

The last chapter identified a gap in academic understandings of the EAW in practice. I suggested that exploring the role of policing actors in the EAW could provide a more complete picture of the system, potentially offer alternative perspectives on the problems with the system and contribute to a growing body of work on transnational policing. I set the EAW within a theoretical framework drawn from work on transnational police cooperation, illustrating that exploring police processes and practice relating to the EAW in detail could contribute to developing theory in this area.

In this chapter I describe the research methods used to explore the questions raised in the previous chapter and explain the thinking behind the methodological decisions. I adopted a mixed-methods case study design that provided enough flexibility to adapt to some of the “false starts, blind alleys, mistakes, and enforced changes to plans” (Bryman 2015:13) that research projects so often encounter. Throughout this chapter I reflect on my plans, how they played out in the field and discuss some of the challenges I came up against.

3.2 Research questions and narrowing the focus

The previous chapter raised a wide range of both general and specific questions which research into policing and the EAW might address. Answering all of these questions in a single study would be an insurmountable task, especially if the project were to address all 28 EU member states. The most logical starting point for this study was to address the complete absence of even a broad description of the police role. At the outset of the project the idea that police play a central role in the system was based on inference. My initial enquires with potential participants supported the idea, so I designed the project around broad exploratory and descriptive questions

which would allow for wide ranging investigation of the police role and lay the groundwork to examine some of the more specific issues in detail.

In order to formulate research questions and design a manageable project it was necessary to narrow down the possible research sites from all police and criminal justice agencies in all EU member states. I considered a comparative study of three or four jurisdictions, similar to the *Inside Police Custody* project (Blackstock et al. 2014) which compares suspects rights in custody across four jurisdictions or the *European Cross Border Justice* project (Christou et al. 2010) which explored the implementation of the EAW in four states. However, these projects involved large budgets and long data collection periods. They benefitted from multiple researchers from several universities, who spoke several languages and were educated in the legal traditions of several countries (Hodgson 2014:455). I am just one researcher educated in one legal jurisdiction, I had limited time to collect and analyse my data on a limited budget and I speak only one language.

These considerations led me to focus on police practice from the perspective of the UK, building in opportunities to compare cross-border cooperation between the UK and other EU member states. My research questions aimed to build a comprehensive account of the police role in the EAW system; focusing on the detailed processes and modes of cooperation between police and other criminal justice actors within the UK itself, and between UK agencies and those in three other jurisdictions.

The initial research questions were formulated as follows:

- What role do policing actors play in the EAW system?
- What processes do police follow when issuing and executing EAWs?
- What modes of cross-border communication are utilised in these processes?
- When and why will formal mechanisms of cooperation be utilised?
- How can the differences in cooperative relationships be explained?

3.3 Which methodology?

A range of methods have been used by scholars to conduct research into policing. Experimental and quantitative approaches are increasing in popularity in-line with a policy focus on evidence-based policing, but the experimental approach is not new. The much criticised *Kansas City Preventative Patrol Experiment* (Kelling et al. 1974) tested different types of police patrol and has been followed by a number of randomised control trials (RCTs) testing policing methods. In particular work by Larry Sherman and his colleagues stands out (e.g. Sherman & Weisburd 1995; Sherman et al. 1995; Ratcliffe et al. 2011; Sherman et al. 1992), as does the quantitative experimental and survey based research focused on public trust and police legitimacy (Hough et al. 2010, 2013a, 2013b).

Some of this work has been extremely successful and a number of systematic reviews (Braga 2005; Braga et al. 2014; Mazerolle et al. 2013) focusing on RCTs as the “gold standard” of experimental research have been published. Some experimental work, particularly related to mandatory arrest in domestic violence cases, has had unintended negative consequences (Miller 1989). Nevertheless, experimental criminology is on the rise, especially in policing where bodies like the College of Policing are fuelling the drive to find out “what works.” There are criticisms of these approaches, in particular that they focus on essentialised quantifiable outcomes, mostly crime reduction or recidivism, whilst seeking to quantify intrinsically qualitative notions such as trust. There is also concern that claims that randomisation is sufficient to demonstrate causation may be overstated (Hough 2010; Sampson 2010).

An experiment in this project would be practically impossible and inappropriate to answer the exploratory and explanatory questions being asked. Similarly, a purely quantitative approach would provide incomplete answers at best. Understanding the processes and decisions made by institutional actors requires rich data of a qualitative nature that lends itself to the “thick description” (Geertz 1973) of police processes, the networks that support them and the decision-making processes of the

actors involved. Some quantitative data relating to the use of EAWs is relevant to building a rich account of police practice, but the bulk of the data has been collected and analysed using qualitative methods.

There are various qualitative approaches to data collection and analysis which “differ from each other considerably” (Bryman 2015:377). In his textbook *Social Research Methods* Bryman lists the main qualitative research methods as: ethnography and participant observation, qualitative interviewing, focus groups, discourse or conversation analysis and the collection and qualitative analysis of texts and documents (2015:377–78). All of these methods are distinct and some of them, for example interviews and observation, can be approached in different ways, they could also be employed in the same project in complementary ways.

Some of the most insightful and significant research into police work has been based on observational data. Most notable is the early “ethnographic, sophisticated, nuanced and detailed” (Manning 2013:55) work by Egon Bittner (1967, 1973, 1990) in the USA and Michael Banton (1964) in the UK, which sought to describe and conceptualise the police organisation by reference to what the police were actually doing. These researchers spent weeks on the street and in squad cars watching police officers work, supplementing their observations with qualitative interviews with officers of various ranks. This approach has been replicated by many policing researchers that have followed, including work by Punch (1979), Bayley (2005), Chan (1996, 1997), Loftus (2010, 2012) and Guille (2010a). The work has produced detailed accounts of police work and the processes and decision-making of everyday officers. It has also developed nuanced understandings of changes and continuities in police occupational culture and contributed to understandings of police cooperation in Europe.

In the realm of participant observation Simon Holdaway (1983, 1989) conducted a ground-breaking ethnographic study whilst he was a police officer in the Metropolitan police force in the 1970s (Heslop 2012:525). As an external researcher I was unable to conduct *participant* observation, but some period of observation and

complementary interviews would generate data well suited to answering the research questions posed.

Given that one of the most interesting aspects of the EAW scheme is the number of institutional actors involved and the networks between them, it was clear that observation would not be possible in every agency. So I aimed to focus on short periods of observation with the authorities most active in the system and decided to rely primarily on interview data, supplementing this with short periods of observation.

Focus groups were another option for data collection in this research. They were used in one small study which examined prosecutor's views of the EAW system (Murphy et al. 2014) and to collect data in a comparative study of the implementation of the EAW (Christou et al. 2010). Several of my interviews were conducted in groups which provided some of the benefits of focus groups, avoiding duplication of information and allowing participants to engage with each other's contributions. I did consider running focus groups towards the end of the study to focus on outstanding key questions, but this proved unnecessary.

A final mode of data collection relevant to this project is the analysis of documents and records. The original design anticipated some analysis of texts and documents, including EAWs themselves, case files, training and guidance, the legal frameworks and most importantly the databases that facilitate the transfer of EAWs both around Europe and within the UK.

Having identified some relevant quantitative data and multiple modes of qualitative data collection that I could use to tackle the research questions, I was eager to arrive at a research design flexible enough to incorporate all of these methods. Access to conduct the research was by no means guaranteed and involved a constant process of negotiation with multiple stakeholders. To avoid over reliance on any one organisation or type of data I planned to collect data from multiple sources, using multiple methods.

A case study research design provides a rigorous approach to answering exploratory, descriptive and explanatory questions using multiple methods and sources of data. A similar approach to data collection has been used successfully in several studies of policing, both domestic (Grimshaw and Jefferson 1987) and transnational (Bowling 2010), in studies of police culture (Chan 1997), of suspects rights in police custody (Blackstock et al. 2014), and of the police custody setting (Skinns 2012a). According to Yin “the case study’s unique strength is its ability to deal with a full variety of evidence – documents, artefacts, interviews and observations” (2014:12). Yin defines the case study as “an empirical enquiry that investigates a contemporary phenomenon (‘the case’) in depth and within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident.” (2014:16) Case studies are particularly appropriate when seeking to answer how and why questions about contemporary events over which the researcher has little or no control (Yin 2014:14).

The exploratory and descriptive questions that this project addresses are in essence how and why questions. They can be boiled down in very simple terms to *how* do the UK police utilise and support the EAW system? *How* do they cooperate and communicate with each other and outside agencies? *Why* will they choose a particular course of action or form of cooperation over another? The questions are not about what should happen, or what might happen under certain conditions, but what is actually happening. There is no need in these circumstances to assert any control over events, only to examine existing practice.

The phenomenon or “the case” that this research is focused on is police practice and cooperation within the EAW system. On the face of it this seemed like a well-defined case, but initial investigations quickly revealed that the boundaries between case and context are difficult to define, especially outside of the UK. Firstly, there are so many agencies involved in the EAW who employ both police and civilian staff, all of whom are making decisions and cooperating with one another. I soon realised that very in-depth research would be needed to understand and disentangle their

interdependent decision-making roles. Secondly, as the legal boundaries between police, judges and prosecutors are organised very differently across Europe it seemed likely that my focus on the police would need to broaden to include other agencies engaged in policing when the research moved outside of the UK. I was keen to arrive at a case study design flexible enough to incorporate this potential broadening of “the case”, allowing me to research case and context simultaneously and to develop my units of analysis as I progressed.

3.4 Ontology and epistemology

Another advantage of using a case study design is its ability to incorporate various epistemological and ontological positions (Yin 2014:17). I initially tried to avoid delimiting my ontological position and wanted to remain agnostic as to the nature of the social realities I was studying. This was particularly because of the inclusion of quantitative data in the project which I felt lent towards a positivist epistemology, alongside qualitative data which is better understood within an interpretivist framework. Taking a step back helped to resolve the conflict.

In the context of this research the ontological question relates to the nature of the social world being studied. Bryman (2015:28) pinpoints the key “question of whether social entities can and should be considered objective entities that have a reality external to social actors, or whether they can and should be considered social constructions built up from the perceptions and actions of social actors”?

The first proposition can be broadly understood as objectivism which focuses on the formal aspects of social organisation, suggesting that formal laws, rules, regulations, processes and so on are learnt, transmitted between, and applied by social actors giving the social entity or organisation independent existence and effectively guiding or restraining individual action (Bryman 2015:29). The second proposition captures constructionism as an ontological position which challenges the conception of social entities as external facts, and instead suggests that “social phenomena are produced through social interaction” (Bryman 2015:29) on a continuous basis. It understands

social order as being constantly negotiated, renewed, challenged or reproduced by the individuals that constitute it (Becker 1982; e.g. Strauss et al. 1973). This position does not ignore the role of formal rules, but it recognises that their effect is mediated by other social factors.

This research focuses on criminal justice agencies and the interaction between them, particularly concerned with the processes, systems, rules and regulations that affect the operation of the EAW. Whilst it is possible to view these as having some external existence, measurable in a positivistic way, there are individuals that take actions within these frameworks and the research questions are aimed at understanding how and why they choose to employ particular tools or utilise particular methods of cooperation. Understanding how individual actors conceive of their roles, actions and decision-making and the way in which these are constrained by law, is best approached from a constructivist perspective.

Once a constructivist ontology is settled upon understanding quantitative data within an interpretivist epistemology becomes possible. If, as constructivism holds, all social entities are constituted by the actions of the individuals and groups involved in their operation and perpetuation, then the production of statistics and in fact the creation of, and adherence to rules, simply becomes part of that process.

Epistemology is concerned not so much with the nature of social entities but with the question of what we can know about them (Bryman 2015:24). A positivist epistemology sees social entities as objectively real and measurable whereas an interpretivist epistemology sees them as constantly under revision and only really finding existence in the perception of social actors involved in constructing them. Within an interpretivist framework quantitative data is simply an interpretation of social interactions by the people who produce the statistics. From this perspective it is important to understand that what is being studied is not an objective and singular social reality but individuals' accounts of their social world.

An interpretivist epistemology is consistent with a constructivist ontological foundation and has important consequences for the design of the research and the role of the researcher. First, it entails a focus on what interviewees *say* they are doing, what they *say* about what others are doing, and what they *say* about why they are doing it. It involves acknowledging that this is about interviewees' *interpretation* of their social reality and their part in constructing it. Second, it entails a focus on observing what police *appear* to be doing and why they *appear* to be doing it. It involves a focus on *accounts* rather than *events* (Bryman 2015:26). It also involves acknowledging the critical role the researcher plays in constructing the social reality where the research is taking place, as well as their role in interpreting social action when generating data and when analysing the data itself. This process is continuous throughout the research as well as during analysis, drawing conclusions and writing up.

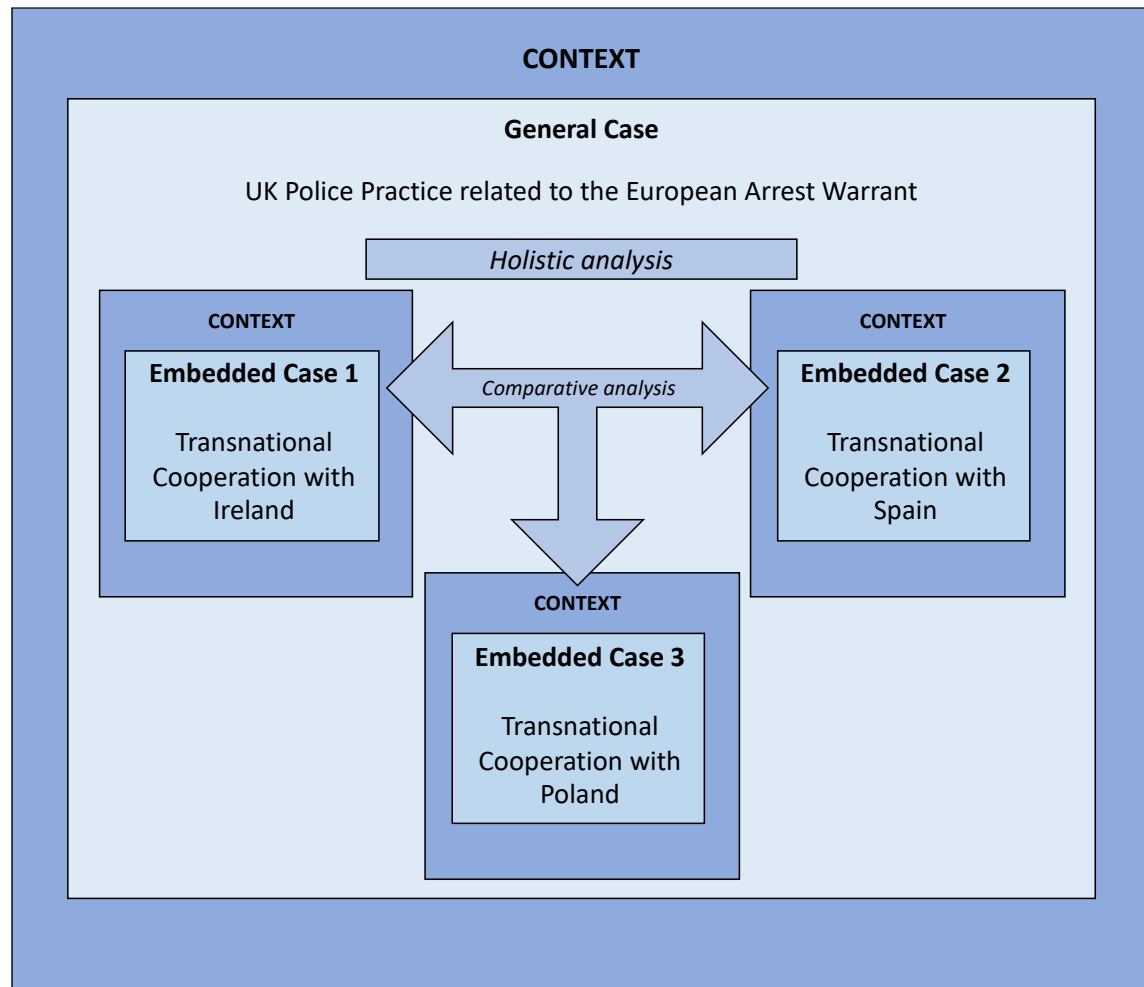
3.5 Designing the case study

Notwithstanding the need for flexibility over the course of the project, the most important step in designing a case study is defining the boundaries between case and context. My decision to base my research in the UK conflicted with my desire to explore some of the differences in EAW use across the EU and to examine cross-border police cooperation in detail. I wanted to include scope for meaningful comparison of cross-border relationships.

Case studies can be single or multiple. They can have just one unit of analysis or several embedded units (Yin 2014:50). Single case studies focus on one occurrence of a social phenomenon, one nation, one institution or one person. Multiple case studies examine more than one of these units and conduct comparative analysis. My research design marries the two. Focused primarily on *UK police practice relating to the EAW* as the general case. Embedded within that case the *transnational cooperative relationships between the UK police and police in Ireland, Spain and Poland*. The project is best described as a single case study with multiple embedded

units; this is illustrated in Figure 3.1. The decision to focus on these specific relationships is explained in section 3.6.

Figure 3.1: Case study design: An Empirical Study of a Transnational Policing Tool



What constitutes case and context in the general case is not mirrored in the embedded cases. In exploring and describing the general case of *UK police practice relating to the EAW* I focused on police actions, methods and processes. This included police decision-making processes and the cooperation between police and criminal justice agencies within the UK. In exploring the context I examined the European and domestic legal framework, the domestic and European institutional architecture, the legal institutional arrangements relating to police independence and powers, the role of other domestic criminal justice agencies in the EAW, the role of political institutions and some relevant migration trends.

The embedded cases focus on the *transnational cooperative relationships* between the UK and Ireland, Spain and Poland. I was able to secure sufficient access to explore police officers' views of cooperation on both sides of the relationship, but the focus for comparison of the relationships is the UK perspective. The exploration of the embedded cases focused on the volume of EAW traffic, the quality of relations, the institutional arrangements for cooperation between the UK and each state, and the channels for cooperation utilised in each relationship. The context of the embedded cases includes the domestic legal frameworks, the institutional architecture in each state, the legal institutional culture that governs the role of the police, the police organisational structure, police practice in the EAW system, the competencies of other criminal justice agencies in the EAW, patterns of migration to and from the UK and the geographical location where that is relevant.

My units of analysis map fairly well onto my cases. For the general case of UK police practice my analysis encompasses national *police practice* in its totality. For the embedded cases of transnational cooperative relations my units of analysis are the *relationships* between the UK police organisations and those in Poland, Spain and Ireland. My analysis aims to be alive to the constructivist ontological position that individual actors constitute the organisations involved, and that the relations between those organisations constitute both the national practices and the transnational relationships being examined.

3.6 Sampling and access

It is common in case study research to have multiple levels of sampling and to use different approaches at different levels (Bryman 2015:408). This project involved sampling research subjects at four different levels. First, I needed to select which transnational cooperative relationships I would investigate for the embedded cases. Second, I needed to select which organisations to target both within the UK and in the three jurisdictions chosen for the embedded cases. Third, I would need to select interviewees from within those organisations. Fourth, I would need an approach to sampling documents, texts and databases for analysis.

Just as there are options relating to data collection methods, there are multiple approaches to sampling. Sampling methods have implications for the generalisability or the external validity of the case study. This is particularly important when trying to explain variations and similarities in the embedded cases of transnational cooperative relationships. “Comparative work is both about discovering surprising difference and unexpected similarities” (Nelken 2010:32) and seeking explanations for these observations. Generalisable conclusions can tell us something about the relationships between other EU member states in the EAW and about transnational police cooperation more generally.

Random or probability sampling, most commonly associated with quantitative research, carries with it the greatest chance of generalisability. In theory, choosing the sample at random from a large eligible population will provide a representative sample. Randomisation potentially increases internal validity because it acts as a substitute for controlling for confounding variables. Here randomisation is inappropriate for two reasons; firstly, the benefits of randomisation depend on a population size much larger than the 27 possible jurisdictions available; secondly, there is insufficient EAW traffic between the UK and some member states to guarantee enough data for analysis. Random or probability sampling would also theoretically be possible when selecting interviewees. But this was impractical because the targeted organisations are large and involvement in the EAW is limited to small numbers of personnel. In practice I had no control over who was made available for interview.

I utilised a range of purposive sampling methods which are “conducted with reference to the research questions, so that units of analysis are selected in terms of criteria that will allow the research questions to be answered” (Bryman 2015:410). A number of distinct and sometimes complementary purposive sampling methods are available. These include theoretical sampling which is linked to the development of grounded theory and is an iterative process (Bryman 2015:411), and snowball sampling which involves using existing participants to recommend and recruit new

ones (Bryman 2015:415). Also included are extreme case sampling of units at the extreme ends of a scale, typical case sampling of units chosen as they exemplify a particular dimension of interest, and critical case sampling of units that allow a theory to be tested. This project employed a combination of these purposive methods for theoretical and practical reasons.

The first level of sampling for embedded cases of transnational cooperative relationships employs a combination of extreme and critical case sampling (see figure 3.2). My starting point was to identify EU member states with sufficient EAW traffic to and from the UK. I focused on the statistics for completed surrenders between 2011 and 2015. These figures represented recently completed processes, from investigation to issuing an EAW, through the court process, and all the way to the surrender of a prisoner across a border. Identifying the top ten countries for incoming and outgoing surrenders over that period left me with a list of five countries, Germany, Ireland, Poland, Romania and Spain, which appeared in both lists. I added the Netherlands since they appeared in the top ten for outgoing warrants and were eleventh for incoming ones.

After identifying the provisional list of six through extreme case sampling, I investigated several aspects of the legal and operational arrangements in each country which I hypothesised may have some explanatory and comparative value. Following the logic of critical case sampling I chose three jurisdictions that cover the range of arrangements for the purposes of comparison. Figure 3.2 provides the provisional list and details of the factors taken into account when choosing the final three jurisdictions. It became clear during the fieldwork that not all of the information in the table is accurate. Chapter 4 explores the actual institutional arrangements in each jurisdiction in detail.

Figure 3.2 - Sampling of embedded cases

Country	Legal tradition	SIS II Member	Centralised / Localised EAW Authority according to EJN	Ongoing joint operation with NCA	Land border shared with UK	Charging basis legality / proportionality	Percentage of part 3 surrenders into UK 2011 - 2015	Ranking incoming surrenders 2011 - 2015	Percentage of part 1 surrenders out of UK 2011 - 2015	Ranking outgoing surrenders 2011 - 2015
UK (General Case)	Common law	Yes	Centralised - NCA SIS II Bureau	N/A	N/A	Proportionality	N/A	N/A	N/A	N/A
Germany	Civil law	Yes	Localised	No	No	Proportionality	4%	6	2%	8
Ireland	Common law	No	Centralised non SIS II	No	Yes	Proportionality	16%	2	3%	6
Poland	Civil law	Yes	Localised	No	No	Legality	5%	5	58%	1
Romania	Civil law	Yes	Localised	No	No	Legality	3%	7	5%	3
Spain	Civil law	Yes	Centralised SIS II Bureau	Yes	No	Proportionality	27%	1	1%	10
the Netherlands	Civil law	Yes	Centralised Prosecutors	Yes	No	Proportionality	15%	3	1%	11

Ireland is unique in several ways, it is the only country to share a land border with the UK, it is one of the few common law jurisdictions in the EU and has long term policing relationships that pre-date the EAW. Ireland is also the only country in the list of possible candidates that is yet to join SIS II. Warrants must be transmitted to Ireland either via Interpol or directly to the Department of Justice and Equality. In terms of EAW traffic with the UK between 2011 and 2015, Ireland ranked second only to Spain for Part 3 surrenders into the UK and sixth for Part 1 surrenders out of the UK, suggesting significant cooperation between the two countries.

Poland was responsible for the majority of EAW traffic overall, both with the UK and across the whole EU between 2011 and 2015. It accounts for 58% of all Part 1 surrenders out of the UK during this time and is ranked fifth for Part 3 incoming surrenders. In provisional discussions with stakeholders and during pilot interviews every single UK practitioner mentioned Poland. It was immediately clear that the project would be seriously lacking if it were to ignore the cooperative relationship between Poland and the UK. Poland also offers an opportunity to examine a civil law jurisdiction that according to the EJM operates a decentralised system for EAW cooperation.

Spain is ranked number one for Part 3 surrenders into the UK and tenth for Part 1 surrenders out of the UK. Over the last five years 27% of prisoners surrendered to the UK have been surrendered by Spain. Spain, like Poland, is a civil law jurisdiction but according to the EJM it operates a centralised system of EAW transmission and cooperation via SIS II. There is a long-term joint operation run by the NCA (National Crime Agency) and the Spanish National Police (hereafter *Policía Nacional*), which aims to return British criminals who abscond to the so called 'costa-del-crime'. There are similar operations run by the NCA in the Netherlands and Cyprus. Including Spain in the study provided an opportunity to examine the best known and most successful of the three operations.

The second level of sampling involves choosing which organisations to target for observations and interviews with personnel. This level of sampling began by securing

the support of key organisations, primarily the SIRENE Bureau at the NCA which is at the centre of the process in the UK. From here I tried to identify other key organisations such as the Metropolitan Police Service (MPS) Extradition team, a sample of national police forces and the Crown Prosecution Service extradition team, who would be crucial to understanding the general case and its wider context. This process combined crucial case and snowball sampling (Bryman 2015:415).

Taking a snowballing approach is practical. Building relationships with gatekeepers in key organisations, who put you in contact with gatekeepers in other organisations is an effective way of developing trust and securing access. It is also a practical approach to finding the right people in large and often difficult to penetrate criminal justice agencies. After securing support from the UK SIRENE Bureau I was able to request contacts in organisations I expected to be crucial to understanding the case and was then able to make contact with others suggested by participants throughout the project. I also made contact with agencies in the jurisdictions relevant to my embedded cases in this way, although access was hard to negotiate in some cases and I had fewer contacts who I could call upon for help. I had to be persistent in pursuing contact with multiple agencies until I found someone who was interested in the project and willing to help. I attempted to interview people in all of the organisations I made contact with. I only sought to conduct observations in a handful of UK organisations where the EAW forms the bulk of their day-to-day work.

The third level of sampling, choosing people within organisations to interview, relied entirely on the access that organisations granted and on individuals being willing to speak to me. As I was reliant on existing participants to help me to recruit new ones, I had to remain open to the opportunities that presented themselves. I attempted to interview officers at different levels and in different roles, but I also spoke with many officers in similar roles across jurisdictions and UK police forces.

The final level of sampling - choosing texts, documents and databases to analyse - ultimately relied on participant's willingness to share suggestions, materials and access to databases with me. I managed to negotiate access to conduct a wide range

of interviews and a small number of observations in key areas. This resulted in much less reliance on document and database analysis than I envisaged.

The varied sampling methods reflect the complex nature of this project and case study research in general. Investigating all aspects of the case, including the complex networks of agencies cooperating across several jurisdictions, to build a 'thick description' (Geertz 1973) of the processes and networks involved necessitated casting a wide net.

The process of negotiating access was ongoing and time consuming. My initial priority was to make contact with the NCA, early research pointed to them as the central authority for EAWs in the UK. I had no knowledge of the recently established SIRENE Bureau at that time and I had very few contacts in the police. The NCA is a large and secretive organisation and critics of the project proposal doubted that I would gain access for interviews or any formal support from them.

I was extremely fortuitous at the outset of the project; only through a personal contact and the kindness of strangers was I able to contact the SIRENE Bureau with my project proposal. My initial contact in the SIRENE Bureau agreed to discuss the project and was able to secure the support of the UK head of INTERPOL. I made a trip to the UKICB (UK International Crime Bureau) in the North of England in December 2015 to discuss the project in detail. I was able to meet managers in the relevant casework teams who actively supported the project.

The NCA helped me contact various local police forces, the CPS and the Scottish prosecution authorities. We jointly pursued contacts in multiple agencies and I was security vetted by the NCA. The successful outcome of the vetting process helped me to secure access to a range of organisations across the UK and in all three of my target European jurisdiction.

In terms of UK police forces I initially sought access to one force from each of the twelve regions in the UK (see figure 3.3). I focused on the force with the highest

number of EAWs in each region to ensure there would be sufficient data for analysis. Each UK police force has a designated EAW SPOC (single point of contract) and my interview requests were made via this route with support from the NCA. In some cases requests were immediately granted with full support of senior officers, in other cases, such as with the MPS Extradition Team, negotiating access involved in depth discussions and independent agreement with their own research teams. In a small number of cases my request got no response or was refused. In the end I was able to conduct some level of research in ten UK police forces, covering nine of the twelve regions. The forces and regions interviewed were Police Scotland (Scotland), the Police Service of Northern Ireland (Northern Ireland), the Metropolitan Police (London), Lancashire Constabulary (North West), West Yorkshire Police (Yorkshire and the Humber), Avon & Somerset Constabulary (South West), Lincolnshire Police (East Midlands), Kent Police (South East), Sussex Police (South East) and Northumbria Police (North East).

Figure 3.3 – UK Regional Police Force Sampling



Many of my interviewees were instrumental in helping me make contact with European jurisdictions and EU institutions. Much of this contact was personal, with people I had interviewed putting me directly in contact with individuals they worked with on a regular basis and those individuals helping me to find the appropriate route to request official access. I did use some existing contacts to help move research requests forward particularly with agencies that had an official process for research requests. This was true of both MPS and *An Garda Síochána* in Ireland where the College of Policing facilitated contact and helped contact agencies in other EU jurisdictions that I was struggling to reach. I was fully responsible for negotiating access and arranging interviews or observations and most communication was by email, although I did have several telephone conversations and a few face-to-face meetings. By the end of the field work I had sent and received well over a thousand emails. Managing this process whilst conducting fieldwork was very time consuming and affected my initially ambitious data analysis strategy as I explain below.

3.7 Data collection

The initial research design envisaged three stages of data collection involving interviews, observation and document analysis. The staged approach, gathering data from multiple data points, using multiple methods, was both rigorous and flexible. It involved strict adherence to data collection, processing and storage protocols. Effective planning and testing of data collection methods aims to ensure the quality and reliability of data and the study more generally (Yin 2014:71). The idea was to collect data of different types from multiple sources to facilitate triangulation during analysis and when drawing conclusions. It avoided reliance solely on one source or type of data so any insurmountable problems with access would not automatically derail the project.

The first phase of research focused on archival research and statistical analysis and included some informal discussions with key stakeholders. As mentioned in the previous chapter there is an absence of reliable and complete statistics at a European level (Carrera et al. 2013:36; The European Commission 2011:10) so the

numerical data presented throughout this research is drawn from yearly statistics published by the NCA (National Crime Agency 2018).

During the first phase I developed a broad understanding of the academic literature and developed a theoretical framework. I attempted to build an understanding of the legal and institutional structures that provide the context for police practice in the EAW system in the UK. This research contributed to the selection of embedded cases and was the first step in securing access to conduct the fieldwork. In retrospect the picture I built up of the system at this stage was far from complete and my understanding has developed significantly throughout the data collection and analysis process. This is especially so in relation to the institutional context in Spain, Poland and Ireland where my initial background knowledge was limited.

The second phase aimed to investigate the role of the NCA, local police forces in the UK, and the transnational cooperation between those agencies and police forces in Spain, Ireland and Poland. The third phase aimed to examine individual EAW cases and to track them from issue through to execution and surrender. It was envisaged that both phases would rely primarily on interviews with police officers and other criminal justice practitioners directly involved in processing incoming and outgoing EAWs. I also hoped to secure interviews with liaison officers involved in supporting the process and aimed to supplement the interviews with periods of observation and document analysis.

The staged approach was designed to allow for continuous analysis of data, the honing of broad research questions and the development of interview and observation protocols. The idea was that the project would develop progressively, moving from a very broad focus to a narrow one, beginning with the descriptive *where, who, when* and *what* questions and moving towards the explanatory *how* and *why* questions. As with many of the best laid plans this staged approach did not play out as expected and was a little ambitious.

Conducting the fieldwork was far less linear than anticipated. Access came in fits and starts and not necessarily in the most logical order. Some of the most important organisations in the system were the last to officially participate despite their ongoing support from the early stages. Observations were hard to negotiate and arrange so I conducted fewer than planned, but this was more than made up for by the type of activity I was able to observe and the wide range of interviewees I was able to speak with.

Fairly early on in the project it became clear that the sheer number of actors involved in an individual case would make following single EAWs in a comprehensive way very difficult. So the planned final phase was abandoned in favour of building a comprehensive account of the system as a whole and speaking with as many key stakeholders as possible about their involvement.

In total, between March 2016 and June 2017 I conducted 63 formal interviews, with 92 participants in 38 organisations. This included pilot interviews in one local police force in March 2016, which allowed me to test the interview protocol and recording equipment and to develop an analysis strategy. Participants included both national and local police as well as officers from the SIRENE or Interpol bureaux in all four jurisdictions in the study. It also included prosecutors, European agencies, commercial airlines, two judges and some government departments relevant to the context of police practice in the EAW system. I hoped to recruit interview participants of various ranks, in various roles, to build the most complete picture possible of the processes and decisions that are made when police utilise EAWs. Although I was able to speak with a very broad range of actors, in the main interviewees were criminal justice practitioners directly involved in the day-to-day operation of the EAW, rather than those at a policy level. I was unable to secure interviews with liaison officers themselves but I did have the opportunity to discuss their role in the system with many other officers.

I conducted interviews in a semi-structured fashion; loosely following an interview schedule to ensure I asked all the relevant questions but giving interviewees room to

speak freely and sometimes lead the discussion elsewhere. As Bryman says “the formulation of research question(s) should not be so specific that alternative avenues of enquiry that might arise during the collection of fieldwork data are closed off” (2015:470). For this reason and because the unique role of each participant meant that not all questions were relevant to each of them, rigidly structured interviews were not appropriate. Completely unstructured interviews also seemed undesirable, leaving too much room to stray away from the research topics and risking me forgetting to ask about key issues. A semi-structured approach to interviewing police and criminal justice practitioners has been used successfully in several studies of transnational policing (e.g. Bigo 2000; Bowling 2010; Swallow 1998). Indeed in his pioneering study of Interpol, Anderson conducted informal interviews and “no attempt was made to standardise interview techniques”(Anderson 1989:9). In all interviews I attempted to strike a relaxed and conversational tone and to avoid asking leading questions, roughly following the schedule, giving space for the interviewee to respond as they wished and following up on points raised by participants.

I developed six interview schedules tailored to the role and jurisdiction of the interviewee (see annexe 3 for UK examples). I had envisaged the protocols developing and becoming more specific towards the end of the fieldwork, but the semi-structured interviews worked well inspiring a wide-ranging discussion. The protocols remained unchanged after the pilot study, where I identified and eliminated areas of repetition and overlap. Some interviewees requested the questions in advance and providing a protocol was sometimes a condition for access. I used the same questions, adapted only with the name of each jurisdiction, when interviewing police and criminal justice practitioners in the embedded cases, aiming to collect comparable data.

When participants consented, the interviews were recorded and later transcribed. 46 of the 63 interviews were recorded. Consent for recording was most forthcoming when access had been negotiated through official channels and a specific data collection agreement had been finalised with the organisation. In most other cases

assurances of anonymity and an explanation that I was not asking individuals to speak for their organisation were sufficient for participants to consent to recording. Consent was least forthcoming in Spain and Poland where most interviewees declined to be recorded and sometimes refused to sign consent forms despite clearly agreeing to participate in the study. Where interviewees did not consent to being recorded, I made bullet point notes during the interview and attempted to write a full account as soon after the interview as possible. Participants were anonymised during the transcription process. They are identified by their role (e.g. police officer or prosecutor) and their organisation or jurisdiction in the research findings.

The bulk of the interviews were transcribed between March and September 2017 and coding for analysis did not begin until a year later when I returned from maternity leave. Interviews were transcribed by an agency who split tapes into chunks between typists to maintain anonymity. The transcriptions were not high-quality and many of the interviewees had strong accents making transcription difficult. I listened to all the interviews and corrected the transcripts when they were returned to me which, although time consuming, provided an excellent opportunity to absorb the data and start thinking through the analysis.

It was not my intention to spend long periods of time observing policing actors, but I had hoped to spend time with one or two local forces as well as the NCA. In the end I was able to spend a day with one local police force following enquiries into EAWs and I spent several days at the SIRENE Bureau within the NCA talking through and observing their processes in detail. I was also able to observe three surrenders of prisoners from the UK to other EU countries. These observations are really the only place in the research where EAW subjects clearly come into view. The focus of the project is clearly on the police processes and transnational police cooperation that underpins the EAW system and it is easy when focusing on these relationships to forget that these processes ultimately bring state power to bear on individuals. My observations of surrender are discussed in detail in chapter 7.

Observations were unstructured, leaving scope to develop an in-depth narrative account of the processes and procedures involved, unconstrained by checklists and coding schemes. I recorded bullet point fieldnotes throughout the day and made comprehensive notes in the evenings. I was able to talk with the officers accompanying me throughout the observations and ask questions about what was happening. In the terms that Bryman discusses, in this kind of observation work I was a “non-participating observer with interaction” (2015:437).

During observations, interviews and informal field visits I came into contact with the documents relevant to my analysis. These included EAWs and SIRENE forms, guidance to police officers and civilian staff, fugitive profiles, formal requests in the SIS II system, PNC alerts and communications between agencies. In some cases, I was able to take copies of these documents or officers emailed them to me later and in other cases I included descriptions of them in my fieldnotes. I collected over 100 documents and have drawn on these where they are relevant to my analysis.

During interviews and observations I was focused on gathering participant’s perceptions, accounts and understandings of their role or the roles of others. My analysis focuses on the data collected in line with the constructivist ontological position of the project, and I recognise that my act of analysing is an interpretation of my participant’s account of the social phenomena being examined. My goal in data collection, analysis and writing up the thesis has been to build a “thick description” (Geertz 1973) of police processes and cross-border relationships with their counterparts. This means developing a rich account of police practice and decision-making, reporting the accounts of my interviewees alongside thick analysis that places their views in context and interprets their meaning (Ponterotto 2006).

3.8 Ethics and data storage

This research was conducted in accordance with the 2015 British Society of Criminology Code of Ethics. It received approval from the Ethics Committee at King's College London and data collection was approved up to and including 22 January 2018.¹⁶

The study did not include vulnerable participants, interviewees were criminal justice practitioners speaking in their professional capacity. The subject matter is uncontroversial, uncovering illegal activity was highly unlikely and I did not engage in deception of any kind. As a researcher my first ethical concern is to do no harm to participants, but the nature of this research and the type of participants made the risk of harm very small. The research was assessed as low risk making my primary ethical concerns obtaining participants informed consent and ensuring their anonymity. I also had some concerns about bias and reflexivity from the outset of the project.

The British Society of Criminology Code of Ethics 2015 details the requirements of informed consent at paragraphs 4.6, 4.7 and 4.8. To the extent that these provisions apply, this project needed to ensure that consent was voluntary, un-coerced and fully informed. Interviewees needed to understand the implications of participation and the agreement regarding anonymity and they must be allowed to reject the use of a recording device.

When I interviewed participants I always explained the purposes of the interview in full. I drew participant's attention to the aims of the project, my goals for dissemination and my sources of funding. I also explained the arrangements for confidentiality and data storage. All participants were provided with an information sheet giving full details of the project and they were asked to sign a consent form (see Annexe 4). They were asked specifically to consent to the use of recording

¹⁶ Reference number LRS-15/16-2152. Extension approval reference LRMR-16/17-2152

equipment and if they refused then I did not record the interview but made notes instead. Around 30% of participants did not wish to be recorded so these interviews were documented manually. Participants had an opportunity to withdraw from the research; the procedure and the time period were detailed clearly in the information sheet.

In some cases it was very difficult to ask participants to sign consent forms, particularly when I was interviewing non-English speakers in other jurisdictions or in EU institutions. Where the interviewees agreed to be recorded, I asked them to indicate their consent verbally. There were some cases where interviewees did not consent to recording and did not sign a consent form either. Two of these interviews have been completely excluded from the data analysis and the others have been included in the general analysis but have not been quoted directly. Details of this can be found in annexe 1.

All participants are anonymised in the data. Most participants were fairly relaxed about being identified but to protect confidentiality for all participants none are named. All participants are identified by their role and organisation or jurisdiction only. Details are in the table in annexe 1.

When writing up the findings of the research identifying organisations is necessary to give the results real meaning. Some organisations, like the SIRENE Bureau at the NCA, are in unique positions and the research would be meaningless if their role was indistinguishable from other police agencies. Local police forces in different parts of the country have different experiences with the EAW and their geographic location plays a significant role in this. The research subject is fairly uncontroversial and there is no risk of reputational damage or controversy linked to identifying which forces took part. These considerations led to the conclusion that naming organisations but not individuals is sufficient to safeguard anonymity and protect participants.

When conducting observations issues of consent and anonymity were slightly different. Consent to conduct observations was obtained from gatekeepers rather

than from individuals. I have not identified any individuals in my fieldnotes and only recorded the team or organisation where the observations took place.

During the research all data has been stored safely and securely in accordance with the Data Protection Act 1998 and the Data Protection Act 2018. The identity of participants was concealed during transcription and recordings are stored separately. All data is stored on encrypted hard drives and no personal information has been shared by email. The only other person with access to any data during the project was my supervisor and this was only once the data had been anonymised.

A final ethical concern relates to bias and reflexivity, there are two aspects to this. First, my participants might have been influenced by my aims in the project. My lines of questioning may have suggested certain responses from participants and that they may have focused on those issues in answering questions. One thing that Bryman (2015:473) warns against is the leading of interviewees and the influence of the interviewer's own bias and expectations. When I listened back to the pilot interviews, I became aware of my tendency to participate in the conversation in a way that confirmed what interviewees were saying or led them in a particular direction. I sometimes asked questions that were very descriptive. The validity of the results of this study depend on me being as neutral as possible. Clearly complete neutrality is impossible, but I was acutely aware that leading questions might bias the results in favour of my preconceptions. I tried therefore to ask as few leading questions as possible and to remain aware of my tendency to talk too much. This is clearly a skill that researchers need to learn, and it is not an issue that I completely eliminated even though I had been made aware of it early on. I have found conducting interviews in a relaxed but sufficiently detached way is a skill that takes considerable practice and one that I am yet to fully master.

Secondly, I myself may be biased in the research flowing from my own tendency to be sympathetic to the concerns of the social group I am closest to at any given time. I was often aware of associating closely with my interviewees and became invested in understanding the system from their point of view. On the one hand this is especially

useful in social research, since it helps me understand my participants, to reflect their concerns and to gain their trust. On the other hand, it has the potential to bias this research in favour of the police. This is perhaps made less likely because my questions are so descriptive, because I have explicitly excluded viewing this process from outside of the criminal justice system, and because I have interviewed a range of actors from within the system about the role of the police, thus providing a range of views on my subject from groups with differing perspectives. Despite the research not directly focusing on them, subjects are always in the background of the process. It has been important to remind myself of this throughout the data collection and analysis.

The subject of sympathising with one's research participants has been written about by Becker (1966) and more recently by Liebling (2001) in articles titled *Whose side are we on?* Becker's concern is largely to argue that it is not possible to remain neutral in the field and that in criminal justice research the loudest and most credible voices tend to be those of the empowered and enfranchised officials. He therefore argues that taking the side of one's deviant research participants is both brave and valuable since it provides a counter narrative to the dominant voice of officials. Writing later about the more complex research environment of the prison, Liebling acknowledges the competing pull of prisoner and official narratives. She agrees that sympathy is unavoidable but disagrees that a researcher must necessarily take one side or another. She acknowledges that "there is a link between openness, warmth, devotion to the task, the capacity to be sympathetic, and the depth at which the research process operates" (Liebling 2001:475). Suggesting that empathy during data collection may be advantageous to the development of deep understanding. It is during the data analysis that "a little more distance" is required (Liebling 2001:475).

Ahead of conducting the research I felt that the best way to guard against these concerns was to remain aware of the potential risks and to be self-critical throughout the research process. I wanted to build space for reflection and data analysis during the fieldwork period and give myself dedicated time just to analyse data after I have

left the field. Hoping this would give me an opportunity to view the data from a neutral standpoint, free from the influence of the fieldwork environment.

My experience of bias in the field was in some ways as expected and in other ways surprising. I did find myself empathising with my research subjects and relating to their point of view in the moment, but this was mitigated by interviewing such a range of actors from multiple jurisdictions, many of whom had competing concerns and perspectives. On listening back to the recordings of interviews there were cases where I asked quite descriptive questions and in some cases it was clear that participants attempted to give me the types of answers I was looking for, but there were at least an equal number of occasions where interviewees disagreed with my perspective or added to my understanding and clarified it in unexpected ways.

I was also confronted with an unexpected personal reaction to some of the subjects being surrendered during my observations where I took an almost instant dislike to them and felt very unsympathetic about their situation. This was by no means the case for all the subjects I encountered, and my feelings tended to soften as the attitude of the subject changed, particularly as they came into contact with police officers from their own countries. But this personal reaction was unsettling for me, it impacted my experience in the field and I did feel concerned about bias in these situations.

In all cases I found the potentially biasing aspects of my research came more clearly into view as I gained distance from the field. As good fortune would have it, I took a year of maternity leave between processing my data and beginning the analysis in earnest. This significant gap between data collection and analysis certainly created the distance that Liebling (2001:475) suggests is necessary to compensate for natural biases and during analysis I was able to view the data more objectively.

3.9 Data analysis

The overall aims of the project were to build a holistic account of UK police practice within the EAW scheme focused on ‘thick description’ and to compare relationships between the UK and Ireland, Spain and Poland. At the outset I was focused on exploring the general questions detailed at the start of this chapter, but I was committed to being led by the data in respect of more discrete issues which came up in interviews.

The initial strategy for data analysis was to process the data and to code it in Nvivo throughout the data collection period, developing theoretical explanations for what I was observing and testing them in subsequent interviews. In the event I was not able to realise these intentions. The demands of organising access and interviews with so many participants and travelling to conduct fieldwork meant that the bulk of the data was not processed until after the data collection was complete. Coding did not commence in earnest until I returned from maternity leave a year later.

The data from the pilot study was transcribed and coded in 2016. This was done using Nvivo taking a bottom up approach, drawing out themes from the data rather than trying to impose any preconceived ideas about what I might find. This helped me to develop the interview protocols which were used for the remainder of the interviews.

I did conduct some analysis between field visits, typing up notes, storing and anonymising tape recordings and thinking about the themes that were materialising in interviews. I had regular supervision meetings where I reported on field visits, discussed the themes I was observing and theorised about how these might fit into the existing literature. These discussions eventually contributed to the detailed analysis.

I embarked on a long period of processing the data between March and September 2017, where I listened to all of the tapes and corrected the transcripts that had been

produced. I read my fieldnotes alongside these interviews and continued the process of reporting to my supervisor and discussing my perceptions of the data in detail.

Coding of the data in Nvivo began over a year after leaving the field, giving me a new perspective and some distance between myself and the subject. The process of coding the data, honing the coding frame and creating the institutional maps and process flow charts used throughout the remainder of this thesis, took 10 months from October 2018.

I coded the data systematically, beginning with a bottom up analysis from a selection of key interviews. The pilot study interviews are included in the data analysis and were re-coded in line with the finalised coding frame (annexe 5). The bottom up coding involved coding data into themes based on themes in the transcripts and those identified at the outset of the study. I also created codes for specific areas of the process so I could locate information when building a narrative account of what police and other criminal justice actors do.

Each interviewee was allocated a series of relevant attributes, including their jurisdiction, their institution and their role (e.g. Police, Prosecutor, SIRENE officer). Details can be seen in the table in annexe 1. These attributes were then used to structure outputs for comparison.

After coding the first batch of interviews I reviewed the coding frame, combining duplicated codes and rationalising the themes, drawing related issues together under broad headings. I tested this coding frame on a small batch of UK interviews. Having made a small number of adjustments I settled on a final coding frame (see annexe 5) and paused to review the data I had coded so far. This allowed me to develop more specific questions that built on the general questions posed at the outset and gave me time to define some of the key concepts detailed in the introduction and literature review.

As well as the general questions: How do the UK police utilise and support the EAW system? How do they cooperate and communicate with each other and outside agencies? Why will they choose a particular course of action or form of cooperation over another? I focused the remaining data analysis on the specific questions that follow:

- What is the police role in the EAW system?
- What processes do police follow when issuing, receiving, and executing EAWs?
- What role do police play in the surrender process?
- What methods of cross-border communication and cooperation do police use and why?
- When are formal routes or informal routes for cooperation used and why?
- How can the differences in cooperative relationships between states be explained?
- What is the role of police discretion in issuing and executing EAWs?
- How does risk management shape police practice?
- Does mutual trust between police officers differ from mutual trust between political actors at state level?
- To what extent is the EAW a transnational policing tool, and what are the implications of this?

I completed coding the UK data and then proceeded to code the recorded interviews from Ireland, Spain and Poland. There are a handful of interviews and notes that I did not code in detail but reviewed in line with creating a holistic account of processes and relationships, whilst keeping the detailed questions and hypotheses in mind. These are mostly interviews that were recorded in note form rather than transcribed. I excluded a handful of interviews from the coding process with actors who are not directly involved in the process, such as Europol employees and an independent interpreter. I interviewed several airline security staff and I only coded the most detailed of these interviews.

During the final phase of coding I developed the institutional maps and process flow charts that appear throughout the rest of this thesis. I also reviewed all of the observational fieldnotes and the documents that I had collected. The output from the observational fieldnotes and the document data informs the detailed account that follows.

3.10 Conclusion

This project utilised a case study methodology incorporating mixed methods data collection from multiple sources. The research design was rigorous yet flexible enough to cope with hurdles encountered in the project. Much of the work proceeded as anticipated but there were some challenges along the way which resulted in small changes to the planned data-collection and analysis strategy. The broad-brush research questions incorporated a wide-ranging inquiry into both case and context and allowed me to build a deep and detailed understanding of police practice relating to the EAW. The analysis was led by the data and the theoretical framework was developed to include themes that arose throughout the project. Ultimately the fieldwork and subsequent data analysis confirmed my initial hypotheses that the EAW can be usefully viewed as a transnational policing tool. This thesis seeks to demonstrate this and to explore the interesting issues that arise when the EAW system is viewed in this way. The following chapters present a detailed account of police processes and some of the cooperative relationships that underpin the EAW system in practice.

4. The Infrastructure of the European Arrest Warrant

4.1 Introduction

The EAW is supported by a complex system of transnational cooperation that links the criminal justice agencies of European states. The system facilitates the transfer of sovereign law enforcement power from the requesting to the executing state and authorises the transfer of subjects to the issuing state to face trial or serve a sentence overseas. There are many national, supranational and international legal tools, databases, institutions and networks involved in the system and this chapter describes that infrastructure in detail. Understanding the legal and institutional context is key to understanding the scope of the police role - how police are linked across borders and how their role relates to that of other criminal justice actors.

I use the terms *architecture* and *infrastructure* to describe the institutions, databases, networks and legal tools that facilitate the EAW. The term *architecture* has been used by Bowling and Sheptycki (2012:51) to delineate some of the institutional frameworks in the global policing field. I use *institutional architecture* in a similar but more focused way; referring to *state institutions*, established by law, entities in their own right, with distinct and sometimes interdependent competencies. In a similar way to Skeptycki (1998) who referred to the legal and technological infrastructure of transnational policing, I use the term *infrastructure* to encompass the institutional architecture and the many databases, legal tools, formal and informal networks involved. This term, meaning “the collective parts of an undertaking” (Oxford English Dictionary 2019a) or “basic facilities such as transport, communications, power supplies, and buildings, which enable [a] country, society, or organisation” to function (Collins English Dictionary 2019), is more appropriate when examining how state power moves across boundaries. If *institutional architecture* evokes images of blueprints, buildings and scaffolding, then *infrastructure* also brings to mind the electric cables, water pipes, transport and telecommunications which

link those buildings together, tying them to the state and making them an interdependent whole.

I begin with a discussion of EU-level infrastructure, starting with the EAW itself and then explaining the operation of SIS II and the national SIRENE bureaux that administer it. I will also mention the role of Interpol, an international network that operates at a European level within the EAW system. I discuss the ancillary role played by EUROPOL and Eurojust and describe some key EU-level “informal” networks which link national prosecutors, judges and police across borders. This sheds light on the formal and informal routes for cooperation available to police and other criminal justice practitioners, revealing how the EAW and other EU criminal law initiatives are formalising transnational police cooperation.

At a national level I explore the infrastructure of the three jurisdictions that make up the UK (England and Wales, Scotland and Northern Ireland) and Spain, Poland and the Republic of Ireland. After briefly discussing national law enacting the EAW I describe the institutional architecture in each jurisdiction, delineating the role of each agency and exploring the links between them. This work is built on in chapters 5, 6 and 7, which describe the police processes involved in issuing, sending, receiving and executing warrants, and surrendering subjects. This chapter sheds more light on the research process, making it clear which agencies I was able to interview and highlighting gaps.

4.2 The European EAW Infrastructure

4.2a European law

The obvious starting point is the EAW framework decision (FWD) itself,¹⁷ adopted by the European Council in June 2002. Based on the principle of mutual recognition, the

¹⁷ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (Annexe 6)

EAW requires criminal justice agencies in receiving member states to recognise an EAW issued by courts in requesting member states and give it full effect. The law explicitly limits grounds for refusal to the few included in the FWD, but some member states, including the UK, have included further restrictions in domestic legislation. Nevertheless, when compared to traditional extradition requests, the EAW significantly curtails the power of domestic courts to refuse a request.

An EAW can be issued if it meets the minimum requirements set out in Article 2 of the FWD. If the warrant is a conviction warrant that seeks surrender of a fugitive to serve a sentence already passed by a court, the subject must have at least four months left to serve. If the warrant is an accusation warrant that seeks surrender of a subject to stand trial, the maximum penalty faced on conviction must be 12 months or more. The offence for which the fugitive is being sought must be an offence in both issuing and receiving states unless it falls within the list of 32 offences listed in Article 2 for which the double criminality requirement is waived. The list contains broad categories of criminal activity including corruption, terrorism, computer-related crime, racism and xenophobia, environmental crime and participation in a criminal organisation; acts that may be regulated very differently in different states. Subjects may not be pursued for questioning or investigation, issuing authorities must have sufficient evidence and be ready to bring a subject to trial immediately.

The FWD permits each member state to designate a central authority (more than one if appropriate) to assist the competent judicial authorities. Member states may make this central authority responsible for the transmission and receipt of EAWs, and the preamble to the FWD makes it clear that the role of the central authority must be limited to “practical and administrative assistance” (Paragraph 9). Articles 9 and 10 set out provisions for transmission of EAWs: directly to competent judicial authorities, to central authorities, via the Schengen Information System or via Interpol. They also point to the role of the EJM in advising on appropriate receiving authorities if necessary.

Article 1 creates an obligation for receiving authorities to execute valid EAWs, and Article 17 insists that EAWs be dealt with as a matter of urgency, setting time limits to resolve cases: within 10 days where subjects consent and within 60 days where they do not. Once surrender has been ordered, subjects must be surrendered to the requesting state within 10 days. In practice the time limits for resolving cases are not strictly adhered to, but EAW cases are resolved significantly faster than traditional extradition cases.

Article 11 sets out a subject's basic rights on arrest: to be informed of the contents of the EAW and to be assisted by legal counsel and an interpreter. These legal obligations are to be fulfilled by judicial authorities or member states in their domestic enactment of the FWD.

This system, based on the reciprocal principle of mutual recognition, represents a major extension of the law enforcement power of member states. Previously, domestic criminal justice agencies' power to enforce the law outside their territory was limited to requesting extradition via political channels, which was subject to substantive review in the courts of the requested state. Now this power travels largely unimpeded across national boundaries. By issuing a valid EAW, police, prosecution and judicial agencies can co-opt the law enforcement power of executing states, obliging them to execute the request in a timely and near-automatic fashion.

One notable thing about the FWD is that despite creating obligations that impact directly on the police, its wording is aimed at judicial bodies and member states. The FWD makes no direct reference to police agencies, even though their involvement is clearly envisaged in the operation of the Schengen Information System, Interpol and in the arrest and surrender processes. The transposition of the FWD into domestic law is left to member states and so too are the obligations and powers of the police. One of the questions that arises here is whether the FWD obliges states, and

therefore their police agencies, to execute all EAWs as a matter of urgency or indeed at all. The role of police discretion in prioritising and executing EAWs is explored in Chapter 5.

EU directives relevant to the operation of the EAW include those on a suspect's right to a lawyer,¹⁸ to legal aid,¹⁹ to the presumption of innocence and the right to be present at trial,²⁰ as well as the right to certain information in criminal proceedings and EAW cases.²¹ These directives aim to strengthen the mutual trust underpinning mutual recognition by ensuring a base level of due process protection for suspects across the EU (Mitsilegas 2015). In adopting these directives, the EU recognises that a state's membership of the ECHR does not provide sufficient assurance that basic due process rights will be protected. Other relevant EU legal instruments include the Schengen Acquis and associated regulations. The EU regulations governing civil aviation security²² and The Tokyo Convention²³ (an international treaty), are relevant to police powers when physically surrendering EAW subjects on commercial aircraft. This will be discussed in chapter 7.

4.2b European databases

The main route for transmission of warrants and information-sharing in EAW cases is the second-generation Schengen Information System (SIS II). SIS II replaced the first-generation system in April 2013 and is the most widely used security and border management database in Europe. SIS II is currently operational in 30 countries²⁴ including Spain, Poland and the UK, which joined the system in April 2015. Ireland is

¹⁸ Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013

¹⁹ Directive (EU) 2016/1919 of the European Parliament and of the Council of 26 October 2016

²⁰ Directive (EU) 2016/343 of the European Parliament and of the Council of 9 March 2016

²¹ Directive 2012/13/EU of the European Parliament and of the Council of 22 May 2012

²² Regulation (EC) No 300/2008 of the European Parliament and of the Council of 11 March 2008

²³ Convention on offences and certain other acts committed on board aircraft. Signed Tokyo 14 September 1963

²⁴ 26 EU member states (excluding Ireland and Cyprus) and four associated Schengen Countries (Switzerland, Norway, Lichtenstein and Iceland).

not currently a member but is carrying out preparatory work and hopes to join soon. SIS II contains alerts on missing persons, vehicles, stolen identity documents, and persons wanted for judicial purposes.²⁵

On 31 December 2018 the system held over 82million live alerts, of which 39,287 were Article 26 (EAW) alerts for arrest and surrender or extradition. There were also 156,534 Article 36 alerts for discrete and specific checks, which are sometimes used by police agencies to locate subjects prior to issuing an EAW. SIS II was accessed over 6 billion times in 2018 alone, generating 267,239 hits (eu-LISA 2019). The legal basis for SIS II stems from the Schengen Acquis, incorporated into EU treaties by the Treaty of Amsterdam in 1997. SIS II is regulated by a host of Decisions, Directives and Regulations.²⁶

From the perspective of the end user - a police patrol officer or border guard - SIS II is a hit/no-hit system. Speculative searches of the databases are not possible; end users must search for specific information such as individual names, dates of birth, vehicle registrations or fingerprints (where this capability has been incorporated into the national system). On the basis of this information the system will return a 'hit' or 'no hit' response, giving end users clear direction for action in the case of a 'hit.'

The database's central copy holds all live alerts and is mirrored by national copies that update in real time. These national copies link to national databases, for example the Police National Computer (PNC) in the UK. Here live alerts are available to end users, who can only access information relevant to their role.²⁷ Creating and deleting alerts is only possible at a national level by the issuing state. These actions update instantly throughout the system, so an alert deleted in Spain is immediately removed from the UK PNC.

²⁵ There is also a portion of the database related to visas and border crossing which is not relevant to the EAW and which the UK does not access as it is not a member of the Schengen Area.

²⁶ Most importantly: Council Decision 2007/533/JHA of 12 June 2007; Regulation (EC) No 1987/2006 of 20 December 2006 and; Commission Implementing Decision 2013/115/EU of 26 February 2013

²⁷ Transcript 7 - European Commission DG Home

Each member state has a national SIRENE bureau that administers the national system. These bureaux are embedded in national police agencies and staffed by police officers and civilian police staff, as well as immigration or border officials in some states. In the UK the SIRENE Bureau is part of the NCA's UK International Crime Bureau (UKICB). In Spain it is connected to the Interpol National headquarters in the *Policía Nacional* headquarters. In Poland it is in the International Cooperation Bureau (ICB) in the Polish National Police headquarters. In Ireland the long-awaited SIRENE Bureau will sit alongside Interpol in *An Garda Síochána's* (hereafter the Guards) headquarters. Within the scope of the EAW, the SIRENE bureaux are responsible for creating and disseminating alerts to other states via SIS II. As the national hubs at the centre of the EAW process they act as the international conduit, linking domestic criminal justice agencies with their European counterparts. They receive incoming EAWs and disseminate them to the relevant domestic police agencies. Bureaux staff support intelligence development in individual cases and exchange information with other bureaux. The precise processes vary from state to state and the UK process is discussed in detail in the following chapters.

The processes and competencies of each SIRENE bureau I studied varied slightly. For example, the UK SIRENE Bureau carries out a certification function that is not mirrored elsewhere in the EU. In Spain there is a department in the SIRENE Bureau that not only organises surrender operations but also physically conducts them. The interface for each national database copy is also customised. For example, in Poland officers in the ICB view the SIRENE and Interpol databases in the same interface. In Spain, SIRENE and Interpol operators are not in the same department, though they do share a building. In the UK, these systems are operated by the same people but via different interfaces.

Communication via SIS II is standardised via a system of numbered alerts and standardised forms²⁸ that have specific purposes and usually prescribed content. EAWs are transmitted as Article 26 alerts. The language of the system is English,

²⁸ See Annexe 2 for a list of relevant Alerts and Forms

meaning that all SIRENE officers outside the UK must be bilingual, with a good standard of written English. Two interviewees mentioned that system operators have begun to develop a kind of “SIRENE English,” coining phrases that have discrete meanings, such as “releasing freedom” to mean that a subject has been released to travel home by their own means.²⁹ This was reflected in conversations with UK SIRENE officers, who have allocated names to various forms according to their role in the process; for example, the G Form, which notifies the requesting state of an arrest, is referred to as a “Got him form”.³⁰

The European Commission is responsible for coordinating SIS II and the SIRENE Bureau, and I interviewed staff from the Directorate General for Migration and Home Affairs (DG Home) in Brussels.³¹ DG Home is responsible for coordinating and chairing SIS Working groups, including the SIS-VIS group, which meets every six weeks and functions as an operational steering group.³² The group works on small- and large-scale changes to the system, from the addition of new vehicle manufacturers to wholesale redrafting of regulations. These meetings allow member states to raise and resolve ongoing issues with day-to-day operation of the system.

There is also a SIS-SIRENE group, which meets every six months. It acts as a strategic steering group, led by current Commission priorities and chaired by whichever member state currently holds the EU presidency. Working group meetings give national bureaux members important opportunities to meet counterparts, resolve operational issues and explain the systems they work within. This can be especially useful when there are issues emanating from one member state.³³ The value of these networks is practical, but they also have a diplomatic function in developing mutual trust and understanding.

²⁹ Transcript 24 - SIRENE Bureau Spain

³⁰ Fieldnote 1 - SIRENE Bureau UK

³¹ Transcript 7 - European Commission DG Home

³² Transcript 49 - SIRENE Bureau UK

³³ Transcript 49 - SIRENE Bureau UK

As well as organising and hosting working groups, DG Home conducts Schengen Evaluations, which take place every five years in each member state. “The visits are carried out by a team of member states and commission experts. It's like a mixed commission, peer-to-peer evaluation basically.”³⁴ DG Home also provides training to new SIRENE officers and works with CEPOL to provide ongoing training and development via short residential courses and webinars. These residential courses provide an opportunity for national SIRENE bureau officers to meet international counterparts and informally develop their understanding of other national systems.

Also relevant in supporting SIS II is eu-LISA, the European agency for the operational management of large-scale IT systems in the ASJF. It is responsible for the technical operation and support of SIS II.³⁵ It hosts a backup system, develops technical solutions and new features,³⁶ and produces yearly statistical reports on the use of SIS II (e.g. eu-LISA 2019).

As an alternative to SIS II, EAWs can be transmitted to the competent judicial authority directly or via Interpol. Interpol is an international agency with 194 member states. Each country hosts a National Central Bureau (NCB) and in many EU member states, including the UK, this NCB sits alongside the SIRENE Bureau. In some cases the INTERPOL Criminal Information System (ICIS) and the Interpol secure email system (i24/7) are operated by the same national officers administering SIS II. It is possible to circulate EAWs as Red or Blue Notices or as email notifications via i24/7. Which kind of notice is issued depends on national practice. Ireland, which is not member of SIS II, circulates EAWs as Blue Notices and follows up with a full EAW to the relevant authority when an arrest is made.³⁷

Some countries circulate all EAWs via both Interpol and SIS II, but most only circulate serious cases on both systems. Notices are sent via Interpol when specific intelligence suggests that a subject is present in the territory of a non-SIRENE

³⁴ Transcript 7 - European Commission DG Home

³⁵ Transcript 7 - European Commission DG Home

³⁶ Transcript 7 - European Commission DG Home

³⁷ Transcript 51 - Interpol Ireland

member state. Before joining SIS II, the UK received incoming EAWs via Interpol. Several interviewees suggested that the UK experienced a rise in arrests following the introduction of SIS II because many more EAWs were circulated on SIS II than would have been directed to the UK through Interpol channels. The ancillary role that Interpol channels play in the EAW system is important; it links police forces that are not connected to SIS II into the system and facilitates intelligence exchange via NCBs where a SIRENE Bureau is not in place.

Like SIRENE, the Interpol network gives officers opportunities to meet their international counterparts. A yearly general assembly includes all member states, and there are annual European conferences, regular Heads of Bureau meetings, working groups and steering groups. Member states regularly send officers on secondment to the Interpol headquarters in Lyon, which develops national expertise and builds trust. This underlines the diplomatic nature of transnational policing, with international agencies creating forums for interaction between national officers working in the transnational field, allowing them to develop relationships and mutual trust.

Communication via SIS II and the Interpol channels is highly formalised. The vast majority of transnational communication relating to EAWs happens via SIS II. EAWs sent via SIS II are considered legal documents for the purposes of arrest, but this is not always the case for Interpol alerts, which may need to be followed up via a central authority. Only SIRENE officers can send transnational communication via SIS II. In the UK, local PNC bureaux can create some SIS II forms, but these are validated and sent by the SIRENE Bureau. In Poland, the district court and local criminal intelligence bureaux create some forms, but again these are translated, validated and sent by the SIRENE Bureau.

SIS II is the most formal channel for communication and cooperation in the EAW system, but intelligence passed between SIRENE bureaux is not evidential. The only documents that can be used in UK court proceedings are official EAWs, A Forms (which provide a summary of the EAW), ID information and official criminal record

certificates. If police need to transfer evidence across borders, they must do so via International Letters of Request (ILORs), Mutual Legal Assistance (MLA) or via a European Investigation Order (EIO).

A final EU database that is relevant to the EAW system is ECRIS,³⁸ the European Criminal Records Information Exchange System. Established in April 2012, ECRIS links the criminal record databases of member states to streamline the exchange of criminal conviction information. In the UK this system is accessed via requests to ACRO Criminal Records Office. Police and SIRENE officers make ACRO requests relating to EAW subjects to get a full picture of a subject's risk profile and support police court statements in response to bail applications.

4.2c The European institutional architecture

Three EU institutions or agencies have already been mentioned: DG Home, eu-LISA and CEPOL. Within the European Commission, DG Justice creates statistical reports related to the EAW, evaluates member state implementation of the FWD, and develops the legal framework that supports the system, taking the lead on new legislation relating to suspects' rights.

The two EU criminal justice agencies, Eurojust and Europol, play ancillary roles in the EAW system. Their main function is to host national desks for all member states. These desks, staffed by secondees from national criminal justice agencies, are located in the agencies' headquarters in the Hague. Seconded staff are able to liaise with each other directly to pursue and resolve queries from their domestic agencies.

Eurojust,³⁹ the European Union's Judicial Cooperation Unit, is "a sister organisation to Europol".⁴⁰ It has 28 national members, each of whom has a desk with seconded prosecutors acting as liaison for that member state. At the time of this research, the

³⁸ Council Decision 2009/316/JHA of 6 April 2009

³⁹ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018

⁴⁰ Transcript 9 - Eurojust UK Desk

UK desk had four prosecutors, two from the Home Office, one from the CPS and one from the Crown Office in Scotland. Prosecutors working on their country desks remain employed by their member state and report to them. Like Europol, Eurojust is there:

to assist national stakeholders with principally major crime which has an international dimension, where our import by being face-to-face with the other 27 member states can speed up a process or can facilitate the completion of MLA [...] or EAW requests, or a range of issues.⁴¹

Eurojust involvement with EAWs is threefold. First, it assists with chasing up queries and resolving issues where member states are not making progress through the usual channels. In these cases, police, prosecutors or even judges can contact their own country desk and raise an issue. Domestic agencies cannot contact the desk of another member state directly, members of their own country desk act on their behalf. Contact between desks is very direct because all members are in the same building, so chasing up a request for further information from Germany can be as simple as walking down the hall.

UK stakeholders do not need to use a formal channel to contact the UK desk:

We don't have any particular formality about how we are contacted by UK authorities [...] we want law enforcement and prosecutors to simply pick up a phone or email us and make contact. They don't have to go via central authorities or central bureaux. They may have internal mechanisms back home that require them to do that, but not for us. We just want the direct contact. So our contact is as much with law enforcement as it is with prosecutors.⁴²

⁴¹ Transcript 9 - Eurojust UK Desk

⁴² Transcript 9 - Eurojust UK Desk

Second, Eurojust is involved in EAW cases by helping to resolve questions around thematic issues that have arisen in multiple cases:

For example, questions can crop up about the prison conditions in various member states and whether or not our courts feel comfortable for human rights reasons to surrender someone to another country. We have meetings with other countries to try to resolve prison conditions issues, which may be in the form of getting undertakings from relative authorities in the other country [...] “if people are surrendered to our country from the UK, they will only be put in prisons A, B, C, they won't be put in prisons D, E, F,” and that will be because of some sort of international scrutiny; prisons A, B, C have met certain requirements.⁴³

Where questions arise that relate to multiple states, the UK desk can open a “topic.” This poses a series of questions relating to a specific issue, for example double criminality in parental child abduction cases. Topics are opened up to all member states to answer if they wish, but the UK desk makes it clear which countries it will be particularly relevant to, since answering questions can be time-consuming and other desks may not wish to contribute if the question is purely academic from their perspective.⁴⁴

Third, Eurojust can be involved in EAW cases via its role in Joint Investigation Teams (JITs).⁴⁵ Eurojust provides support for coordination meetings between national police and prosecutors working on a cross-border investigation and considering setting up a JIT. Eurojust can host the meeting, assist with travel funding, provide interpreters and help draft Memorandums of Understanding (MOUs) which form the legal basis for a JIT.

⁴³ Transcript 9 - Eurojust UK Desk

⁴⁴ Transcript 9 - Eurojust UK Desk

⁴⁵ Council Framework Decision of 13 June 2002 on joint investigation teams

Coordination meetings bring together prosecutors, police officers and investigatory judges from all jurisdictions involved in the case. Issues covered include establishing what evidence each country has, when to move from a covert investigation to making arrests, identifying the best jurisdiction in which to press charges, protection of witnesses, transfer of evidence and any possible need for EAWs.⁴⁶ Europol may be involved in JITs, hosting meetings between police at an earlier stage, before it has been decided to establish a JIT.⁴⁷

The set-up at Europol⁴⁸ is similar, with permanent staff employed by the agency and country liaison desks staffed by secondees from national agencies. When I conducted interviews, the UK liaison desk included staff seconded from the NCA, the Metropolitan Police (MPS), Regional Organised Crime Units (ROCU) and Police Scotland.⁴⁹ Each country has a national bureau liaising between the desk and domestic law enforcement agencies. In the UK this bureau is located at the NCA UKICB alongside the SIRENE and Interpol bureaux. Europol's remit is serious and organised crime; it holds and analyses two large datasets of intelligence on serious and organised crime and terrorism. Europol also runs a secure law enforcement communication platform, SIENA, which links national law enforcement to the liaison desks and can be used to add intelligence to the Europol databases.

In relation to the EAW, the role of the Europol liaison desks is similar to that of Eurojust: it receives ad-hoc requests, usually from law enforcement, and can raise these directly with the liaison desks of other states. Europol or members of the liaison desks may also be involved in individual JITs, which may lead to EAWs.

Eurojust and Europol sit in the middle of the formal/informal cooperation dichotomy. They are formally established and have a physical presence in the institutional architecture of the EU. They may be approached directly and informally by domestic

⁴⁶ Transcript 9 - Eurojust UK Desk

⁴⁷ Transcript 9 - Eurojust UK Desk

⁴⁸ Regulation (EU) 2016/794 of the European Parliament and of the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol)

⁴⁹ Transcripts 8 and 11 - Europol UK Desk

criminal justice professionals, but there is also a formal process: national desks are the route to raising queries with the liaison desks of other states. A Eurojust officer stressed the diplomatic nature of this interaction especially at coordination meetings.⁵⁰

Ireland, Spain and Poland all have desks at Eurojust and Europol and it is possible for queries between those states and the UK to go through these routes. However, this research suggests that these agencies play only a minor role, with the bulk of cases going through SIS II. In the specific transnational relationships included in this study, other routes for less formal contact are preferred to Eurojust and Europol. I interviewed members of the UK desk from both agencies but did not make contact with the desks from other states.

Two courts form part of the institutional architecture of the EAW at the European level. The Court of Justice of the European Union (CJEU) makes preliminary rulings on questions referred by member state national courts under Article 267 TFEU, and the European Court of Human Rights⁵¹ (ECtHR) hears individual EAW cases appealed on human rights grounds. The judicial process is not the focus of this work, so I mention them here only for completeness.

4.2d European networks

The final elements of European institutional architecture are two formally established but informal networks. The European Judicial Network⁵² (EJN) was established in 1998 and forms a network of national judicial and prosecutor contact points across all member states. It has a small secretariat⁵³ in The Hague which is responsible for the functioning and continuity of the network. Unlike the European agencies discussed above, the EJN is comprised of national members, prosecutors and judges working in domestic roles. Each state has a nominated corresponding

⁵⁰ Transcript 9 - Eurojust UK Desk

⁵¹ The ECtHR is Council of Europe Institution rather than an EU one.

⁵² Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018

⁵³ Transcript 10 - European Judicial Network

member who plays a coordination role, disseminating information relating to the EIJN, promoting training courses and liaising with the secretariat.

The EIJN focuses on international criminal justice cooperation. Contact points provide practical support to professionals in other member states by finding the right contact for a specific query, following up on a delayed response, or advising on how to make a successful MLA or EAW request. Members of the network are prosecutors and judges regularly engaged in international cooperation and in most cases speak more than one language.⁵⁴ Contact points are listed on the EIJN's secure online platform, which also contains country-specific information on international cooperation tools.

The EIJN hosts biannual meetings for national contact points to meet international counterparts and build relationships. Most prosecutors I spoke to did not regularly use the EIJN but preferred the formal SIRENE channel for EAW related requests.⁵⁵ Those that did utilise the EIJN spoke highly of it.⁵⁶ Prosecutors appreciated direct person-to-person contact and welcomed opportunities to meet counterparts.⁵⁷ They sometimes bypass the SIRENE network to go direct via EIJN contact points when sending requests for further information (RFFIs) in EAW cases.⁵⁸ This was thought to be appropriate and especially useful in urgent, serious or complex cases.⁵⁹ Prosecutors also send these requests via the SIRENE Bureau as the formal channel.⁶⁰

The most relevant informal network in this study is the European Network of Fugitive Active Search Teams (EN-FAST). Established in 2013 under a Memorandum of Association, the EN-FAST network links national police in Fugitive Active Search Teams across the EU. Each member state has national contact points who are police professionals actively engaged in fugitive work. EN-FAST also have a "most wanted" platform hosted by Europol and work with CEPOL to provide training courses.⁶¹

⁵⁴ Transcript 10 - European Judicial Network

⁵⁵ Transcript 57 and 58 - Prosecutor CPS and Transcript 54 - Prosecutor PPSNI

⁵⁶ Transcript 32 - Judge Poland and Transcript 16 - Liaison Magistrate

⁵⁷ Transcript 3 - Prosecutor Crown Office Scotland

⁵⁸ Transcript 3 - Prosecutor Crown Office Scotland

⁵⁹ Transcript 3 - Prosecutor Crown Office Scotland

⁶⁰ Transcript 3 - Prosecutor Crown Office Scotland

⁶¹ Transcript 18 - Policía Nacional

Most national EN-FAST teams are operational police officers who search for and arrest subjects, but the UK's EN-FAST contact points are non-operational officers situated in the UKICB at the NCA.⁶² EN-FAST mostly deals with high-profile, high-risk or extremely urgent EAW cases. Cooperation through EN-FAST is direct, informal and fast.⁶³ The network is built on high levels of trust and personal relationships. Conferences are held regularly and because staff turnover is low, contact points get to know each other personally. There is an expectation that queries and cases referred through EN-FAST will be prioritised by all parties and the network will not be used for trivial or speculative matters.⁶⁴

EN-FAST and the EJM represent the most informal end of the scale in terms cross-border cooperation relating to the EAW. Direct person-to-person contact helps to quickly resolve or progress complex and urgent cases. There is a diplomatic aspect even in these informal relations. It was clear from discussions with interviewees that positive experiences via informal channels helped build trust, and there was anxiety that misusing these channels or failing to give good service could negatively impact the wider cooperative relationship.⁶⁵

Some officers mentioned that the lack of an operational team in the UK causes trust issues with some EN-FAST partners. This is compounded by the fact that not all NCA staff are police officers and UK contact points change more regularly than their operational counterparts.⁶⁶ UK contact points were acutely aware of these issues and were conscious of the need to provide good service when asked.⁶⁷

I spoke with EJM contact points in the UK and Poland and interviewed members of the secretariat. I also spoke with EN-FAST contacts in all jurisdictions in the study.

⁶² Transcript 46 - SIRENE Bureau UK

⁶³ Transcript 46 and 49 - SIRENE Bureau UK

⁶⁴ Transcript 42 - SIRENE Bureau UK

⁶⁵ Transcript 42 - SIRENE Bureau UK

⁶⁶ Transcript 46 - SIRENE Bureau UK

⁶⁷ Transcript 46 - SIRENE Bureau UK

National EAW infrastructure links with supranational infrastructure at a European and international level. It connects national and local agencies with their transnational counterparts through supranational databases and meso-level networks (Benyon 1996). There are also bilateral arrangements that play a role in transnational cooperation, and the arrangements are different in every cooperative relationship included in this study. These arrangements are mediated by differences in national infrastructure and the varying competencies of domestic agencies. The following sections give details of the national infrastructure in each jurisdiction include in the study and explain the role of each institution in the EAW system. The discussion focuses on aspects of the national infrastructure most relevant to contextualising the police role and visual maps represent the EAW infrastructure rather than the full criminal justice infrastructure of each state.

4.3 EAW infrastructure in the United Kingdom

EAW infrastructure in the United Kingdom is complicated because the UK incorporates three legal jurisdictions with a total of 45 local police forces. This section first explains the UK-wide infrastructure then details the institutional architecture in England and Wales, Scotland, and Northern Ireland.

4.3a UK law

The FWD is transposed into UK law by the Extradition Act 2003 (hereafter EA 2003).⁶⁸ Part 1 of the EA 2003 deals with incoming EAW requests and Part 3 deals with outgoing EAWs. Section 2(9) gives the Secretary of State power to designate

⁶⁸ Annexe 7

competent authorities for the receipt and certification of incoming EAWs. This role is given primarily to the NCA, which shares this competency with the Crown Office in Scotland.

The FWD obligation for member states to prioritise and execute valid EAWs is not imported into UK law. Section 2 of the EA 2003 lays out the criteria for a certification process that is the responsibility of the SIRENE Bureau at the NCA. This certification process was not anticipated by the FWD and is not mirrored in other jurisdictions. Section 2 details the content a warrant must contain so that the NCA *may* issue a certificate. This technically leaves a margin of discretion to authorities not to certify a warrant even if it meets the validity criteria. A certificate issued by the NCA constitutes a valid warrant for arrest.

Section 3 lays out the power of arrest under a certified warrant, stating that it *may* be executed by a constable or customs officer. Once a warrant is certified, a “wanted marker” is created in PNC. This marker constitutes a legal basis for arrest and the arresting officer need not be in possession of a physical warrant. Just as section 2 leaves room for discretion in the certification process, section 3 reserves a margin of discretion for police officers in whether or not to execute a warrant. Whether police officers actually feel they have discretion seems to vary across police forces and may depend on the circumstances in which officers encounter the warrant. This role of discretion in certification and execution is explored in detail in chapter 5; here I simply note that, contrary to the FWD, UK law technically leaves some discretion in police hands.

Once a subject is arrested, section 4 states that they must be given a copy of the warrant and be brought before the relevant court “as soon as practicable.” The Westminster Magistrates Court, which oversees EAW cases, has interpreted this provision extremely strictly, noting that the statute does not leave room for reasonable deviation.⁶⁹ In practice this means that subjects must be presented to the

⁶⁹ Transcript 58 - Prosecutor CPS

court on the day of arrest or first thing the next morning if arrested later in the day. Subsection 5 obliges the court to discharge the subject if not presented in a timely fashion whereas subsection 4 states that judges *may* discharge if a warrant is not served on the subject, leaving room for judges to consider reasonable reasons why it may not have been.

The statute details absolute and discretionary bars to extradition in sections 10 to 21b. Most of these sections transpose the FWD, but the EA 2003 does include additional bars to extradition. In particular section 21a introduces a proportionality test for accusation warrants. This effectively involves judges evaluating the decision of the requesting authority to issue an EAW. This is conceptually at odds with the principle of mutual recognition and the FWD, which requires any proportionality assessment to take place in the issuing state (Ostropolski 2014:171). This provision has impacted the certification process under section 2 and the NCA now applies a proportionality threshold test alongside the validity assessment. As will be seen in chapter 5, the test at certification stage is basic and the bar for failure on this basis is very high. Nevertheless, this looks a lot like a policing organisation carrying out a legal function and highlights the blurred boundaries between different parts of the criminal justice system in this field (Bowling and Sheptycki 2012).

Another provision that highlights this is section 12a, which was introduced along with the proportionality bar by the Antisocial Behaviour, Crime and Policing Act 2014.⁷⁰ Section 12a bars extradition in cases where there has not been a prosecution decision to charge the suspect. Whilst this is not at odds with the FWD, which does not allow EAWs for questioning or investigation, it has caused problems with some requests from states where investigatory judges are procedurally unable to close the investigatory phase of a case until the accused has appeared before them. Several interviewees mentioned this “charge and try” provision as an ongoing issue, although there were hopes that the problems would be ironed out as interpretation of the new clause is resolved by the courts.⁷¹ These problems are due to differences

⁷⁰ Sections 156 and 157 Antisocial Behaviour, Crime and Policing Act 2014

⁷¹ Transcripts 16 and 19 - Liaison Magistrates

in institutional competence and criminal procedure across the EU and a lack of understanding between states. It highlights the challenges a system of mutual recognition faces when attempting to impose a unified system of transnational cooperation across jurisdictions with significantly different criminal justice arrangements.

The statute contains provisions that give priority to domestic charges and sentences and gives the courts tools to resolve conflicts between these and EAW requests (sections 8a, 8b, 22, 23, 36a, 36b, 37). It also sets out the factors that courts should consider if multiple warrants from different states are received for the same subject (section 44). The speciality conditions contained in the FWD are included in the EA 2003, meaning authority from the executing state must be sought to charge the subject with offences not included in the original warrant.

Section 45 deals with a subject's consent to surrender and the consequences of that irrevocable consent. Sections 35 and 36 set a 10-day time limit for surrender; this is particularly relevant to police, because organising and conducting physical surrender is their responsibility. If police miss this 10-day deadline without reasonable cause, the courts are obliged to discharge the subject. In practice it is possible to apply for extensions to the deadline but exceeding it without an extension in anything less than exceptional circumstances will result in discharge.

Part 3 of the EA 2003 deals with issuing outgoing warrants and partially acknowledges the role of the police. Section 142 anticipates that constables or appropriate persons will apply for part 3 warrants, although in Scotland only a Procurator Fiscal is able to do so (section 142(10)). In order to issue an EAW there must be reasonable grounds to believe the person has committed the offence and a domestic warrant must be in place, or the subject must have been convicted and required to serve a sentence.

Section 148 sets out the criteria for an extradition offence according to the minimum terms laid out in the FWD. Section 149 specifies which courts are competent to issue

EAWs in each jurisdiction of the UK. These arrangements are discussed below. The court *may* issue a warrant if all of these conditions are met, leaving them discretion to refuse to do so. Of course, this is not the only discretionary decision in applying for warrants, as police and prosecutors must pursue a case in the first place. The exercise of this discretion is discussed in chapter 6.

Part 4 of the Act sets out police powers of entry, search and seizure on or after arrest, including the power to seize travel and identification documents to confirm the identity of the subject and prevent travel. Sections 166 to 177 detail the custody procedure and extend key provisions of the Police and Criminal Evidence Act 1984 (PACE) to those detained under the EA 2003. Section 173 obliges the Secretary of State to issue codes of practice detailing police obligations and procedures under the EA 2003. These codes of practice⁷² detail a specific caution for arrest and state that, in line with section 166, only warranted officers can take fingerprints and DNA samples from subjects to use as evidence to confirm identity. This can cause problems when officers are not familiar with the EA 2003, as many custody suites are staffed by civilians who have powers to fingerprint, photograph and take non-intimate samples (Skinns 2012a:15).

There are some obvious omissions from the EA 2003 and the codes of practice. Nowhere does the law detail the police role in arranging and conducting physical surrender and it does not provide any specific powers of detention for these purposes. As discussed in chapter 7, this vacuum was of concern to some officers; several interviewees raised the issue in discussion and varying accounts of the legal basis for detention during surrender were offered in the course of the research.

The codes of practice do not explain the strict requirement to present an arrestee to court as soon as practicable and they do not explain that the Westminster court is able to address outstanding domestic charges. This seems like a glaring oversight in guidance, as the priority given to domestic charges can directly conflict with the

⁷² Extradition Act 2003 Police Codes of Practice (Home Office)

timing issue if officers do not understand this. There have been cases where officers have taken subjects to local magistrates to dispose of domestic charges only for the EAW to be discharged at Westminster.

The EA 2003 explicitly acknowledges the role of the police where the FWD is silent. The EA 2003 explicitly allocates a central role to police agencies in certification, arrest and applying for part 3 warrants. It gives police a margin of discretion in certifying and executing warrants and gives the courts discretion to discharge cases in circumstances other than those in the FWD. The Act gives judges the final say on issuing warrants with discretion to refuse, but police and prosecutors exercise a prior discretion in deciding to request warrants in the first place. The role of the police acknowledged by the law is only an indication of the pivotal role they play in the EAW system, which the following chapters describe in detail.

4.3b UK databases

Police utilise a plethora of domestic databases when issuing and executing EAWs. Besides the national copy of SIS II, PNC is the most important database. This national database is readily available to officers in police stations, in cars and on handheld devices.

Once Part 1 EAWs are certified by the NCA, a wanted marker is attached to the name and date of birth of the subject in PNC. This marker states that the subject is wanted for arrest by the NCA and gives contact details for the UKICB. Police officers can find these markers simply by running a check on the name of a suspect, witness, driver or any individual they encounter, and they will be instructed to execute an arrest. If the NCA does not certify a warrant a PNC marker is still displayed but with no power of arrest. Instead the marker notes the NCA's interest in the subject and prompts the officer to take the subject's details for follow-up.

PNC is operated by local PNC bureaux, who play a role in creating wanted markers for Part 3 subjects, allowing the NCA to create and validate Article 26 alerts to

transmit EAWs. PNC bureaux can also generate Article 36 requests for discrete and specific checks, which prompt police in EU member states to notify the UK if the subject comes to their attention but does not request any enforcement action. PNC bureaux also generate G Forms, which notify the NCA and the requesting state when an EAW subject is arrested.

PND is the national police intelligence database. Both the NCA and local police forces run PND checks to identify live intelligence on a subject or to deconflict cases, ensuring that subjects under covert investigation by other UK authorities are not accidentally tipped off. Local forces use their local or regional intelligence databases, such as NicheRMS, to check local intelligence on subjects or associated addresses. Data on past offences and police contact is used to make risk assessments and to plan arrest operations. It also informs police statements relating to bail. As well as these police databases ANPR and the DVLA databases are used to find information on vehicles associated with EAW subjects.

IDENT1 is the UK's national fingerprint database. It can be used to confirm a subject's identity on arrest or help locate subjects who have been arrested previously. During the data collection period, a project linking IDENT1 to SIS II was close to completion. This will ensure that all fingerprints uploaded to Article 26 alerts are automatically checked against IDENT1. Until this project is completed, speculative checks cannot be run against IDENT1, although direct comparisons with a specific record can be requested.

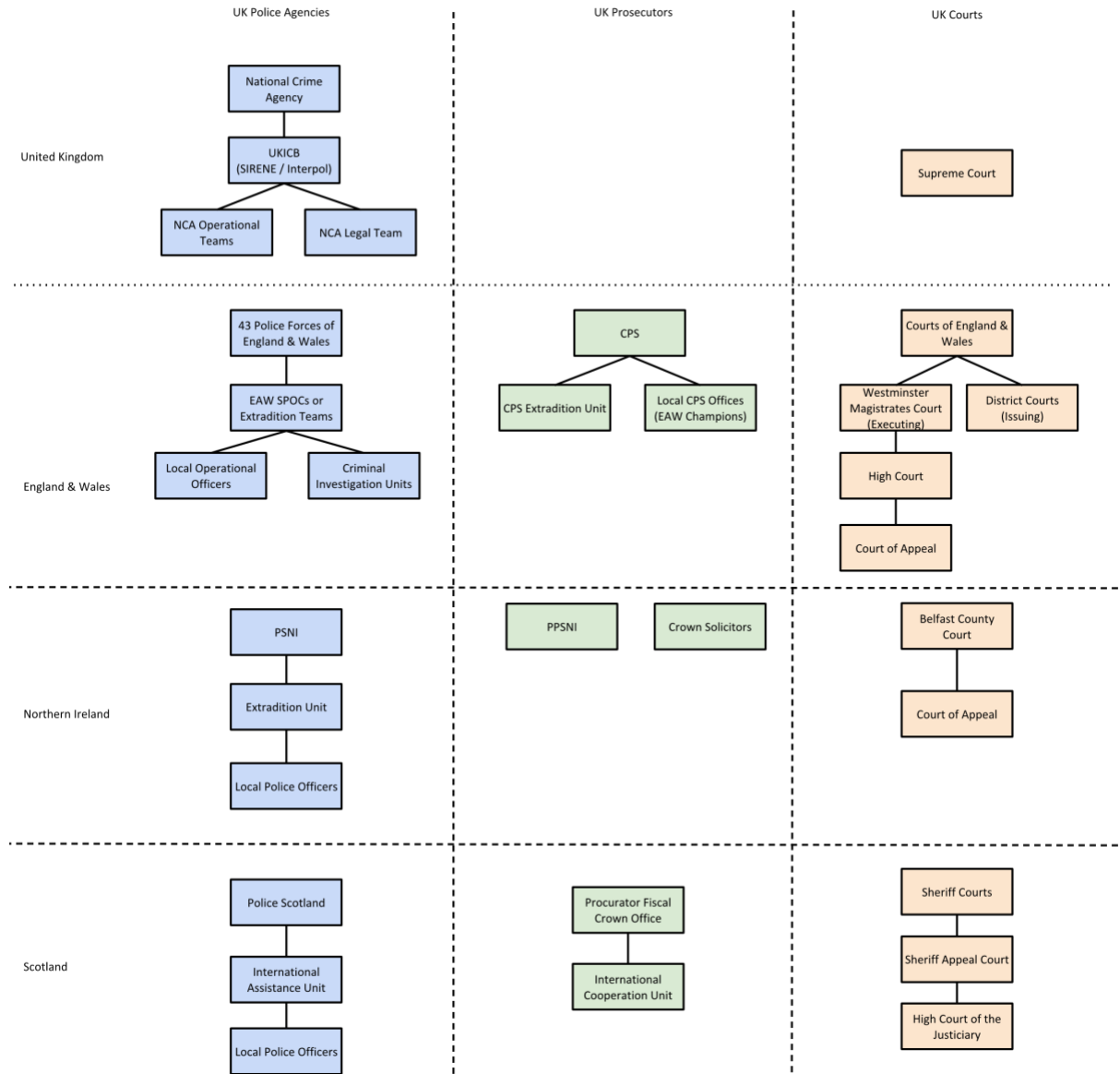
There are other databases, such as NBTC, run by Border Force, that police cannot access directly but can request information from when issuing and executing EAWs. NBTC includes all PNR (passenger name records) data sent to Border Force by airlines. NBTC checks are often used when issuing EAWs to confirm that a subject has left the country.

The database infrastructure that supports the EAW in the UK is disjointed. Many local police intelligence databases hold information in silos. Progress towards

integration is evident as IDENT1 is linked to SIS II and forces gradually pool information from local to regional databases. From the perspective of effective and efficient policing this progress is probably desirable but should not be accepted uncritically as positive.

The amount of data potentially involved in the issue and execution of EAWs and the vast database infrastructure that facilitates data exchange certainly supports the conception of policing as knowledge work (Ericson and Haggerty 1997), particularly in the transnational realm (Sheptycki 1998). Serious questions have been asked about what constitutes 'knowledge' in policing, however (Brodeur and Dupont 2006), and similar questions should be asked about the societal impact of pooling data that requires vastly different levels of validation and reliability. The data discussed here ranges from fingerprints in IDENT1 to police call logs, visit reports and rumours in local intelligence databases. While information may contribute to assessing potential risk for police on the ground it is not clear that more information is always better especially, when the quality and validity of that knowledge is not closely regulated (Brodeur and Dupont 2006).

Figure 4.1: United Kingdom - Institutional Architecture



4.3c UK institutional architecture

The institutional architecture related to the EAW in the UK encompasses three distinct legal jurisdictions and includes institutions with jurisdiction over the whole UK territory, the most active of which is the NCA. There is also Border Force, which is responsible for monitoring and managing the borders; and the UK Supreme Court, which is the UK's final court of appeal. The Home Office has responsibility for extradition policy and works closely with the NPCC on this.

The NCA, the successor to SOCA, is a national agency leading the UK's fight against serious and organised crime. Established under the Crime and Courts Act 2013, the NCA has crime reduction and criminal intelligence functions.⁷³ NCA officers are officially civil servants but may be warranted with the powers of a police officer, a customs officer, an immigration officer or all three. Not all NCA officers are warranted, but clearly the NCA is a policing organisation directly concerned with law enforcement (Bowling and Ross 2006) and SIRENE officers are engaged in policing.

Within the NCA, the UKICB hosts the UK's SIRENE Bureau, Interpol NCB and Europol National Bureau. This transnational policing hub is the UK's designated central authority under the EA 2003 and operates a 24/7 service for national and international partners. The SIRENE Bureau is divided into four teams. The Fugitive Coordination Team (hereafter FCT) receives and certifies incoming EAWs and manages the Polish Military flight, which regularly collects EAW subjects from the UK. The Part 1 team deals with incoming EAWs, conducting preliminary intelligence checks, allocating EAWs to local forces and acting as a liaison between UK authorities and the requesting state throughout the court process and when arranging physical surrender. The NCA holds a yearly conference for local force EAW SPOCs and International Liaisons to facilitate relationship-building and disseminate information and training. The Part 3 team supports local law enforcement and prosecutors when issuing EAWs and liaises with European states when pursuing subjects abroad. This

⁷³ Crime and Courts Act 2013 s.1

team runs fugitive search operations with regular Part 3 partners. The most successful of these is Operation Captura, which is run in partnership with Spain and is discussed in detail in chapter 6. Finally, there is a strategy and support team. Their role includes recruitment, training, statistical reporting, risk management and assurance, and liaison with outside agencies including the Home Office.⁷⁴ The strategy team or officers in senior management positions within the UKICB attend SIS-VIS meetings and other working groups at EU level.

In the UK the UKICB is central to the EAW architecture, advising police and prosecutors on the process and linking UK agencies to their international counterparts. The UK's EN-FAST contact points are NCA officers in the UKICB; as mentioned above, the UK is unusual within EN-FAST as it does not have operational officers. This is partly because officers in the UKICB are non-operational and many have no law enforcement powers, but also because operational responsibility for the EAW in the UK is spread across 45 police forces.

The UK has a global network of International Liaison Officers (ILOs) in British embassies; these officers report directly to the UKICB. Described as providing the 'oil and glue' (Andreas and Nadelmann 2006; Bigo 2000; den Boer and Block 2013; Bowling and Sheptycki 2012:78–81; Nadelmann 2010:468; Yon 2010) which holds the transnational policing infrastructure together and greases the wheels of cooperation. These officers create informal relationships with national police forces in their host state and facilitate fast, informal and personal police cooperation (Bigo 2000; Bowling et al. 2019:201). Their role in the EAW system depends on the relationship between the UK and the ILO's host country. Some are very active; ILOs in Spain are frequently used as a route to expedite EAWs and pass intelligence to local or national police.⁷⁵ Others are less active because the relationship between the UK and those states has developed using other routes. This is the case in Ireland, where the ILO is active but not the primary route for EAW cooperation. In all cases the SIRENE network remains the official and most-used channel.

⁷⁴ Transcript 49 - SIRENE Bureau UK

⁷⁵ Transcript 42 - SIRENE Bureau UK

Mirroring the ILO network is the Foreign Law Enforcement Community (FLECs) officer network located in foreign embassies in the UK. These officers work closely with the NCA UKICB but can be contacted directly by local police forces to help develop intelligence or resolve queries in specific cases.⁷⁶

I interviewed many NCA SIRENE officers, including members of each team and some senior officers. I carried out a short period of observation at the UKICB, learning about the processes each team is responsible for. I was also able to attend a UK ILO conference as an observer. Unfortunately, I was unable to interview any members of the FLEC or ILO networks as they were not made available by gatekeepers. The information about the role of ILOs is drawn from interviews with SIRENE officers and local police forces.

4.3d Institutional architecture in England and Wales

Police institutions

Across the UK, operational responsibility for incoming EAWs lies with local police forces. Until 2009 the MPS had a national remit across England and Wales for all incoming extradition requests based on EAWs or full extradition papers under Part 2 of the EA 2003. As EAW cases increased and the costs of policing extradition mounted, APCO decided that the 43 police forces of England and Wales would take operational responsibility for their own EAWs;⁷⁷ responsibility for Part 2 cases remained with the MPS Extradition Unit.⁷⁸

⁷⁶ Transcript 61 - MPS Extradition Unit

⁷⁷ Transcript 1 - Lancashire Constabulary and Transcript 21 -Sussex Police and Transcript 29 - Northumbria Police

⁷⁸ During data collection plans for local forces to take operational responsibility for Part 2 requests were being discussed.

While the volume of EAWs processed by forces varies dramatically and arrangements for managing EAWs were different in each police force I visited, the responsibilities and processes they follow when policing EAWs are broadly similar.

Local forces are responsible for investigating and locating EAW subjects suspected to be in their force area and executing arrests if subjects are found. Local forces process subjects through custody and arrange for their appearance at Westminster Magistrates' Court. They are responsible for the surrender of all those arrested in their area, even if those subjects are bailed to another location or remanded in custody in London. Local forces request outgoing Part 3 EAWs from prosecutors and liaise with the CPS, courts and the NCA throughout the issuing process. When subjects are arrested abroad, local forces are responsible for collecting them from the arresting state. All forces have an EAW SPOC or a team which acts as the SPOC; these officers monitor a generic EAW email inbox, which is how the NCA distributes EAWs to forces.

Unlike many European jurisdictions or Scotland, police forces in England and Wales retain operational independence from prosecutors, the NCA and the executive (Lustgarten 1986:4). This independence partly explains why EAWs are managed differently in each force and the differing levels of discretion police feel they have during issue and execution. Another important factor in determining the staffing arrangements for EAWs is the number of cases that each force deals with. Figure 4.2 gives details of key EAW statistics for the forces included in this study for the year to March 2017 (National Crime Agency 2018), the year in which the fieldwork took place.

Figure 4.2: Local Forces EAW Statistics April 2017 to March 2018

Force	Part 1 EAW (Incoming) Arrests 2017/18	Part 1 EAW (Incoming) Surrenders 2017/18	Part 3 EAW (Outgoing) Issued 2017/18	Part 3 EAW (Outgoing) Surrenders 2017/18
Metropolitan Police	412	368	42	30
Police Scotland	81	53	24	23
West Yorkshire Police	92	67	8	6
Kent Police	78	67	11	6
Sussex Police	53	47	6	5
Police Service of Northern Ireland	42	23	17	6
Lincolnshire Police	34	34	1	1
Avon & Somerset Constabulary	22	26	2	6
Lancashire Constabulary	37	15	3	0
Northumbria Police	11	16	1	1

As the capital city with proximity to the UK's biggest international transport hubs MPS deal with the bulk of the UK's EAW traffic. The MPS Extradition Unit sits alongside the International Assistance Unit under the umbrella of Operation Nexus, which targets high-harm Foreign National Offenders (FNOs) in the UK. The MPS Extradition Unit has three operational teams that conduct searches and surveillance of EAW subjects, plan and execute arrests, and conduct physical surrender operations to and from the UK. Teams consist of four or five detective constables and a detective sergeant.⁷⁹ There is also an administrative and intelligence team that deals with incoming requests, basic intelligence checks, organising surrender operations and liaising with outside agencies and departments. As I understood it, the MPS Extradition Unit is staffed entirely by warranted officers, all with previous detective experience.⁸⁰ This is a well-staffed but extremely busy department; extradition is their sole responsibility and policing EAW and extradition requests is their day-to-day role. All operational officers in the MPS Extradition Unit have completed the Special Operations Aviation Policing Command's (SOAP) extradition training course.

Requests for EAWs tend to be made by investigating officers, usually within serious crime departments, but sometimes by borough officers if their suspect has fled the country. MPS Extradition Unit officers can advise on the process and occasionally request EAWs themselves.⁸¹ Requests for EAWs are drafted in cooperation with the CPS and the NCA Part 3 team, but the initial decision to pursue an EAW is usually a police one, as discussed in Chapter 6. The MPS Extradition Unit is often called upon to advise other MPS departments, other UK police forces⁸² and even forces outside the UK.⁸³

⁷⁹ Transcript 61 - MPS Extradition Unit

⁸⁰ Transcript 41 - MPS Extradition Unit

⁸¹ Transcript 61 - MPS Extradition Unit

⁸² Transcript 61 - MPS Extradition Unit

⁸³ Transcript 50 - An Garda Síochána

The MPS International Assistance Unit (and sometimes other operational units within the police) regularly host officers seconded from national police forces in European states. The Polish National Police second two officers to the MPS International Assistance Unit on a six-month rotation.⁸⁴ Seconded officers remain linked to their national police forces and can help develop intelligence and expedite enquiries on an informal basis. They are able to assist in executing arrests and searching for suspects; speaking their native language can help subjects better understand the situation or result in uncovering intelligence UK police would be unable to understand.⁸⁵

In contrast to the MPS, Northumbria Constabulary, at the other end of the country with only a small international airport, processes relatively few EAWs. The EAW SPOC is a police staff member rather than a warranted officer and the team dealing with EAWs is an administrative police staff team in the PNC Bureau. Search, arrest and surrender operations are allocated to police officers via area command. Officers conducting these operations are local police constables with no requirement for specific experience or training in extradition.⁸⁶

West Yorkshire Police have a complicated set-up with two officers acting as EAW SPOCs; they manage incoming EAWs from the NCA and allocate these to operational officers who regularly work on EAW cases. These operational officers work in special operations teams and manage cases post-arrest, ensuring custody procedures are followed and that subjects are delivered to court with the correct documentation. They act as contact points for EAW arrests that happen as a result of chance encounters. The EAW SPOCs liaise with the NCA and arrange physical surrender when the court process is complete.⁸⁷

⁸⁴ I was able to interview one Polish seconded officer during the research. The Modern Slavery and Kidnap Unit had a long-term secondee from Romania and I encountered two Polish Officers completing secondment when I visited Police Scotland.

⁸⁵ Transcript 60 - Polish National Police

⁸⁶ Transcript 29 - Northumbria Police

⁸⁷ Transcript 13 - West Yorkshire Police

In relation to Part 3 requests, or “import extraditions”⁸⁸ as West Yorkshire call them, there is a cadre of officers trained to conduct extraditions and advise investigators on the issuing process. These officers are drawn from Special Operations or Specialist Crime Directorates and receive extradition training developed by West Yorkshire in line with the training offered by SOAP.

In Sussex Police, responsibility for EAWs sits within the main Warrants Enforcement Bureau, which has responsibility for both EAWs and domestic warrants. This office is staffed by civilians and overseen by a senior police officer. It administers incoming and outgoing EAWs and delegates arrests to divisional officers. The team advises and assists criminal investigation departments that are considering requesting EAWs. Officers who collect subjects from abroad are nominated by division commanders to attend a training course developed in line with the training offered by SOAP. Sussex Police have a team of around 35 officers available to conduct incoming and outgoing surrenders.⁸⁹

This is just a sample of the different arrangements in place throughout police forces in England and Wales. Generally speaking, the more EAWs a force deals with, the more resources are dedicated to them. However, volume alone does not explain the distribution of work between operational officers and civilian police staff, or whether officers tasked with EAWs also have other responsibilities. Budgetary considerations, internal priorities and the organisational structure of the force play key roles in allocating resources and distributing duties.

Working alongside local police forces, the MPS SOAP team plays a role in managing surrenders at London’s Heathrow Airport. They also provide extradition training to MPS police,⁹⁰ this is discussed in chapter 7.

⁸⁸ Transcript 14 - West Yorkshire Police

⁸⁹ Transcript 21 - Sussex Police

⁹⁰ Transcript 63 - MPS SOAP

As well as hosting the UKICB the NCA have numerous operational teams around the country investigating serious and organised crime. One of these teams acts as the NCA's own extradition team, responsible for physical surrenders for NCA cases and occasionally assisting local law enforcement in high-risk collections outside the UK. They also facilitate surrenders from abroad for agencies such as HMRC, which do not have extradition-trained officers. The NCA officers are all warranted, SOAP-trained officers experienced in conducting extraditions.⁹¹

I interviewed officers in the eight local forces in England and Wales listed in figure 4.2 and spoke with one operational NCA officer. I conducted observations with one force as they investigated incoming EAWs and searched for subjects. I spoke with EAW SPOCs in all eight forces and with some operational and senior officers. I was also able to speak with officers at SOAP about the process of surrender and the training they offer. One of the surrender operations I observed took place at Heathrow Airport, where I accompanied SOAP officers.

Prosecutors

The Crown Prosecution Service (CPS), established under the Prosecution of Offences Act 1985,⁹² is responsible for drafting requests for Part 3 EAWs in conjunction with the police. This work is undertaken by local CPS offices, which each have an allocated "EAW Champion."⁹³ During the issuing process the CPS liaise closely with the police, who usually initiate the EAW request and sometimes even complete a first draft. The CPS also liaise with the Part 3 team at the NCA, who provide advice on drafting and have country-specific knowledge.⁹⁴ The CPS or the requesting police officer then take the request to an appropriate judge to be authorised.

The CPS is also involved in incoming EAW requests. Prosecutors from the CPS Extradition Unit represent the Issuing Judicial Authority (IJA) in court proceedings.

⁹¹ Transcript 15 - NCA Operational Team

⁹² Prosecution of Offences Act 1985

⁹³ Transcript 57 - Prosecutor CPS

⁹⁴ Transcript 42 - SIRENE Bureau UK

The CPS liaises with arresting officers to obtain statements regarding the circumstances of arrest and police recommendations for bail. The case then lodges with the CPS until surrender is ordered, at which point the case passes back to the police. The NCA requests a translation of the EAW from the IJA and the CPS issues requests for further information (RFFIs). There are several routes available to prosecutors for this transnational communication, but they usually send and receive information through the SIRENE Bureau at the NCA.

The CPS have a network of liaison magistrates who, like ILOs, are situated in embassies around the EU. Much like the ILOs, how these liaison magistrates are utilised depends on the relationship between the UK and their host state.

I spoke to several staff in the CPS Extradition Unit, with the CPS Liaison Prosecutor in Spain and the Spanish judge who acts as liaison in the UK. I did not speak with any EAW champions in local CPS offices, but prosecutors working in the CPS Extradition Unit were able to answer my questions.

Courts

Section 149 of the EA 2003 details the appropriate judges to issue Part 3 EAWs. In England and Wales, EAWs can be issued by district judges in magistrates courts, justices of the peace or crown court judges. This means that police officers and prosecutors can go to local courts to have EAWs certified. The court's role is to ensure the warrant's validity under the EA 2003 and check its accuracy. Police officers explained that judges do ask for amendments at this stage,⁹⁵ but I did not meet any UK police officers who had had a warrant refused by a judge.

In England and Wales all Part 1 incoming EAW cases are dealt with by Westminster Magistrates' Court in London. Westminster's five courtrooms are focused almost entirely on EAW cases. This centralisation, combined with strict provisions requiring

⁹⁵ Transcript 62 - MPS Kidnap Unit

subjects to be presented as soon as practicable, places a significant burden on police forces far from London. During the data collection period the court dockets became so busy that Hammersmith Magistrates' Court was used as an overflow; there is talk of setting up a northern court to relieve the burden on both the Westminster court and northern police forces, but no decision has been made.⁹⁶

Westminster Magistrates' Court deals with initial hearings in which the identity of the subject is confirmed and the issue of consent addressed. A subject's consent to extradition cannot be revoked and the judge is obliged to resolve the case, usually by ordering surrender, within 10 days. Judges may bail or remand the subject at this stage and are responsible for hearing subsequent bail applications. Most subject's, barring women and category A prisoners, are remanded to HMP Wandsworth in London.

When subjects do not consent, the Court sets a full hearing date to review the substance of the EAW. Judges hear all arguments raised by the defence and review the EAW in line with the EA 2003; they might ask the CPS to obtain more information from the IJA. Cases are appealed to the High Court and ultimately to the UK Supreme Court.

I did not interview any judges about the process. As the focus of the project is the police, I felt that involving judges would cast too wide a net. All data about the judicial process in the UK is taken from interviews with prosecutors and police.

⁹⁶ Transcript 45 - SIRENE Bureau UK

4.3e Institutional architecture in Northern Ireland

The Police Service of Northern Ireland

In Northern Ireland the Police Service (PSNI) plays the same role as local police forces in England and Wales. The PSNI's Extradition and International Mutual Assistance Unit is responsible for EAW cases and acts as the EAW SPOC. They also deal with all international requests such as criminal record or intelligence checks and are responsible for mutual assistance.⁹⁷ Northern Ireland is the only part of the UK to share a land border with another state and PSNI have a developed cooperative relationship with the Guards in the Irish Republic.

The Extradition Unit at PSNI receives incoming EAW requests from the NCA, conducts intelligence checks, runs any necessary surveillance and executes arrests. It also provides information and advice to officers who encounter EAW subjects by chance. When they can the Unit sends police officers to court hearings to give evidence on the identity of the subject, the circumstances of arrest and comment on any bail application. The Extradition Unit is responsible for the case up to and including the surrender of a subject. The team is made up of four constables, a sergeant, an inspector and a chief inspector who oversees the unit. There is also a civilian "export officer", an administrative role.⁹⁸

PSNI issues relatively few Part 3 requests and the Extradition Unit supports investigating officers with requesting EAWs, drafting requests for warrants and liaising with the Public Prosecution Service (PPSNI). Once Part 3 subjects are ordered for surrender, the Extradition Unit is responsible for returning them to Northern Ireland.

Prosecutors

⁹⁷ Transcript 55 - PSNI

⁹⁸ Transcript 56 - PSNI

Northern Ireland has two prosecutor offices involved in the EAW process. Similar to the role of the CPS Extradition Unit, the Crown Solicitor's Office in Northern Ireland (CSONI) represents the IJA throughout the court process.⁹⁹ Where possible, PSNI sends warrants to the CSONI for review before executing an arrest.¹⁰⁰ PPSNI plays an advisory role in incoming cases, providing information to the CSONI on equivalent domestic offences and sentences.¹⁰¹

PSNI passes requests for Part 3 warrants to PPSNI. PPSNI reviews the case file and domestic warrants to ensure that the charging decision still stands and that all relevant evidence and witness are still available for a trial to proceed.¹⁰² The requests are then passed to the CSONI to finalise the EAW draft.

Once a warrant is drafted the CSONI, PPSNI, the investigating officer and the PSNI Extradition Unit hold a scrutiny meeting to review the accuracy of the domestic warrant and the EAW.¹⁰³ This additional scrutiny is not mirrored in other UK jurisdictions and has its roots in the historically politically charged relationship between Northern Ireland and the Republic of Ireland in relation to extradition. Under the now repealed Backing of Warrants (Northern Ireland) Act 1965, a number of high-profile extradition requests for terror suspects failed on minor technicalities,¹⁰⁴ so this review process was introduced and it has remained in place.¹⁰⁵

Once EAWs have been scrutinised the CSONI and the PSNI extradition unit appear before the court to request certification of a new domestic warrant and the EAW. The CSONI then sends the EAW to the NCA for transmission via SIS II.¹⁰⁶

⁹⁹ Transcript 53 - Prosecutor CSONI

¹⁰⁰ Transcript 56 - PSNI

¹⁰¹ Transcript 54 - Prosecutor PPSNI

¹⁰² Transcript 54 - Prosecutor PPSNI

¹⁰³ Transcript 53 - Prosecutor CSONI

¹⁰⁴ Transcript 53 - Prosecutor CSONI

¹⁰⁵ Transcript 53 - Prosecutor CSONI

¹⁰⁶ Transcript 53 - Prosecutor CSONI

Under section 149 of the EA 2003, “a justice of the peace, a resident magistrate or a Crown Court judge” may issue an EAW in Northern Ireland.

Part 1 EAWs are dealt with by the County Court in Belfast. Whereas in England and Wales judges always ask the CPS to request further information from the IJA, sometimes in Northern Ireland judges make the request themselves. In most cases, however, further information is requested through the CSONI and RFFIs are sent via the SIRENE Bureau.¹⁰⁷ Cases can be appealed to the Court of Appeal in Northern Ireland and ultimately to the UK Supreme Court.

4.3f Institutional architecture in Scotland

While some aspects of the process in Northern Ireland are unique, the relationship between police, prosecutors and judges is similar to England and Wales. The division of competence in the Scottish system is markedly different; police in Scotland do not have the same independence from prosecutors as their counterparts. In Scotland prosecutors occupy “a supervisory position over the police” (Lustgarten 1986:5) and officers are required to “comply with any lawful instruction” of prosecutors, the Lord Advocate, the Lord Chief General or the Sheriff Principal.¹⁰⁸ This reduces police discretion and reserves a more central role for prosecutors in the process.

¹⁰⁷ Transcript 53 - Prosecutor CSONI

¹⁰⁸ Section 17 - Police and Fire Reform (Scotland) Act 2012

Police Scotland

Police Scotland process the second largest number of EAWs of all the forces included in this study. The Extradition Team is located in the International Assistance Unit, created when Police Scotland was formed, amalgamating seven local forces, in 2013. This unit deals with all incoming and outgoing international assistance requests, whether for intelligence, evidence, cross-border surveillance or extradition. Like the MPS Extradition Unit, this team is linked to Operation Nexus.¹⁰⁹

In relation to EAWs, Police Scotland have similar responsibilities to other UK police forces. They deliver subjects to court and physically surrender subjects to requesting states.¹¹⁰ During this process the International Assistance Unit liaises with the International Cooperation Unit at the Scottish Crown Office to ensure that prosecutors are aware of an EAW and have an opportunity to review it. Sometimes Police Scotland will receive an urgent EAW direct from the Crown Office, but they usually come from the NCA.

In relation to Part 3 outgoing warrants, the International Assistance Unit provides support and advice to officers considering requesting EAWs, but the role of the police is more limited than in England and Wales. Scottish prosecutors oversee investigations and the prosecutors in the International Cooperation Unit draft warrants. When surrender is ordered from executing states, Police Scotland arranges surrender and collects subjects.¹¹¹

Prosecutor

Prosecutors in Scotland are actively involved in investigations of serious crimes and can direct police investigations. All charging decisions in Scotland rest with a prosecutor, whereas in England and Wales police are able to initiate charges

¹⁰⁹ Transcript 5 - Police Scotland

¹¹⁰ Transcript 4 - Police Scotland

¹¹¹ Transcript 5 - Police Scotland

themselves.¹¹² Under the EA 2003, the Procurator Fiscal is designated as a central authority for Scotland; before the UK joined SIS II, the International Cooperation Unit carried out the certification function now carried out by the FCT in the SIRENE Bureau.

After warrants were certified by the prosecutor, they were sent to police to be executed:

The police have to follow every lawful instruction of the prosecutor. They saw that as a prosecutor's role, and the prosecutor directed them to execute it. Whether it's [a] European [warrant] or whatever is irrelevant for them and they would act on that, which meant that it had been given the same priority as a warrant sent by a prosecutor in a domestic case.¹¹³

Now that Police Scotland usually receive warrants from the NCA or via a PNC alert, the mindset that "a warrant is a warrant is a warrant"¹¹⁴ prevails.

Prosecutors in the International Cooperation Unit still prefer to see EAWs prior to their execution, and Police Scotland and the NCA send the EAW to the prosecutor when the intelligence suggests a connection to Scotland. At this stage the prosecutor checks the warrant and requests further information from the IJA if a court request is anticipated. Once an arrest is made, the Crown Office represents the IJA throughout the court process.

In part 3 cases, police officers liaise directly with prosecutors overseeing a case and those prosecutors request an EAW from the International Assistance Unit. EAWs are drafted by prosecutors working with police to compile the necessary identification material. The prosecutor appears in court to request certification of an EAW then transmits it via the NCA and in urgent cases directly via an EIJ contact point as well.

¹¹² Transcript 3 - Prosecutor Crown Office Scotland

¹¹³ Transcript 3 - Prosecutor Crown Office Scotland

¹¹⁴ Transcript 3 - Prosecutor Crown Office Scotland

Courts

The courts in Scotland play the same role in the EAW as those in England and Wales and Northern Ireland. Sheriff courts in Edinburgh conduct initial hearings confirming ID and resolving the issue of consent, hear bail applications and resolve procedural issues. Full hearings take place in the Sheriff court; appeals are made to the Sherriff Appeal Court and ultimately to the High Court of the Justiciary, Scotland's highest criminal court. The UK Supreme Court plays a role only if the grounds for appeal raise devolution issues.¹¹⁵

The UK EAW infrastructure is complex and links local police officers, prosecutors and courts to international counterparts through the national PNC database and SIS II. Most transnational communication between UK police or prosecutors and their European counterparts is via the SIRENE Bureau or other networks established at meso-level.

The remaining sections of this chapter explore the infrastructure in the jurisdictions that are the subject of the embedded case studies. The focus of the embedded cases is the relationship between the UK and the specific state rather than police practice in that state. Rather than examining differences in national practice I investigate the reasons for differences and similarities in the cooperative relationships. The following sections explore the infrastructure of the EAW in Ireland, Spain and Poland and provide contextual information relevant to understanding the police relationship between those states and the UK.

4.4 Infrastructure of the EAW in the Republic of Ireland

The Republic of Ireland is the only country sharing a land border with the UK and is one of its closest law enforcement partners. The relationship developed against a backdrop of ethno-nationalist conflict and an enduring terrorist threat (Shirlow and

¹¹⁵ Extradition Act 2003 Section 30A.

Coulter 2014), particularly in the border region. The police forces (PSNI in Northern Ireland and the Guards in the Republic) have, through proximity, necessity and shared occupational identity developed close informal relationships even when formal frameworks for cooperation were politically impossible (Walsh 2011). In 2008 a British-Irish parliamentary report into police cooperation found that cooperation was excellent, both police forces working, formally and informally, on many issues (British-Irish Parliamentary Assembly 2008:9).

Historically, extradition between the UK and Ireland was politically sensitive, with the Republic seen as offering safe haven for IRA terrorists. Informal agreements between PSNI and the Guards to discreetly arrest and surrender each other's suspects resulted in court cases¹¹⁶ and ultimately formal legislation in 1965.¹¹⁷ Even after the system was formalised, several high-profile cases failed due to minor technical deficiencies in the UK warrants, preserving the sense of tension. As discussed, there are still hangovers from these difficulties in the process Northern Ireland authorities follow when issuing EAWs. Nevertheless, the EAW has reduced the extent of review that domestic courts apply to requests. Warrants between the UK and Ireland are largely successful: between April 2009 and March 2015, 243 arrests on incoming warrants resulted in 200 surrenders to the Republic of Ireland, and 193 arrests on outgoing warrants resulted in 146 surrenders to the UK.

Studies of police cooperation across the Irish border identified a strong preference among police officers to utilise personal contacts and informal methods of cooperation rather than more formal channels developed at a European level (Walsh 2011). This research indicates that even when focused on extradition as the most formal aspect of transnational law enforcement cooperation, the Irish–British relationship is less formal than the UK's relationship with other states. This is true not only in the cross-border relationship between the Guards and PSNI but also between the Guards and the rest of the UK. Whilst the developed relationship prior

¹¹⁶ State (Quinn) v. Ryan [1965] IR 70

¹¹⁷ Backing of Warrants (Northern Ireland) Act 1965 (UK Legislation) and Extradition Act 1965 (Irish Legislation)

to the enactment of the EAW goes some way to explaining this informality, the infrastructure of the EAW in the Republic of Ireland provides additional clues.

Like the UK, the Irish legal system is a common law, adversarial system and operates in both English and Irish languages, so there are few cultural barriers to direct informal contact. Criminal justice professionals speak the same language and operate in similar legal contexts.

There are large emigrant populations living in both the UK and Ireland. In 2017 an estimated 227,200 UK-born residents lived in Ireland and 375,900 Irish-born residents in the UK. The same report estimated that there are over 110million border crossings between Northern Ireland and the Republic each year (Smith 2017). People born in Northern Ireland before 2005 can claim Irish passports and can apply for them under the Irish spelling of their name. Some officers point out that this system is open to exploitation, allowing criminals to travel under their true identity but using a spelling that will not trigger a 'hit' in a police system.

4.4a Irish law

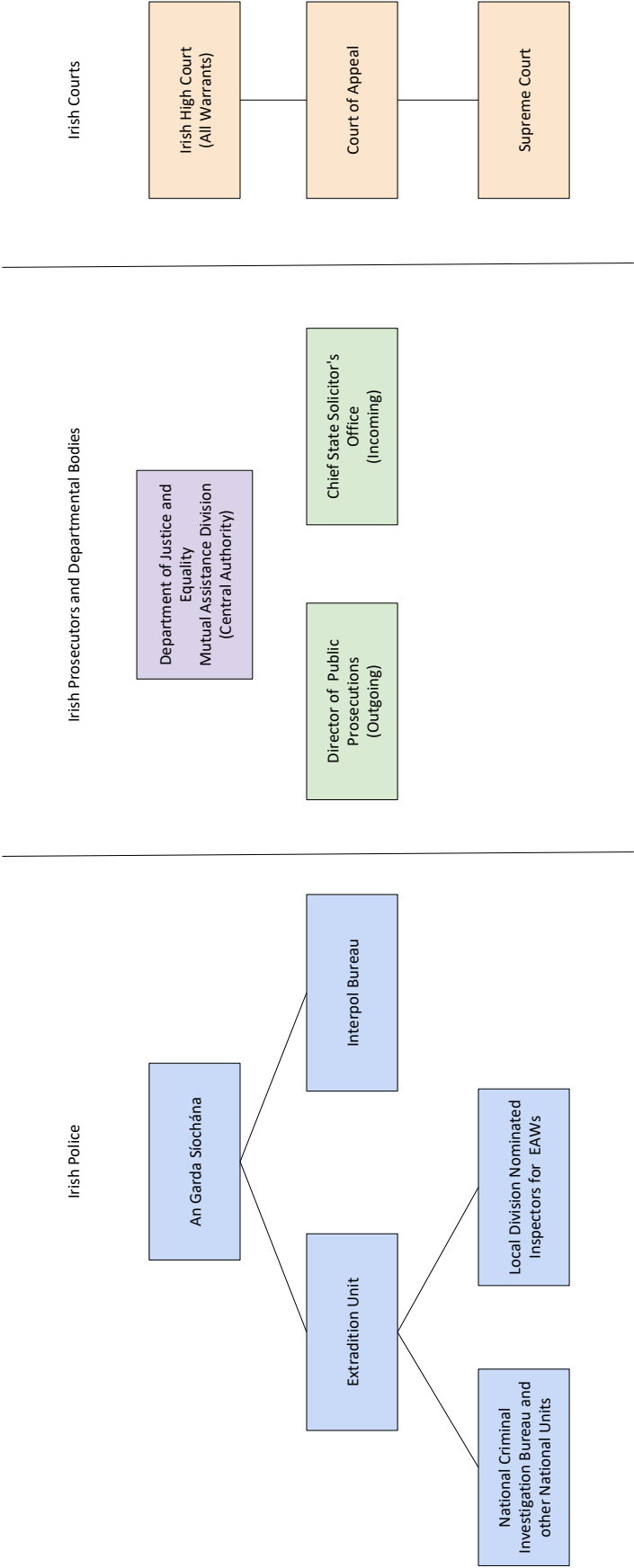
The law that transposes the Framework Decision (FWD) into Irish law is the European Arrest Warrant Act 2003 (EAW Act). Section 6 designates the Minister for Justice and Equality as the central authority for Ireland, retaining certain political aspects of extradition that the EAW aimed to abolish. Under section 12, issuing states must transmit EAWs directly to the central authority in the Department of Justice and Equality.

Section 9 of the EAW Act designates the Irish High Court as the executing judicial authority for incoming requests, and in practice this court also issues EAWs. Under section 13 the central authority must present EAWs meeting validity requirements to the High Court to be endorsed. This endorsement by the High Court, like the certification process in the UK, is not foreseen by the FWD. The law reserves a margin of discretion for the court which *may*, rather than *must*, endorse a warrant

valid under section 12. A similar margin of discretion is reserved for the police who *may*, under section 13, execute a judicially endorsed warrant. Sections 25 to 27 of the Act detail police powers to enter dwellings, conduct searches, seize property and detain subjects in police custody.

In relation to issuing outgoing EAWs, section 33 states that applications must be made by the Director of Public Prosecutions (DPP) in accordance with the conditions in the FWD. The EAW should then be transmitted by the central authority to the receiving member state.

Figure 4.3: Ireland - Institutional Architecture



4.4b Irish police and databases

The Guards, the Irish national police, has a central Extradition Unit based at the national headquarters in Dublin, and nominated personnel in each of its 26 divisions are trained to execute EAWs. The Extradition Unit is made up of three warranted sergeants and two civilian support staff and is overseen by a detective inspector. The Unit is nested within the National Bureau of Criminal Investigations (NBCI) and can draw operational support from detectives in that unit.¹¹⁸

The Extradition Unit is responsible for receiving endorsed EAWs, conducting intelligence checks, developing intelligence on the location of subjects and tasking EAWs out for arrests. The Extradition Unit liaises with the Chief State Solicitor's Office (CSSO) and appears in the High Court to give evidence of the arrest and opinions on bail. Much like the UK, the law requires that subjects be presented "as soon as may be", which is similar to the "as soon as practicable" provision in the EA 2003. The Extradition Unit and the CSSO provide a 24/7 service to arresting officers to ensure compliance with these provisions. Once a court has ordered surrender of a subject, the Extradition Unit is responsible for physical surrender to the requesting member state.

With outgoing EAWs, the Extradition Unit receives a case file from investigating officers and liaises with them to draft an EAW, which is sent to the DPP. The prosecutor finalises the request and presents it to the High Court for endorsement. The Extradition Unit then transmits the warrant through the central authority and the Interpol NCB.¹¹⁹ Once surrender has been ordered by the executing state, the Extradition Unit is responsible for collecting the subject.

The Extradition Unit is also the EN-FAST contact point for Ireland but, unlike many EN-FAST units on the continent, they are responsible for all of Ireland's EAW traffic rather than specific high-value cases.

¹¹⁸ Transcript 50 - An Garda Síochána

¹¹⁹ Transcript 50 - An Garda Síochána

The Irish Interpol office is also situated in the Guards' headquarters in Dublin. Ireland is not yet a member of SIS II, but a project is underway to bring a SIRENE Bureau online and Ireland is expected to join imminently.¹²⁰ In the absence of a SIRENE Bureau, Ireland's Interpol NCB acts as the main transnational police-to-police channel. EAWs received via this route cannot be executed by the Guards, but the Interpol office can conduct preliminary checks and ask the Extradition Unit to make further inquiries. If any checks return a positive result the NCB asks the requesting state to send the EAW to the central authority. In Ireland Interpol is not an official channel for EAW transmission, it is "just a police-to-police channel for the purpose of liaising and dissemination of information in relation to fugitives and intelligence."¹²¹ The NCB is also the National Bureau for Europol and occasionally receives requests relating to EAWs via this route.

When the NCB receive certified outgoing EAWs from the Extradition Unit they issue an Interpol Blue Notice, which is disseminated to all EU member states, notifying them that Ireland has an EAW in place and requesting information if the subject comes to the attention of the authorities. The NCB may also be involved in outgoing cases at an earlier stage, initiating international inquiries about serious criminals who are thought to have fled the jurisdiction.

4.4c The Department for Justice and Equality

The Mutual Assistance Division at the Department of Justice exercises the central authority function allocated to the Minister for Justice and Equality by the EAW Act 2003. Incoming EAWs are received by this office and checked for compliance with the FWD and the EAW Act 2003; valid EAWs are sent to the CSSO to be presented to the High Court for endorsement. The central authority usually receives warrants for subjects who are known or thought to be in Ireland.¹²² The division may have contact

¹²⁰ Transcript 51 - Interpol Ireland

¹²¹ Transcript 51 - Interpol Ireland

¹²² Transcript 52 – Central Authority Ireland

with the Guards at this stage, especially in serious cases or when the subject is considered a flight risk.

Once an arrest is executed and a full hearing date is set, the Mutual Assistance Division send RFFIs to the IJA or central authority in the issuing state. Requests to the UK are sent via email to the UK SIRENE Bureau. Once surrender is ordered, the division notifies the issuing state and provides information of time spent on remand to be discounted from any sentence to be served. If the Guards have difficulty arranging surrender with the issuing state, this office can send messages via central authorities on their behalf.

The Mutual Assistance Division has minimal involvement in outgoing requests. It transmits EAWs to requested states and responds to RFFI's, sometimes using the EIJN or the Irish Eurojust desk.¹²³ It receives arrest and surrender notifications and requests information from the executing state on time the subject spent in custody.

4.4d Irish prosecutors

There are two prosecution authorities involved in the EAW process in Ireland. The CSSO receives incoming warrants from the central authority and presents them to the High Court for endorsement. It then represents the IJA throughout the proceedings¹²⁴ and liaises with the central authority to send RFFIs. The CSSO's only contact with the police is during court proceedings, when police give evidence on arrest and opinions about bail. The CSSO is also responsible for applications to extend the 10-day deadline for surrendering subjects, although these are rare.

The DPP is responsible for outgoing warrants. They receive requests from the Guards Extradition Unit and liaise with them to finalise a draft EAW. This is an "interactive process" and interviewees described it as a "close working relationship".¹²⁵ The DPP

¹²³ Transcript 52 – Central Authority Ireland

¹²⁴ Transcript 43 - Prosecutor DPP Ireland

¹²⁵ Transcript 43 - Prosecutor DPP Ireland

presents the draft EAW to the High Court for endorsement. Warrants are returned to the Guards to arrange transmission and all RFFIs are dealt with by the DPP's office via the central authority.

4.4e Irish courts

The High Court, based near the Guards' headquarters in Dublin, is responsible for endorsing incoming EAWs, authorising the Extradition Unit to execute arrests. Subjects are presented to this court immediately on arrest, ID is established, and any bail application dealt with. A hearing date is set within two weeks to address the issue of consent, but the defence's objections are dealt with in a full hearing. Full hearings are scheduled in the High Court once all submissions have been received. The High Court's decision can be appealed by either side to the Appeal Court and ultimately, on points of law, to the Supreme Court.¹²⁶

The High Court also scrutinises and endorses DPP applications to issue EAWs. This process is "certainly not a rubber stamp"; judges ask questions and request amendments in up to 50 percent of cases, but "invariably, the judge will endorse it".¹²⁷

I did not interview judges in Ireland. All information on the court process was provided by other interviewees. I spoke to the Guards Extradition Unit and officers in the Interpol NCB, and to prosecutors at the DPP, but I did not speak with CSSO officers. The information I have about the role of the CSSO was provided by the Department for Justice, where I interviewed members of the Mutual Assistance Division.

¹²⁶ Transcript 52 – Central Authority Ireland

¹²⁷ Transcript 43 - Prosecutor DPP Ireland

4.5 Infrastructure of the EAW in Spain

Spain surrenders more EAW subjects to the UK than any other member state; 27% of all surrenders to the UK between 2011 and 2015 came from Spain. This is perhaps unsurprising, given that Spain hosts the largest population of British emigrants in the EU, estimated at 308,000 in 2011 (Office for National Statistics 2017). Anyone familiar with the British tabloid press will have seen Spain's southern coast called the 'Costa del Crime'; although declining in popularity, it continues to be a favoured destination for organised criminals fleeing British justice.

The relationship between Spain and the UK around EAWs is unique. There are British ILOs posted in Madrid and in Malaga and liaison magistrates posted in the British Embassy in Madrid and the Spanish Embassy in London. These semi-diplomatic postings provide fast and informal routes to share information, resolve queries and expedite cases. The UK and Spain run Operation Captura, a media campaign targeting EAW subjects thought to have a connection with Spain (National Crime Agency 2019). It is discussed in chapter 6.

The criminal justice systems of the UK and Spain are very different. Spain has a civil, inquisitorial legal system; the relationship between judges, prosecutors and police is quite unlike the UK. The principle of mutual recognition is given clear legal status and police do not have the same institutional independence as the UK. Nevertheless, the police play a pivotal role in the EAW, especially in relation to incoming requests.

4.5a Spanish law

The Spanish law enacting the FWD is Title II of Law 23/2014.¹²⁸ In contrast to both the UK and Irish law, the preamble to 23/2014 sets the EAW enactment squarely in the context of mutual recognition. Title II governs the EAW and creates an obligation to recognise and execute valid EAWs unless a legal provision expressly prevents it.

¹²⁸ Act 23/2014 of 20 November on Mutual Recognition of Judicial Decisions in Criminal Matters in the European Union – Reference BOE-A-2014-12029

Article 54 states that “A European Arrest and Surrender Warrant shall be processed and executed urgently.” EAW subjects must be presented to a Central Judge of Criminal Investigation (the *Juzgados Centrales de Instrucción*) or the National High Court (the *Audiencia Nacional*) in Madrid.

Spain has two types of criminal court. Penal courts preside over criminal trials after charges have been brought. There are also investigative courts, which become actively involved in investigations as soon as they become judicialised.¹²⁹ This occurs when a warrant is needed, for example for searches, forensics or any kind of surveillance. At this point investigative judges become actively involved in gathering evidence and investigating the crime; they have a neutral position and gather evidence both against and in favour of the accused. At the end of the investigative stage, the judge makes a recommendation to the prosecutor who makes the final decision whether to charge and initiate a trial in the penal courts.

All judges in penal courts and investigating judges can issue EAWs: over 1,000 judges nationwide.¹³⁰ At the investigative stage, judges can issue EAWs only with input from the prosecutor and the legal representative for the defence. But they cannot officially close the first phase of proceedings until the accused is surrendered. This procedure has caused problems in the relationship with the UK, which enacted the “charge and try” provision discussed above. This means that the UK must refuse EAWs issued when a genuine charging decision has not been made, whilst investigatory judges cannot make official charging recommendations until the accused is physically present.

Some progress in the interpretation of “charge and try” provisions has been made and the issues appear close to resolution, allowing the UK to surrender subjects when it is clear their absence from proceedings is the sole reason an official decision has not been reached.

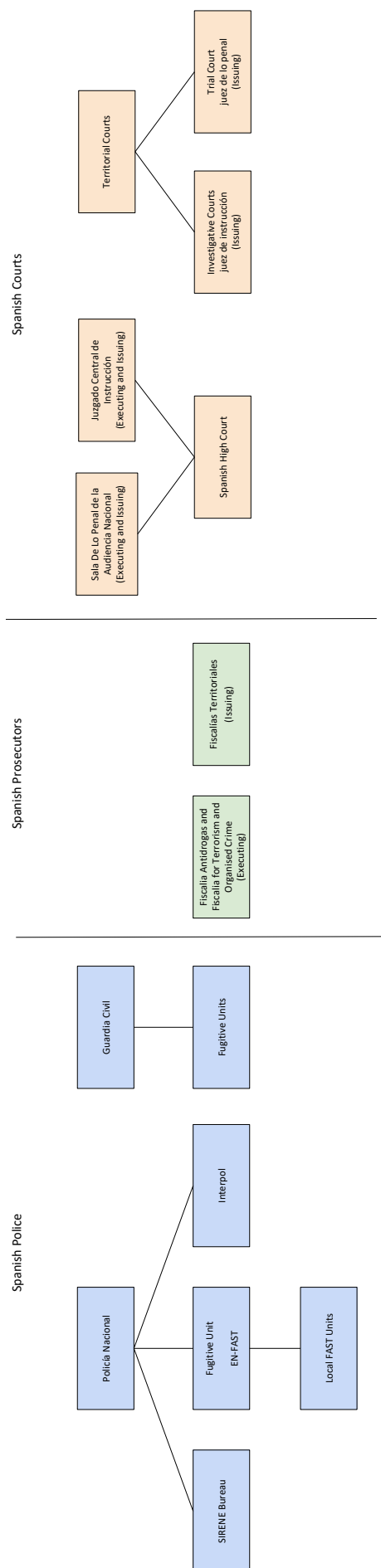
¹²⁹ Transcript 19 - Liaison Magistrate

¹³⁰ Transcript 16 - Liaison Magistrate

Title II of Law 23/2014 states that EAWs may be transmitted either directly to the relevant judicial/central authority, via SIS II, or both. EAWs may be transmitted via Interpol when preferred routes are unavailable. The act expressly acknowledges the role of the police in surrender, with Article 58 stating that surrender shall be performed by a Spanish police officer. This is the only mention of the police in the legal framework and the remainder of their role is governed by the Criminal Procedure Act,¹³¹ which also governs their powers in relation to domestic matters.

¹³¹ Act 10/1995 of 23 November on the Criminal Code

Figure 4.4: Spain - Institutional Architecture



4.5b Spanish police and databases

Spain has two national police forces, the *Policía Nacional* and the *Guardia Civil*, a national militarised police force. Both play a role in the enforcement of the EAW and each has a fugitive unit. Smooth cooperation between the two agencies is not always guaranteed (Jordán and Horsburgh 2006), but interviewees were positive about cooperation between the fugitive teams, saying that they occasionally worked together and that cooperation was “not a problem.”¹³²

The *Policía Nacional* have responsibility for the operation of SIS II and their fugitive unit acts as the main EN-FAST team. This research did not explore the role of the *Guardia Civil*. This section describes the institutional set up of the *Policía Nacional* in relation to EAW, because they take the lead on cases nationally and are the first port of call for international enquiries.

The Fugitive Unit at the *Policía Nacional* is based at police headquarters in Madrid and has a national remit for the execution of EAWs. The unit has three teams: a Central Group for all fugitive search requests, the National Request Group that deals with requests from Spanish judges, and the International Request Group that deals with extradition requests from outside Spain, including all incoming EAWs. The *Policía Nacional* also have dedicated search and arrest teams in each province.

The International Request Group receives all incoming EAW requests via the SIRENE Bureau or directly from British ILOs based in Spain.¹³³ The NCA sends all EAWs with specific Spanish intelligence directly via an ILO as well as via SIS II.¹³⁴ The International Request Group develops intelligence, liaises with the issuing country, conducts surveillance with judicial oversight and executes arrests or delegates them to provincial officers. The Fugitive Unit also deals with all EN-FAST requests to Spain, including those from the UK.

¹³² Transcript 18 - *Policía Nacional*

¹³³ Transcript 18 - *Policía Nacional*

¹³⁴ Transcript 42 - SIRENE Bureau UK

I did not meet with the National Request Group, but it was explained that they provide police support for outgoing requests issued by national judges. They develop intelligence and share this with requested states as well as providing ID information such as fingerprints or photographs.

The *Policía Nacional* headquarters also hosts Spain's Interpol NCB and SIRENE Bureau, both of which are staffed by *Policía Nacional* officers. Spain was one of the original Schengen countries and the SIRENE Bureau, which is responsible for administering the Spanish national copy of SIS II, was set up when the first-generation system was launched. The system is live-linked to the national police database *Personas*, in the same way that the UK copy is linked to PNC.¹³⁵

Within the SIRENE Bureau, officers are split into teams that deal with specific alerts or phases of the EAW process. The Article 26 team deal with both incoming and outgoing EAWs. Incoming Article 26 alerts are automatically available in the *Personas* database; unlike in the UK, there is no pre-certification process. The alert gives frontline police officers a power of arrest if the subject is located. When incoming alerts are received, the Article 26 team conduct preliminary checks on national police databases, if any link to Spain is indicated they ask the Fugitives Unit to follow up. The Article 26 team acts as a liaison between Spanish forces and the requesting state, sharing or requesting more information.

When subjects are arrested the Article 26 team notifies the requesting state and liaises with the arresting officer to provide identification material. They also notify the *Audiencia Nacional* and the relevant prosecutor's office to expect the subject. As the case progresses the SIRENE Bureau can liaise between the Spanish courts and the IJA, but courts and prosecutors usually make direct contact.

¹³⁵ Transcript 24 - SIRENE Bureau Spain

The Article 26 unit also plays a part in issuing outgoing warrants. Police are able to prompt the issue of warrants by courts, and courts also issue them independently. The SIRENE Bureau reviews draft warrants and works with the issuing court to correct errors or remedy incomplete information. They create the Article 26 Alert and the A Form and transmit requests; an Interpol Red Notice is also generated by Interpol NCB officers. When arrests are executed in receiving states, this office is notified and liaises between the executing state and the IJA in the event of requests for information.¹³⁶

When subjects are ordered for surrender to or from Spain the case is passed to the Convoy Unit, which conducts what they call 'active' (inbound collection) and 'passive' (outbound surrender) operations.¹³⁷

4.5c Spanish prosecutors

In Spain two national prosecutors' offices are responsible for representing the IJA in court proceedings for incoming EAWs: the *Fiscalia Antidrogas* and the *Fiscalia por Terrorismo y Crimen Organizado*. They receive incoming requests, usually post-arrest, from the SIRENE Bureau or from the *Audiencia Nacional*. The initial paperwork is usually limited to a 'Form A' translated into Spanish and whatever supporting information is sent by the requesting state, usually in English.

All courts in Spain have the power to issue EAWs within the legal limits of the FWD and Law 23/2014 and regional prosecutors have input at this stage as they must agree with the investigatory Judge's decision.

¹³⁶ Transcript 24 - SIRENE Bureau Spain

¹³⁷ Transcript 25 - SIRENE Bureau Spain

4.5d Spanish courts

Incoming cases are heard in the *Audiencia Nacional* which has six courts and six judges sitting seven days a week.¹³⁸ Subjects must be presented before the court within 72 hours of arrest, which gives police sufficient time to move subjects to Madrid from as far away as the Canary Islands. Cases in Spain are often dealt with in one hearing that considers consent, identification, bail and the limited legal reasons to refuse a warrant in Law 23/2014. RFFIs are dealt with through paper submissions once the translated EAW is received, further hearings are held only in exceptional cases. Appeals to the High Court are considered only on paper and prosecutors make submissions on behalf of the IJA.¹³⁹ Cases tend to be resolved within 60 days even if appeals are made;¹⁴⁰ police then have 10 days to carry out a surrender operation.

RFFIs are usually sent directly by the courts and the liaison magistrates posted in the UK and Spain are often the route used for these requests, although judges also send requests via SIRENE.

Any court in Spain can issue an EAW but does so only after consulting with regional prosecutors and any representation for the defence. Courts tend to draft EAWs themselves then finalise them in liaison with the Article 26 team at the SIRENE Bureau, which then transmits them via SIS II.

During fieldwork in Spain I spoke to officers in the *Policía Nacional's* SIRENE Bureau and the Fugitive Unit, but I did not meet any members of the *Guardia Civil*. I interviewed national prosecutors and liaison magistrates based in Spain and the UK. I was unable to speak to local prosecutors, investigatory judges or anyone from the *Audiencia Nacional*, but the liaison magistrate stationed in the UK was able to answer questions about the judicial process.

¹³⁸ Transcript 16 - Liaison Magistrate

¹³⁹ Transcript 26 - Prosecutor Spain

¹⁴⁰ Transcript 26 - Prosecutor Spain

4.6 Infrastructure of the EAW in Poland

Poland issues more EAWs than any other EU member state and accounted for nearly 60% of all surrenders from the UK between 2011 and 2015 (Carrera et al. 2013; The European Commission 2011). So many EAW subjects are surrendered by the UK to Poland that a special military flight is organised approximately every two weeks. The relationship between the NCA and the Polish National Police is, unsurprisingly, unique.

One reason for Poland issuing so many EAWs is perhaps that criminal justice practitioners in Poland operate under the legality principle, so they are obliged to prosecute all crimes and pursue offenders through all available means. This leaves less discretion for police, prosecutors or judges in issuing and executing EAWs compared to the UK. Although a proportionality principle is slowly being developed in mutual recognition cases, the legal culture that has grown around the legality principle must be overcome and is not the only structural reason behind Poland's prolific EAW use (Ostropolski 2014).

Poland has a high number of nationals who have emigrated to other European states, more than any other EU member state in 2011 (Eurostat 2015:94). The second largest Polish-born emigrant community, over 650,000 in 2011, resides in the UK (Eurostat 2015:95). It is no wonder then that Poland is one of the UK's primary partners in EAW enforcement.

4.6a Polish law

The legal provisions transposing the FWD into Polish Law can be found in Chapter 65 of the Code of Criminal Procedure and Chapter 13 of the Penal Code, enacted in 1997 and last amended in 2016. No English translations of these provisions are currently available, so this section discusses relevant aspects of the legal framework using information published by academics and NGOs.

Much of the literature focuses on proportionality; Poland sometimes issues EAWs for minor or historical offences (e.g. Carrera et al. 2013; Helsinki Foundation 2018; Ostropolski 2014; Sievers and Schmidt 2015). Article 10 of the Criminal Procedure Code imposes a duty on prosecutors and courts to bring charges against all suspects and to impose appropriate penalties. This means that “prosecutors have a duty to take all available measures to bring the offender to justice, no matter how minor the crimes, and use measures adopted by the international law” including EAWs. (Helsinki Foundation 2018:54) A decision to cancel proceedings or an unreasonable decision not to issue an EAW may itself be a criminal act.

In 2015 a provision was inserted into Chapter 65 that gave some leeway to judges to refuse to issue EAWs if not “in the interests of the justice system.” Now, under Article 607, judges in regional courts *may* issue warrants on the request of prosecutors or district courts (Helsinki Foundation 2018:11).

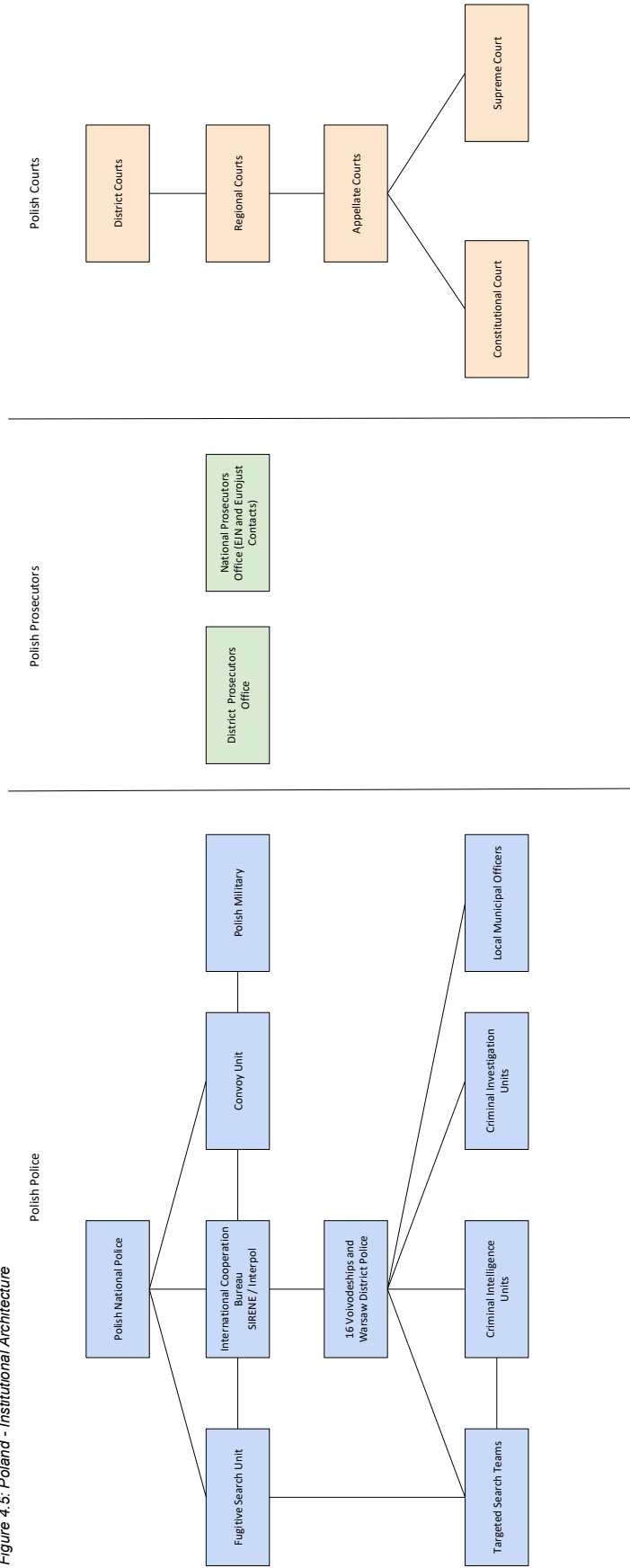
Article 607d designates two possible routes for transmission of EAWs: either direct to the appropriate judicial authority or via the ICB through Interpol or SIRENE. There is little information available on the powers of the Polish police in the EAW literature, but discussions with interviewees made it clear that the police operate under the legality principle and do not consider themselves to have discretion in their law enforcement activities. It was also apparent that Polish police have significant surveillant powers,¹⁴¹ although they were very reluctant to discuss these tactics with me¹⁴² and UK interviewees stated that Polish police rarely disclosed the sources of intelligence.¹⁴³

¹⁴¹ Transcript 33 - SIRENE Bureau Poland

¹⁴² Transcript 39 - Polish National Police

¹⁴³ Transcript 44 - SIRENE Bureau UK

Figure 4.5: Poland - Institutional Architecture



4.6b Polish police

Poland has a national police force, the *Policja*. The force is organised in hierarchical fashion. Every division in the Warsaw headquarters has a subordinate division in each of the 16 *Voivodeships* (regions) and within Warsaw city police. The national headquarters hosts Poland's International Cooperation Bureau (ICB), which acts as the SIRENE Bureau and Interpol NCB. The Europol National Bureau is also situated in this office. The ICB is staffed by a mixture of police officers, civilian staff and border guards and the workflow system which incorporates SIS II and Interpol databases is available to other national agencies, providing information relevant to their role.

The SIRENE Bureau is divided into two sections. Section 1 deals with searches for persons in criminal cases under Article 26 EAW alerts and Article 34 alerts for discrete and specific checks. Section 2 deals with all other SIS II alerts. Section 1 deals with incoming and outgoing EAW requests, linking local police, prosecutors and judicial authorities with international partners.¹⁴⁴

When incoming requests are received, Section 1 conducts preliminary checks on police databases and sends warrants to local officers, targeted search teams or criminal intelligence teams in the *voivodeships*.¹⁴⁵ Local officers conduct searches and execute arrests. Local police can also come into contact with subjects by chance and the police database will direct them to execute an arrest and contact the ICB. When notified of an arrest, the ICB sends EAW documents to district prosecutors and notifies the requesting state.

Once surrender is ordered the case is passed to the Convoy Unit, which is responsible for domestic and international prisoner transport. The Convoy Unit liaises with the requesting state via SIS II and conducts the physical surrender operation.¹⁴⁶

¹⁴⁴ Transcript 30 - SIRENE Bureau Poland

¹⁴⁵ Transcript 31 - SIRENE Bureau Poland

¹⁴⁶ Transcript 30 - SIRENE Bureau Poland

The SIRENE Bureau checks outgoing EAWs and liaises with the issuing court to rectify mistakes. They create the A Form, attach ID information and validate the Article 26 alert, transmitting it to all EU member states. In some cases, an Interpol notice is also created, especially if the subject is thought to be in a non-SIRENE country or to have travelled outside the EU.¹⁴⁷

Municipal police in Warsaw and those in *voivodeships* undertake searches for subjects and execute arrests. Criminal Investigation Units and other investigating officers are one of the starting points for issuing EAWs in Poland; if their suspect has fled Poland they can request an EAW from prosecutors. A study by the Institute of Justice suggested that around two-thirds of EAWs issued by Poland are conviction warrants, so many EAWs originate with probation officers and prosecutors (Ostropolski 2014:188).

Voivodeships and Warsaw municipal police have Criminal Intelligence Units, which connect local police and the SIRENE Bureau for information exchange. These units work locally and across borders to develop intelligence and pass it to operational officers. The SIRENE Bureau is their international conduit; they do not send transnational messages themselves can draft requests and translate information to be sent via SIRENE.

Poland has EN-FAST contact points in the Missing and Fugitive Unit at police headquarters. They can assist the SIRENE Bureau and local search teams in serious cases and can be contacted directly by EN-FAST teams in other states. This operational unit only deals with serious and urgent cases.¹⁴⁸

Poland also has a network of ILOs based in their embassies throughout the EU who exchange police-to-police information and assist in resolving urgent cases. There are two ILOs based in the Polish embassy in London who were often mentioned by UK

¹⁴⁷ Transcript 30 - SIRENE Bureau Poland

¹⁴⁸ Transcript 39 - Polish National Police

interviewees. ICB officers made it clear that requests sent through ILOs are formal requests and are likely to be sent via SIRENE as well as directly.

4.6c Polish prosecutors

District prosecutors are responsible for incoming EAWs and play a role in outgoing cases. When subjects are arrested on incoming requests, district prosecutors represent the IJA in the case. They receive files from local police and the SIRENE Bureau. An initial hearing takes place within 48 hours with a full hearing scheduled when the translated EAW is received.

When prosecutors need more information from IJAs they contact them directly or via the EJM network. The Polish contact points for the EJM are in the National Prosecutor's office and the Ministry of Justice.¹⁴⁹ Prosecutors rarely have direct contact with police in incoming cases and if they do is usually with the arresting officers.¹⁵⁰

Any prosecutor can request an EAW from a regional court and local courts seeking to impose a penalty can liaise with regional courts directly. The police can request an EAW from the District Court, but most cases go through a prosecutor, who liaises with the District Prosecutor to draft a request.

Prosecutors confirmed that under the Criminal Procedure Code they are obliged to prosecute or take appropriate action in all cases where there is a suspect. They can consider alternative measures if extradition is thought to be too costly, but if an EAW is the only option available they are obliged to pursue it. Courts make an independent decision on issuing EAWs and this is the only stage where proportionality is considered.

¹⁴⁹ Transcript 38 - Prosecutor Poland

¹⁵⁰ Transcript 38 - Prosecutor Poland

4.6d Polish courts

District and regional courts execute EAWs in Poland. In most cases the District Court is the court of first instance, but felony cases go straight to the Regional Court. Initial hearings review questions of identification, consent and mandatory bars to extradition. The court usually authorises detention for seven days pending translation of the EAW. Full hearings consider all defence objections to the EAW and examine the validity of the translated warrant.¹⁵¹ EAW subjects have a right of appeal and ultimately appeals on points of law can be heard in the Supreme Court. The Constitutional Court has also issued judgements relating to the surrender of Polish nationals.

Regional courts have judges and administrative personnel who coordinate international cooperation and oversee EAW cases. They are responsible for communicating with international counterparts to request further information, which they normally send directly to the IJA. Regional courts also issue EAWs; they receive requests from prosecutors or district courts, but in urgent cases may receive requests directly from the police.

Prior to the proportionality amendment to Chapter 65, judges were bound by the legality principle in EAW cases as well as domestic ones. Since the 2015 amendment, Regional Court judges have been working to develop a proportionality test.¹⁵² The judge I interviewed described consulting judicial counterparts in Poland and the EU in relation to developing this test. The numbers of EAWs issued by Poland have fallen since the introduction of the “interests of justice” provision, but most criminal cases in Poland do technically fall within the remit of FWD.

During fieldwork in Poland I interviewed officers in all the police units discussed above. I spent much of my time with SIRENE officers in the ICB and spoke with the Convoy Unit and with the Missing and Fugitives Unit at the National Police

¹⁵¹ Transcript 38 - Prosecutor Poland

¹⁵² Transcript 32 - Judge Poland

headquarters. I interviewed a criminal intelligence officer and a criminal investigation officer at Warsaw City Police and met national and district prosecutors. I also interviewed a judge at Warsaw Regional Court and a magistrate from the central authority who deals with MLA; these were the only judges I interviewed during the study. These interviews were not actively pursued but kindly arranged by my hosts in the ICB.

4.7 Conclusion

This chapter detailed the infrastructure of the EAW. This infrastructure is legal, judicial and prosecutorial, but also includes local and national departmental bodies and police agencies, linked through supranational and global databases, institutions and networks. The infrastructure provides several routes for cooperation, from the formal SIRENE channel to the less formal EN-FAST network, which enables urgent action in specific cases. Most cooperation and communication takes place via SIRENE and other formal channels, and direct contact and informal networks provide opportunities for diplomacy between transnational police officers to build trust and foster mutual understanding. The following chapters explore the use of formal and informal channels at specific stages of the process, in certain types of cases and in relationships between specific states.

Exploring the legal arrangements across several states highlights the differing scope for police discretion within each national legal framework. In the UK, the space the law leaves for police discretion is clear. Understanding that police initiate requests for EAWs and play a pivotal role throughout the process, helps to identify policing agencies and police infrastructure as the means by which law enforcement power travels from issuing to executing state. The following three chapters explore these issues in detail, examining police practice and cooperation at different stages of the EAW process.

5. Execution

5.1 Introduction

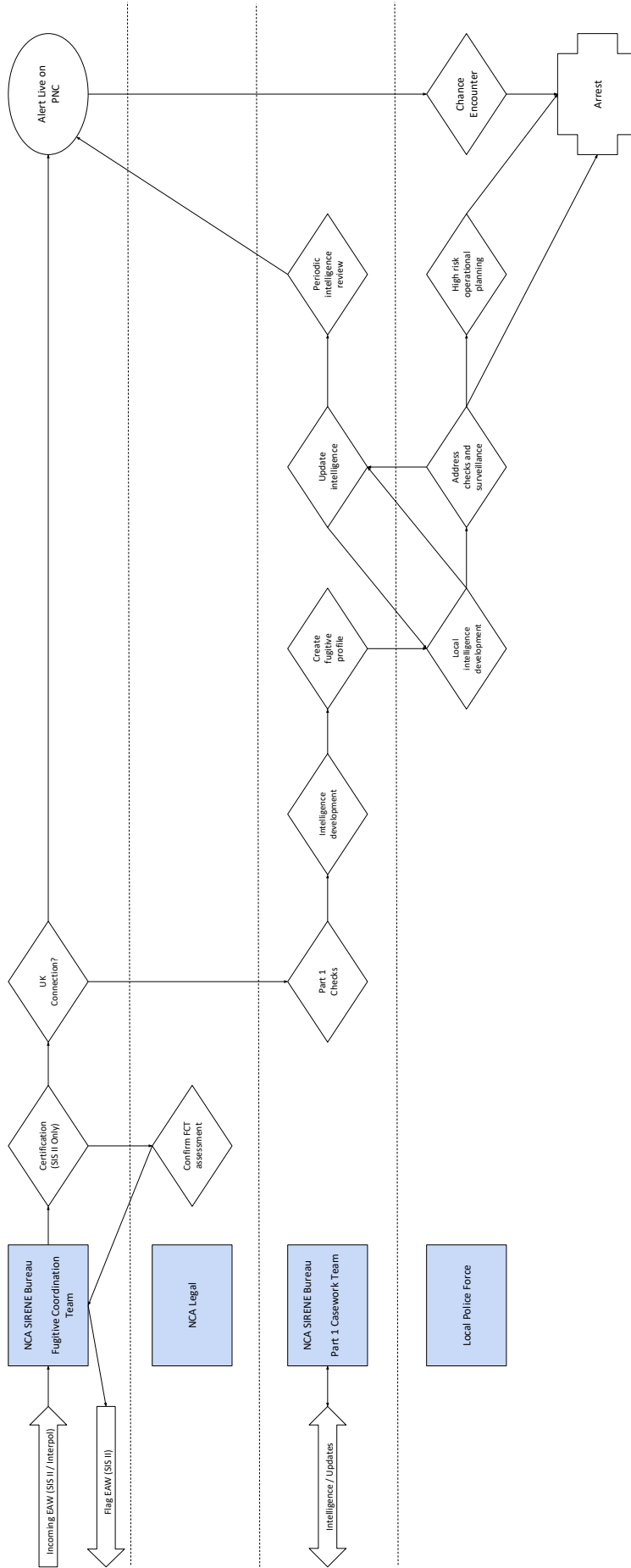
The previous chapter described the infrastructure that supports the EAW and explored the legal and institutional context for police practice. The pivotal role that police play in the EAW was revealed and the potential for police discretion to shape criminal justice practice in the EAW was identified. The following three chapters examine police processes in detail and explore the cooperation and communication between domestic and international policing partners. The focus is on UK police practice and on the relationships between the UK and Ireland, Spain and Poland. Although police cooperation with prosecutors and courts is discussed, the processes within those criminal justice agencies is not explored in detail.

This chapter deals with the execution of warrants received by the UK which are governed by Part 1 of the EA 2003. Chapter 6 will explore police practice relating to the issue of warrants under Part 3 of the EA 2003 and chapter 7 will look at the surrender process in detail. These empirical chapters touch on the theoretical issues relating to formal and informal cooperation, the diplomatic nature of transnational policing and mutual trust between transnational partners. The operation of police discretion throughout the process will be explored, with particular attention being given to the relationship between the law, police discretion and risk management as an organising concept in policing.

5.2 The pre-arrest process

In most UK cases the process of executing EAWs - from the receipt of a warrant, to the arrest of a subject and their appearance in court - is entirely in the hands of police agencies with little or no involvement from prosecutors. Figure 5.1 maps police processes from receipt of an EAW up to arrest. The diagram is somewhat simplified, the following sections explain the process in detail.

Figure 5.1: Pre-Arrest Process - Incoming EAW



5.2a Certification

The SIRENE Bureau at the NCA receives the majority of EAWs via SIS II Article 26 alerts. Incoming alerts are processed by the FCT (Fugitive Coordination Team) which is responsible for the certification process under section 2 of the EA 2003. If EAWs are issued by Ireland or other non-SIRENE countries they will be sent to the NCA via Interpol systems.

Article 26 alerts include the full EAW in the language of the issuing court, ID materials including any available photographs and fingerprints, and an A Form, which provides an English language summary of the EAW. The A Form includes key information from the EAW including the date and place of issue, information about the subject's identity including their name, date of birth and any known aliases. It provides a summary of the offences that form the basis of the warrant and details of the remaining sentence to be served or possible penalty on conviction. Article 26 alerts can be accompanied by M Forms, which are used by SIRENE Officers to transmit miscellaneous information which is not suitable to be transmitted via a form with a specific purpose.¹⁵³ When accompanying an Article 26 alert an M Form usually provides intelligence related to the subject's location.

All Article 26 alerts must be validated and certified by the FCT within four hours. The SIRENE Bureau is active 24 hours a day and the NCA Control Centre deals with critical work, including validation, certification and post-arrest processes outside of office hours.¹⁵⁴

The FCT check that the EAW and the A Form contain all the information required under section 2(6) of the EA 2003 and that this information is accurate in both documents.¹⁵⁵ This includes confirmation that the basic sentence criteria for an EAW

¹⁵³ See Annexe 2

¹⁵⁴ Fieldnote 9 - SIRENE Bureau UK and Transcript 45 - SIRENE Bureau UK

¹⁵⁵ Fieldnote 8 - SIRENE Bureau UK

are met. Checks similar to this are carried out in all receiving states included in this study, but the consequences of a deficiency in either the EAW or the A Form are not universal.

In the UK and Ireland even minor deficiencies such as a misspelt name or transposed numbers in a date of birth, will mean that an amended or reissued warrant is requested and the case is not progressed.¹⁵⁶ The FCT will flag the Alert via an F Form which effectively stops the clock for certification, prevents an arrest marker being created on PNC, and notifies the requesting state of an issue.¹⁵⁷ Instead of an arrest authorisation being placed on PNC the subject will be labelled as ‘wanted for judicial purposes’ which prompt action from police officers but does not give authorisation for arrest.¹⁵⁸

In Poland and Spain a minor deficiency in the Article 26 documentation is unlikely to result in a F Form being issued. In these states SIRENE Officers usually send an M Form requesting amendments or clarifications, leaving a live alert in domestic police databases.¹⁵⁹ In Poland F Forms can only be issued when agreed by a prosecutor.¹⁶⁰ In these states minor errors in warrants are also less likely to result in discharges in court, whereas the courts in the UK and Ireland take a more exacting approach.

In the UK, warrants that fulfil the basic criteria for section 2(6) are subjected to a proportionality test which has been developed by the SIRENE Bureau in cooperation with the Home Office and the NCA legal team that supports the work of the bureau.¹⁶¹ This test was introduced in 2014 when section 21a was introduced into the EA 2003 and subsection 7a into section 2. These provisions created an obligation for courts to consider the proportionality of EAW requests and for this to be taken account of in the certification process.

¹⁵⁶ Fieldnote 8 - SIRENE Bureau UK and Transcript 52 - Central Authority Ireland

¹⁵⁷ Fieldnote 9 - SIRENE Bureau UK and Transcript 45 - SIRENE Bureau UK

¹⁵⁸ Transcript 45 - SIRENE Bureau UK

¹⁵⁹ Transcript 24 - SIRENE Bureau Spain and Transcript 31 - SIRENE Bureau Poland

¹⁶⁰ Transcript 31 - SIRENE Bureau Poland

¹⁶¹ Transcript 17 - NCA Legal Team

Cases must be 'clearly disproportionate' to be flagged at this stage. Interviewees involved in certification made it clear that borderline cases would be certified, and the proportionality review would be left to judges.¹⁶² The test has three stages, first, only accusation warrants are subjected to a proportionality test. Under section 21a "if the subject is convicted, regardless of what the offence is, it is by default proportional, because they are going back to serve a sentence."¹⁶³

Second, the FCT must identify whether the offence is one on a list of minor offences that may be disproportionate. This list is provided by the NCA legal team and includes minor theft or fraud, minor driving offences, minor public order offences or criminal damage and possession of small quantities of controlled substances which have a low harm capacity. Any violence or threat of violence involved in the offence will automatically take it over the proportionality threshold.¹⁶⁴

The final stage considers whether there are any exceptional or aggravating factors connected to the alleged offence, these include a vulnerable victim, significant premeditation, any discrimination, significant criminal history and the existence of additional EAW requests. If none of these factors are present and the FCT considers the EAW to be disproportionate or is unsure if the threshold is met, the A Form will be sent to the NCA legal team for confirmation.¹⁶⁵ If the legal team agree that the EAW is clearly disproportionate they will issue a certificate to send to the issuing state and the Article 26 alert will be flagged.

SIRENE Officers gave examples of EAWs that had been flagged as disproportionate; these included theft of four bottles of perfume which carried a possible six year sentence, possession of small amounts of cannabis, and the theft of two chickens.¹⁶⁶ The proportionality of some theft offences must be considered from the economic perspective of the requesting state, for example warrants for the theft of 21 sheep or

¹⁶² Transcript 17 - NCA Legal Team and Transcript 48 - SIRENE Bureau UK

¹⁶³ Transcript 48 - SIRENE Bureau UK

¹⁶⁴ Transcript 48 - SIRENE Bureau UK

¹⁶⁵ Transcript 48 - SIRENE Bureau UK and Fieldnote 8 - SIRENE Bureau UK

¹⁶⁶ Fieldnote 8 - SIRENE Bureau UK

a prize pig may seem minor in the British context, but may represent the livelihood of victims in other states. Both the SIRENE Bureau and the NCA legal team were most comfortable leaving these kinds of cases to be decided by judges.¹⁶⁷

The certification process under section 2 does leave a margin of discretion to the NCA as the central authority. The NCA *may* issue a certificate under section 2 if the validity criteria are met and the warrant is not clearly disproportionate. The NCA does exercise discretion not to certify EAWs that are issued for the non-payment of child maintenance. This is a crime in some EU member states but is a civil issue in the UK. These warrants would fail in court under the section 10 of the EA 2003 which stipulates that the offence must be a criminal act in both issuing and executing state. The FCT flags these warrants as a matter of course. From the perspective of bureau staff this issue is part of the validity and proportionality test,¹⁶⁸ but from a legal perspective the NCA is exercising its discretion under section 2 to flag these cases and prevent individuals being arrested on warrants that are certain to fail.¹⁶⁹

Discretion is also at play in the decision to flag warrants as disproportionate, but unlike many policing decisions (Bowling et al. 2019:8) this discretion does not lie in the hands of individual officers. It is an institutional discretion, where the decisions of officers are determined by a clear procedure developed by the Home Office, the SIRENE Bureau and the NCA legal team. The structure of the law determines the scope of this discretion (Grimshaw and Jefferson 1987; Lustgarten 1986) and a clear policy has been developed to fill this space.

The NCA legal team closely follow judgements of the Westminster Magistrates and guidance issued by the Lord Chief Justice in developing and applying the proportionality test. They are cautious in flagging borderline cases, preferring to execute warrants and have judges address contentious cases under section 21(a).¹⁷⁰ Nevertheless this process highlights the overlapping competencies of transnational

¹⁶⁷ Transcript 17 - NCA Legal Team and Transcript 48 - SIRENE Bureau UK

¹⁶⁸ Transcript 48 - SIRENE Bureau UK

¹⁶⁹ Transcript 17 - NCA Legal Team

¹⁷⁰ Transcript 17 - NCA Legal Team

criminal justice practitioners in the EAW system, with the NCA as a policing agency exercising something akin to judicial discretion in interpreting and applying the law under section 2(7).

Article 26 alerts which pass the validity and proportionality checks are certified, automatically creating a PNC wanted marker which notifies any police officer searching the subject's name or date of birth that they are wanted for arrest by the NCA. The alert authorises arrest and prompts the arresting officer to contact the SIRENE Bureau.

The certification process and the delay between issue and live PNC alerts being created is not mirrored in any other member state.¹⁷¹ International partners often queried the justification for the certification process with Senior SIRENE Officers:

I can understand why they ask such questions, in that every other country in SIRENE acts a certain way and everything goes live on to their system without those checks and in the UK we have to check it. We have got the Extradition Act which very much dictates how we act when that warrant is received. I would like to think that in the future that cooperation and trust would increase and there would probably be less need for [certification].¹⁷²

Flagging by the UK was highlighted as an issue by SIRENE Officers in Spain who felt that flagging alerts for administrative reasons caused unnecessary work for them and confusion for issuing courts in Spain. Courts sometimes thought their warrant had been refused on its merits, when in fact it had been flagged because of an administrative problem.¹⁷³

Polish SIRENE Officers were also conscious of this issue and felt this was an improper use of the flagging system which should be reserved for warrants that are discharged

¹⁷¹ Transcript 7 - European Commission DG Home

¹⁷² Transcript 46 - SIRENE Bureau UK

¹⁷³ Transcript 24 - SIRENE Bureau Spain and Transcript 19 - Liaison Magistrate

or cannot be executed for legal reasons.¹⁷⁴ UK SIRENE Officers were aware of the problems flagging could cause and the potential impact this had on mutual trust but felt that their hands were tied by the legislation. One SIRENE officer described the situation from their perspective:

The UK were reluctant [...] we have probably annoyed some of Europe in the past [...] we have said “we are different to all of you and whereas all of you get an alert and it automatically updates your police computers, we want to be different and we want to see these things before we allow the Police National Computer to be updated with these alerts.”

Now while that might sound sensible, these other countries said “well no sorry” same argument in a way as proportionality, “a judge has issued this warrant, you should trust us to send the relevant paperwork through. [...] “We’re not happy with [certification], you could take ages doing that” so [...] they then put the four-hour validation timescale in place. Now that is a huge onerous task [...] we give 24 hours for the paperwork to have been received, if after another four hours it has not been, we have to validate [or flag] that alert. [W]e need to have found a better way to have done it. But the government and the legislators at the time have put us in that position and it is hugely onerous in my mind.¹⁷⁵

The certification process impacts mutual trust because proportionality and other checks at this stage send a message that the UK is not politically prepared to buy into mutual recognition. The practice of flagging alerts for administrative reasons creates confusion and unnecessary work for European partners which also undermines trust at an operational level. In a complex system which relies on so many agencies working together to ensure the free flow of accurate information this practice is at odds with the need to appear collegiate and to provide a good service. In this sense

¹⁷⁴ Transcript 30 - SIRENE Bureau Poland

¹⁷⁵ Transcript 48 - SIRENE Bureau UK

mutual trust relies as much on positive practical cooperation as it does on political investment in the process.

5.2b Intelligence development

The FCT carry out basic database searches on all certified Article 26 alerts, prioritising those where a UK connection has been indicated by the issuing state and then dealing with remaining warrants in the order they were issued. Where a UK connection is indicated, either by the issuing state or by the initial intelligence checks, the case is allocated to a case officer in the Part 1 team.¹⁷⁶ Other cases are parked in a general case file and reactivated if new information is provided by the issuing state or if the subject is located via the PNC alert.¹⁷⁷

The Part 1 team is large, with approximately 30 case officers.¹⁷⁸ Case officers in the Part 1 team review the Article 26 alert along with any intelligence provided by the issuing state and the FCT. If the EAW request has been received via the Interpol channel, then case officers request a full English translation of the EAW as they are unable to progress the case without it.

The main task of the Part 1 team at this stage is to develop intelligence on the location of the subject and allocate the EAW to a local police force for investigation and execution. There are multiple data sources available to the Part 1 team including national police databases and records held by government departments or public services. They can request NBTC checks and access public records from various agencies. For serious cases that meet the legal threshold, case officers can make requests for communication data under the Regulation of Investigatory Powers Act 2000.¹⁷⁹ The resources expended on a particular case or the extent to which more intrusive methods may be utilised will depend on how serious the offence is and on how difficult the subject is to locate.

¹⁷⁶ In practice all EAWs from Ireland are allocated to a case officer.

¹⁷⁷ Fieldnote 8 - SIRENE Bureau UK

¹⁷⁸ Fieldnote 9 - SIRENE Bureau UK

¹⁷⁹ Transcript 44 - SIRENE Bureau UK

Case officers may communicate with the issuing state to request further information on a subject, especially if the Article 26 alert indicates they could have more intelligence. Case officers may cooperate with international counterparts in other SIRENE Bureaux or Interpol NCBs to develop and share intelligence at this stage:

Sometimes they are able to provide information that we couldn't glean due to the restraints that we have here with certain legislation and the fact that some of them don't seem to have that much. They can provide us with phone numbers and things that we wouldn't be able to get.¹⁸⁰

As the part 1 casework team run checks and develop intelligence, they create a fugitive profile that is sent to the local police force area indicated by the most recent intelligence. The profile gives details of all the checks carried out by the NCA including any addresses, car registrations, phone numbers and information provided by the requesting state. Forces are not legally obliged to execute EAWs, they are independent of the NCA and in England & Wales they have operational discretion (Lustgarten 1986). The NCA is clear that it is the responsibility of the individual police force to proceed as they see fit, but that any risk associated with the case is also passed to them:

So all of our profiles go out with the caveat that we are handing the risk over to police, we give them everything that we have, all the checks that we have done and they fill in the gaps with the checks available to them, in their local intel systems and things like that. And they prioritise how they see fit.¹⁸¹

As discussed in chapter 4 the discretion that officers have in relation to EAWs varies across the UK. Police in Scotland are legally obliged to execute the lawful orders of prosecutors. However, all forces are independent of the NCA and are not bound by law to progress EAWs as a matter of urgency, if at all. That does not mean that all

¹⁸⁰ Transcript 44 - SIRENE Bureau UK

¹⁸¹ Transcript 44 - SIRENE Bureau UK

forces feel able to exercise discretion. In England and Wales, the scope of discretion officers feel they have is affected by the relative experience of each force with EAWs and by the way in which officers encounter individual EAW cases.

The NCA strongly advise forces to execute warrants in all cases and to prioritise EAWs over competing deportation orders when this tension arises.¹⁸² The concept of risk is used instrumentally here to encourage forces to progress cases and to limit their discretion. As discussed in chapter 2 risk has emerged as an organising principle in UK policing over recent decades (Bayley and Shearing 1996; Ericson 2005; Ericson and Haggerty 1997; Zedner 2013) and permeates the EAW system in multiple ways. Police forces and officers understand risk as a multifaceted concept encompassing risk to officers, risk to the public, risk to subjects themselves, and importantly here, reputational risk for forces and for the criminal justice system as a whole. On the one hand risk originates with the subject, the alleged or adjudicated offence, and their background risk profile. On the other hand, there is potential reputational risk attached to the request itself. This risk also relates to mutual trust (Block 2017) between domestic and international criminal justice partners. A failure to act on a request potentially tarnishes reputation and diminishes trust.

5.2c Local police forces intelligence development

As discussed in chapter 4 the allocation of staff to EAW cases varies from force to force depending on the volume of cases and the internal structure of the force. Whether cases are in the hands of a dedicated international department or an operations team with other responsibilities, the processes that police officers or civilian staff follow are very similar.

EAWs are sent by the NCA to local forces' EAW SPOC email inboxes. In some forces these inboxes are staffed by a small team, sometimes by police officers and sometimes by civilian staff. Often EAW SPOCs have other duties, they may act as the

¹⁸² Fieldnote 8 - SIRENE Bureau UK

force's ILO,¹⁸³ have a special operations role alongside EAWs,¹⁸⁴ be responsible for domestic warrants within the force,¹⁸⁵ or sit within the force's PNC Bureau.¹⁸⁶ Other forces have teams dedicated solely to EAWs and other aspects of international cooperation.¹⁸⁷

All forces I spoke with conduct further intelligence checks on the fugitive profiles they receive. Some EAW SPOCs also revisit the validation and certification criteria and may query the certification with the NCA if they are unsure that a warrant meets the requirements of the EA 2003.¹⁸⁸ EAW SPOCs may develop local intelligence themselves or this may be undertaken by the operational teams tasked with searching for and arresting subjects. The starting point is always local or regional police intelligence databases which the NCA do not have access to.¹⁸⁹ These databases hold detailed information on individuals who have had police contact and information related to specific addresses. This may include information on child protection issues and a history of police call outs to a property, as well as information on other individuals associated with the location.¹⁹⁰

Some forces conduct ACRO foreign criminal record checks as a matter of course,¹⁹¹ but others find these slow and unreliable so only request them if completely necessary.¹⁹² Forces may re-run some of the basic checks conducted by the NCA as profiles can be passed from force to force so data can be out of date. Police officers indicated that having the full picture was preferable, helping them to prioritise cases, allocate resources and plan operations:

¹⁸³ Transcript 2 - Lancashire Constabulary

¹⁸⁴ Transcript 13 - West Yorkshire Police and Transcript 20 - Lincolnshire Police

¹⁸⁵ Transcript 21 - Sussex Police

¹⁸⁶ Transcript 29 - Northumbria Police

¹⁸⁷ Transcript 4 - Police Scotland, Transcript 41 - MPS Extradition Unit, Transcript 12 - Kent Police and Transcript 56 - PSNI

¹⁸⁸ Transcripts 41 and 61 - MPS Extradition Unit

¹⁸⁹ Transcript 20 - Lincolnshire Police, Transcript 41 - MPS Extradition Unit and Transcript 13 - West Yorkshire Police

¹⁹⁰ Fieldnote 4 - Observations with local force

¹⁹¹ Transcript 20 - Lincolnshire Police

¹⁹² Transcript 41 - MPS Extradition Unit

I know it may sound like duplication that they're doing the checks when I'm doing the checks, but it's always hit and miss. We know you guys get really busy, we get really busy. So, because it's me going through the door, I want to check it and by doing it twice, you increase chances of not missing anything. For example, say somebody is wanted for armed robbery and they've had a gun in Poland, we need to get that [arrest operation] silver assessed here. So, either they could pick that up or I can pick that up, and what that means is it has to be assessed, all the intelligence, to see what the appropriate response is.¹⁹³

Police are able to request information from outside agencies if initial searches do not provide any significant leads. They can liaise with public and private agencies to try and locate subjects and building good relationships with regular partners makes this easier.¹⁹⁴ Intelligence on the location of subjects comes from a wide range of sources and each case is different but most forces begin with work, car, tax and benefit registrations before moving on to more complex intelligence development. The gravity of the underlying offences and the risk profile of an individual subject will have the most significant impact on the extent to which more intrusive intelligence checks are conducted.

Like the NCA the range of tactics available to police at this stage is quite broad and sometimes forces will expend significant time and resources on locating subjects. The escalation of intelligence development tactics according to risk assessments is clear in this quote:

[We] would always start off as MPS Intelligence Databases, and then we'd go more overt than that. It could be you'd speak to DVLA, you speak to DWP, you might go NHS, financial databases as well, social media, covert, and

¹⁹³ Transcript 13 - West Yorkshire Police

¹⁹⁴ Transcript 5 - Police Scotland

everything else. That depends whether we're looking at low-risk, medium, high-risk, the starting point and everything else.¹⁹⁵

Police forces may even make public appeals for information in appropriate cases:

[If] we've done all we believe we possibly can. We've gone back to requesting state, we might put an informant in to try and find out if they know where they are. [Then we might go] to the degree of releasing the image of you, for example, on Crime Watch to say: "This person's here. He's got links to London, got links to North London, got links to Bedfordshire, Hertfordshire, maybe completely alias name. We don't know but we're pretty convinced that they're here. Members of the public, can you help us out to locate that person?"¹⁹⁶

As well as conducting data searches to develop intelligence police officers physically search for subjects, knocking on doors, speaking to neighbours, family members, landlords and employers.¹⁹⁷ Many subjects wanted for less serious offences or unaware they are wanted at all are fairly easy to find. They are living normal lives under their real names, going to work and paying taxes.¹⁹⁸ But others are extremely difficult to locate, living under false identities, moving regularly and actively avoiding leaving a digital footprint.¹⁹⁹ Many subjects wanted in the UK are eastern European migrants, new to the country, living relatively transient lives, moving between addresses and around the country as they find work.²⁰⁰

In cases that are fairly low risk, police officers may simply knock on the doors of addresses indicated by intelligence checks, or they may conduct physical surveillance

¹⁹⁵ Transcript 41 - MPS Extradition Unit

¹⁹⁶ Transcript 41 - MPS Extradition Unit

¹⁹⁷ Fieldnote 4 - Observations with local force, Transcript 5 - Police Scotland, Transcripts 41 and 61 - MPS Extradition Unit and Transcripts 55 and 56 - PSNI

¹⁹⁸ Transcript 61 - MPS Extradition Unit

¹⁹⁹ Transcript 41 - MPS Extradition Unit

²⁰⁰ Transcript 13 - West Yorkshire Police and Transcript 61 - MPS Extradition Unit

to confirm that the subject is present at the address before attempting to arrest them.²⁰¹

So sometimes that's just as simple as finding the home address, going down there conducting a day's observations to see whether the person is in and out. If they are, we see whether they spend the night there and get up there in the morning. Then as soon as we can we'll go and execute the warrant. It can be as simple as that.²⁰²

In large police force areas or forces with no dedicated officers for executing EAWs these kinds of cases are often allocated to divisional officers for execution.

High risk cases are more likely to involve more physical surveillance, covert checks and detailed operational planning. Gathering intelligence in these cases often involves requesting detailed risk related information from the requesting state, including previous offending history and information on the nature of previous police contact, including any violence, resistance or weapons use. Generally, this request will be sent via the SIRENE Bureau and SIS II. Some states expressed frustration about delays between EAWs being issued and risk information being requested by the UK, suggesting that the NCA should request this immediately if it is needed.²⁰³

This delay is an issue that impacts mutual trust as it leaves international partners in doubt over the UK's enthusiasm in pursuing incoming requests. When viewed from the perspective of the UK process however it is clear that this delay is caused not by a lack of enthusiasm or commitment but is a result of the fragmented nature of British policing (Metcalf 2017). The existence of multiple agencies that must manage their own resource commitments means that risks at the arrest stage are not always considered until a case is in the hands of an operational team tasked with going through the door. Different forces manage risk in line with their own policies,

²⁰¹ Fieldnote 4 - Observations with local force

²⁰² Transcript 13 - West Yorkshire Police

²⁰³ Transcript 30 - SIRENE Bureau Poland

so whilst one force may seek out particular information to support operational planning another may not. The NCA as the international conduit is responsible for managing the UK's relationship with issuing states but it is not responsible for anticipating requests from local forces.

Forces update the NCA on their inquiries and Part 1 case officers follow up with forces on a regular basis. If local forces exhaust all avenues in searching for subjects or they receive information that the subject has left the force area, they return the EAW to the NCA. The Part 1 case officer will update their intelligence checks and re-allocate the warrant to another force or, if all possible addresses and leads have been discounted, the NCA will hold the EAW and follow up periodically until the warrant is withdrawn or the subject is located.²⁰⁴

During the intelligence development and location of suspects transnational police cooperation and communication is largely focused on exchanging risk related information in the form of warning markers and criminal histories. This communication via SIRENE Bureaux is classic knowledge work (Bowling et al. 2019:32; Ericson 1994; Ericson and Haggerty 1997) which Sheptycki (1998) notes is what the bulk of transnational policing is concerned with. The exception is when intrusive surveillance is used to locate subjects. These cases engage the capacity of the police to legitimately use otherwise illegal methods in pursuit of subjects (Bowling et al. 2019:7; Brodeur 2011:130). The next phase of the EAW process goes well beyond knowledge exchange and engages the executing state's capacity to use force to enforce the law of the issuing state.

All certified EAWs have live wanted markers in PNC whether the subject has links to the UK or not. There are four scenarios in which subjects may be located and arrested: in the course of conducting investigations into low risk EAWs, in planned high risk arrest operations, in a chance encounter with police officers who become aware of the PNC alert, or during special operations with a focus on specific EAWs.

²⁰⁴ Transcript 44 - SIRENE Bureau UK

5.3 Arrest

Planned arrests, whether low or high risk, are procedurally the most straightforward as executing officers will have experience of EAWs or will have been briefed on the process. The priority given to arrests and the type of resources allocated to them will depend on the risk profile of the subject. Most local forces mentioned a risk scoring system or matrix used to prioritise arrests. High risk cases are given high priority and attract the most resources, low risk cases are more likely to be tasked out to divisional officers or addressed according to available resources. Some officers also prioritise EAWs with very current intelligence as experience suggests that subjects can move frequently and leads go cold if they are not followed up quickly.²⁰⁵ Some forces had targets linked to the risk level of a case. These targets are informal since every case is different and some have very little intelligence to go on:

With that matrix if it's high it's immediate for the management meeting. If it's medium two to three days to try and find them. If it's low it's as and when resources come available.²⁰⁶

Usually, we would look to arrest if possible - if we had a lead to go on - a high risk within seven days, a medium risk within 14 days, and low risk within 28 days.²⁰⁷

Arrests may take place in the course of enquiries into the location of a suspect or be planned after a period of surveillance. High risk operations which require additional resources, such as specialist door entry equipment, public order officers or firearms support, will have detailed operational orders approved at a senior level.²⁰⁸ Arrests may also take place by arrangement if the subject is in prison or if they are being held in an immigration detention centre.²⁰⁹

²⁰⁵ Transcript 13 - West Yorkshire Police

²⁰⁶ Transcript 20 - Lincolnshire Police

²⁰⁷ Transcript 41 - MPS Extradition Unit

²⁰⁸ Transcript 20 - Lincolnshire Police and Transcript 13 - West Yorkshire Police

²⁰⁹ Transcript 12 - Kent Police and Transcript 20 - Lincolnshire Police

For forces further away from the executing court in London the timing of arrests is procedurally important as the EA 2003 stipulates that subjects must appear in court “as soon as practicable” after arrest. If subjects are arrested in the morning this can mean delivering them to court in the afternoon. Local forces have contracts with private prisoner transport companies that move prisoners from custody suites to courts or prison. In all the forces included in this study transport leaves in the early morning, so if a subject has to be transported to court later in the day at least two officers and a vehicle will need to drive to Westminster.²¹⁰ With police budgets under serious pressure and frontline resources being significantly reduced, taking officers off the street to transport prisoners is not easy.

This affects operational planning; several officers suggested that they try and time arrests for later in the day:

[We] will try and arrest them in the afternoon so that we can bed them down over night here so that we’re not then having to --[...] Our GEOAmey transport company contract is up to 6am. If they’re in custody by 6am they will provide a crew. So [...] after [that time] the officers end up taking them down to Westminster Court.²¹¹

It is not possible to avoid this in unplanned arrests prompted by police officers searching a subject’s name on PNC. In these cases, a wanted marker instructs officers to arrest the subject and contact the NCA who provide information on the process and direct officers to their EAW SPOC.

The introduction of SIS II in the UK in April 2015 changed the system so that all certified EAWs, rather than just those with a tangible UK connection, are live on PNC. Anecdotally this has increased the number of arrests resulting from chance

²¹⁰ Transcript 20 - Lincolnshire Police, Transcript 29 - Northumbria Police and Transcript 21 - Sussex Police

²¹¹ Transcript 20 - Lincolnshire Police

encounters. There are no official statistics available but many UK officers I spoke to noted an increase in unplanned arrests,²¹² at ports²¹³ and through vehicle checks:

What we're finding is a lot more [...] arrests are being conducted by frontline officers now which [...] has caused a few problems.²¹⁴

We get a lot of them through vehicle stops. Vehicle crashes. [...] We had one guy who went back to Poland. [...] Early morning he ran into, well, a police car ran into him on a country road. It wasn't his fault at all, but they checked him through, and he's wanted on a warrant. So there's things like that happen, but that's the most unlucky one that I've heard.²¹⁵

The famous car on the M62. We stopped the car on M62 for break light out and it was a horrific crime in Eastern Europe and we locked the bloke up. SIS II.²¹⁶

Arrests may also occur as part of special operations that specifically target EAW subjects. I discussed two such operations with NCA officers. The first was Operation Absolute which ran over a two-week period in January 2016 in the London Area. This operation saw SIRENE Officers and the MPS Extradition Team set up dedicated teams to target specific EAWs related to the "MOPAC seven neighbourhood community offences, burglary, vandalism, theft from motor vehicles, theft of motor vehicles, theft from a person, violence with injury and robbery."²¹⁷ SIRENE Officers were seconded to support the MPS Extradition Arrest Teams who executed 27 warrants over two weeks.²¹⁸

²¹² Transcript 5 - Police Scotland

²¹³ Transcript 12 - Kent Police and Transcript 41 - MPS Extradition Unit

²¹⁴ Transcript 5 - Police Scotland

²¹⁵ Transcript 13 - West Yorkshire Police

²¹⁶ Transcript 14 - West Yorkshire Police

²¹⁷ Transcript 47 - SIRENE Bureau UK

²¹⁸ Transcript 47 - SIRENE Bureau UK

The second, Operation Trivium is a nationwide multi-agency operation run by the European Traffic Police Network once or twice a year. It targets criminals travelling on the UK road network, particularly those who exploit the boundaries between police force areas. Some forces choose to target EAWs as part of their contribution to the operation²¹⁹ and the SIRENE Bureau provide intelligence support and help identify specific EAWs to target.²²⁰ Special operations are an opportunity for forces to dedicate multi-agency resources to specific cases and to pursue subjects who have so far evaded arrest.

Whether subjects are arrested in specifically planned operations, as a result of chance encounters, or during special operations the arrest process is the same. Arrests will be executed by county or Metropolitan police officers and in rare cases by operational NCA teams. EA 2003 arrests differ from arrests under PACE in a few ways; the specific caution for EAW subjects is detailed in the EA 2003 Code of Practice. Subjects must be served with a copy of the EAW as the earliest opportunity, and fingerprints and DNA must be taken by a warranted officer. Arrests resulting from chance encounters are more likely to encounter procedural issues than planned ones, but the SIRENE Bureau should always be the first point of contact and they are able to provide support alongside the force EAW SPOC.

Local forces have wide ranging discretion in prioritising and resourcing EAW cases. They also legally have a margin of discretion over whether they execute an EAW at all.²²¹ Whether forces really consider that they have discretion seems to vary. Officers in Scotland confirm the view of the Scottish Prosecutor that “a warrant, is a warrant, is a warrant.”²²²

They’re legitimate, they’ve got to be.... they’ve got to be done. We can't decide, “Oh well, we’re not doing that it’s not worth our time.”²²³

²¹⁹ Transcript 29 - Northumbria Police

²²⁰ Transcript 45 - SIRENE Bureau UK

²²¹ s.3 EA 2003

²²² Transcript 3 - Prosecutor Crown Office Scotland

²²³ Transcript 4 - Police Scotland

Most forces in England & Wales agree with this position:

But we can't choose what we do. We get given a warrant.²²⁴

As far as I'm concerned, a judge has signed off on a warrant, that person is wanted. We carry out that instruction.²²⁵

They acknowledge that risk plays a role in limiting their discretion and that the principle of reciprocity in relations with European partners also relies on forces executing warrants indiscriminately:

I would say that we will always execute it, because if you don't execute it, then if a serious offence occurred, they'd be [...] saying, "Well, if you'd arrested them this wouldn't have happened." They will risk manage it and not make it a priority to arrest with competing resources, if it's a low risk old warrant [...] it's not going to be a priority.

We will as a force always try and arrest people on a warrant. Because likewise if we issued a warrant outbound we'd want the overseas country to arrest them for us. Yes, it might not be a priority for them, but I think if the country has issued a warrant then professionally we should be arresting that person on that warrant. It's not for us to pick and choose what we arrest and what we don't.²²⁶

Some of the larger forces in England & Wales do recognise their margin of discretion but only exercise it in exceptional cases:

In short, we do have discretion over whether we would decide to arrest. I should say for the benefit [of the tape] that the NCA would like us to arrest

²²⁴ Transcript 13 - West Yorkshire Police

²²⁵ Transcript 29 - Northumbria Police

²²⁶ Transcript 20 - Lincolnshire Police

everyone where there is a certified warrant. But in short, we don't. The majority of people, we would. But there would be, and there have been on occasions, people that we've decided not to arrest.²²⁷

Interviewer: Are there warrants that you have decided not to execute?

Interviewee: Yes. But only in very extreme cases. We had one where there was a very old very sick guy in a nursing home. He couldn't have been removed and probably wouldn't have been fit for court. We didn't execute that.²²⁸

The examples of non-execution I encountered were mostly based on humanitarian considerations, where subjects or close family members were at death's door.²²⁹ Or cases where subjects were in the process of travelling or being deported to the jurisdiction where they were wanted. In these cases, subjects would be kept under surveillance until they physically left the UK and the requesting state would be notified of their imminent arrival.²³⁰

The NCA agree that forces have discretion not to execute EAWs but as noted above they are unequivocal that any risk associated with this decision sits with the force:

There is that understanding that "this risk has moved on to you as a force. We are letting you know that this offender is in your force area, we ask you to execute the EAW." But again, it is their choice as to whether to execute that EAW or not and we can't push them into it, we can strongly advise them to execute the EAW but we can't force them to do so.²³¹

Police officers are also less likely to exercise discretion in chance encounters with EAW subjects. Even where forces do decline to execute an EAW, a PNC alert will

²²⁷ Transcript 41 - MPS Extradition Unit

²²⁸ Transcript 21 - Sussex Police

²²⁹ Transcript 13 - West Yorkshire Police and Transcript 20 - Lincolnshire Police

²³⁰ Transcript 41 - MPS Extradition Unit

²³¹ Transcript 46 - SIRENE Bureau UK

remain in place and may result in arrest anyway.²³² NCA officers acknowledge that this is the case:

I think it's difficult for a police officer. [...] Say someone is driving erratically, they'll pull the car over they'll probably ID the person through if they have a handheld system or call it in, and then at the end of the phone or on their system it'll flash up "this person is wanted". I mean let's be honest I think 9 times out of 10 they will be arrested, but that doesn't mean they have to be arrested.²³³

Even where forces do not feel able to simply disregard EAWs a range of factors, including risk and resource considerations, affect the priority given to cases:

I had a couple the other week, it was [...] carnival week. There were two football matches we couldn't staff. [...] It's the case of: "Yes, I have said that the force is busy at the moment and we'll just have to do them when we can do them." We haven't got infinite resources that can do EAWs.²³⁴

This week I had 11 on my workload so I've got to prioritise them. Depending on circumstances [...] I can go on intelligence like the most bang up-to-date, the best thing to do with the EAW to increase your chances is, if the intelligence is bang up-to-date go for that one because within weeks, months, these people can move. Then you've also got to look at the amount of work. If somebody's got 12 addresses linked to them and it's spread out that could take you a couple of days, you look at them and think: "Well, if they're persistently active in crime and there's 12 addresses which is going to take two or three days and it's a low-level offense should I put two or three days work into it because I know they're going to get picked up?" If you're looking at -- you're talking your murders, your serious offenses, your armed robberies

²³² Transcript 21 - Sussex Police

²³³ Transcript 17 - NCA Legal Team

²³⁴ Transcript 13 - West Yorkshire Police

we don't want those people in the streets [...] We want to get them into custody as soon as possible. That is to protect our reputation [...] and it's also to enhance our reputation [...] In the last couple years, we've had one of our EAWs murdered which we couldn't do anything about, but we've also had some others committing serious offenses. If I'm really busy and I've got a couple of days [...] if they're actively involved in crime [...] we need to get them off the street so we can reduce that crime.²³⁵

Whilst the law clearly leaves a margin of discretion to police forces in executing EAWs there are a number of ways that this discretion is limited. Some forces simply take the view that all EAWs will be executed, that relationships with requesting states and the NCA rely on recognising all EAWs and that discretion to refuse surrender sits with the courts. Others acknowledge their discretion and in rare cases do not execute EAWs when the subject is unlikely to be surrendered on health grounds, or when the subject is being deported or travelling to the issuing jurisdiction in any case. Even when this discretion is exercised PNC markers remain live and it is unlikely that officers encountering EAWs subjects by chance feel able to exercise any discretion in execution. Here technology mediates the discretionary decision (Chan 2001; Ericson and Haggerty 1997), the PNC wanted marker gives the officer a clear instruction to arrest.

Even though discretion in refusing to execute is limited, all forces do exercise discretion in prioritising warrants and in planning arrest operations in line with internal considerations. Low-level warrants are likely to have far fewer resources allocated to them and less officer time expended in developing intelligence. Police forces time arrests to avoid expending resources transporting prisoners to court and may delay the execution of warrants where subjects are going through deportation proceedings.

²³⁵ Transcript 13 - West Yorkshire Police

Some issuing states also avoid the risk and expenses associated with extraditions simply by waiting for deportation to take place in particular cases:

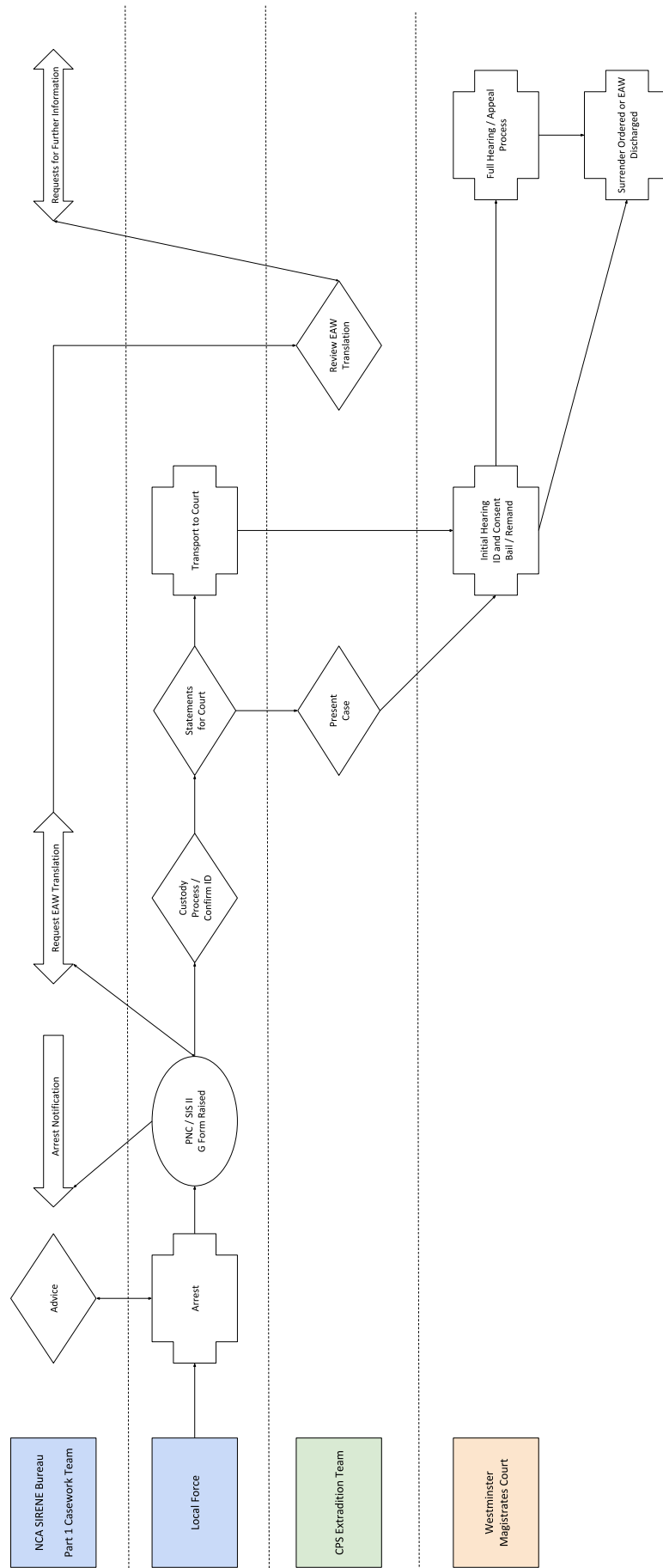
As soon as Latvia knew he was going to be deported by the Home Office they withdrew their EAW application because it saved them all the cost, knowing that no way he's [willingly] going to get on an airBaltic airline and go back home. So then the Home Office had all the responsibility and the risk of sending him back.²³⁶

5.4 Post-arrest process

Unlike the pre-arrest process the UK EAW post-arrest procedure is not solely in the hands of police agencies. Prosecutors and courts are responsible for a case once the subject appears in court for the initial hearing, but the SIRENE Bureau are still involved in cross-border communication with issuing states and local forces must monitor subjects who are released on bail. Figure 5.2 is a representation of the process.

²³⁶ Transcript 20 - Lincolnshire Police

Figure 5.2: Post-Arrest Process - Incoming EAW



When arrests follow from chance encounters arresting officers are usually in touch with the SIRENE Bureau at the point of arrest. NCA officers forward the fugitive profile to the arresting officer and direct them to their EAW SPOC. Arresting officers contact their local PNC Bureau to generate detained markers on Interpol alerts or G Forms on SIS II alerts.²³⁷ The G Form notifies the issuing state of the arrest and its circumstances, it also notifies the NCA if they have not already been contacted. The Part 1 case officer sends the paperwork to the court in England & Wales or to prosecutors in Scotland and Northern Ireland and requests a full translation of the EAW from the issuing state.

As prisoners are booked into police custody, they must be served with a copy of the EAW and have their identity confirmed. Police officers have powers under the EA 2003 to search for identity documents, but they are not always aware of this especially in chance encounters. The EA 2003 specifies that fingerprints and DNA samples must be taken by warranted police officers and this causes problems when arresting officers, custody sergeants or civilian custody staff are not fully briefed. Problems arise during initial court hearings when arresting officers have not seized ID, when civilian custody staff have taken fingerprints, or when warranted officers have taken them but not explicitly stated this in their arrest statement for the court.²³⁸

Many subjects require interpreters to be taken through the custody process and this can cause delays. Some forces have contracts with telephone interpreters, but others need interpreters to travel to custody suites to assist. If subjects do not read English and the warrant has been issued in a jurisdiction which is not their home state subjects will require an interpreter to translate the A Form to them and explain the grounds for arrest. A lengthy custody process and the requirement for subjects to have a copy of the EAW that they are able to understand sits in tension with the requirement to deliver the subject to court as soon as practicable.

²³⁷ Transcript 44 - SIRENE Bureau UK

²³⁸ Transcript 20 - Lincolnshire Police

Subjects are transported to court either by a prisoner transport company²³⁹ or by the arresting officers. Arresting officers must complete two statements for prosecutors to present at the first hearing. The MG11 gives details of the arrest and identification process and the MG7 outlines the police position on any bail application. In most cases police forces use proforma MG11s but for EAW cases full statements are required, particularly outlining the identification process. In Northern Ireland arresting officers sometimes appear in court in person to give evidence of the arrest.²⁴⁰

Providing full and accurate information for MG7s can be difficult in EAW cases because subject's full offending history is not always available. Full criminal history is not always provided when EAWs are issued and ACRO checks can take a few weeks to be processed, meaning that police are often working with limited information when they make recommendations regarding bail and when they risk assess arrest operations.

The risks of partial information are clear in this quote:

I had a guy wanted in Ireland [for] violent disorder. He'd come here and he'd committed no crimes whatsoever, been living with his partner and young child and her family, working as a builder. You'd looked at it and you'd think he's been in no problems since he's been in the UK but when you looked at his criminal history in Ireland it was 40 convictions and really well known. If we hadn't had known that, seen his list of convictions over there, potentially it could be a risk to ourselves. Because we can't really risk assess it properly when we're going to look for this person, thinking he might not cause any problems.²⁴¹

²³⁹ Usually GEOAmey

²⁴⁰ Transcript 53 - Prosecutor CSONI

²⁴¹ Transcript 61 - MPS Extradition Unit

CPS prosecutors state that the quality of police statements varies dramatically, with officers who have regular contact with EAW cases generally providing better information.²⁴² As roughly 75% of all extradition subjects are bailed in the UK this is an important issue for prosecutors:

Quite often, the persons who have been arrested have got no trace in the UK, we won't get the foreign PNC for the initial hearing and that is something that we've been asking for. Especially if you're doing a pre-planned operation, forces really should have that already because you've got no idea, they might have no trace here, but they could have a load of convictions abroad.

Sometimes when you look at the EAW [...] they will say: "This was committed during a period of time where he had done something similar." So, you know that person's offending in Poland but according to the PNC here he's of good character. Sometimes you really don't know what character you're going to be dealing with. On the MG7s, quite often for the summary, [police officers] summarise what's in the EAW. Whereas, what I want to know is: Where did you get him? What kind of a property is he living in? Is he a tenant? Does he have community ties? How does he work? Does he have a family? How is he supporting himself? Does he have any aliases? We get very little information about that, or sometimes the police will say, "He's got no community ties."

But in the back of the court you've got the wife and kid.²⁴³

Usually the CPS are not aware of EAW cases until the subject appears at Westminster Magistrates Court although they may receive advance notice in high-profile cases. It is therefore incumbent on police agencies who have first sight of a case to gather background information on subjects as quickly as possible either prior to, or immediately after arrest. This is especially so as it is possible even for subjects accused of fairly serious crimes to be bailed pending a full hearing.

²⁴² Transcript 57 - Prosecutor CPS

²⁴³ Transcript 57 - Prosecutor CPS

The issuing state is represented in court by national prosecutors, in England & Wales this is the role of the CPS Extradition Unit, in Scotland the Procurator Fiscal, and Crown Solicitors in Northern Ireland. The initial hearing considers identification of the subject and the issue of consent. An initial bail application is usually made at this time. If the subject does not consent to surrender a full hearing date is set once the translated EAW is received.

The NCA receives the fully translated EAW and forwards this to the CPS, who review the warrant and, anticipating the issues the defence will raise, make Requests For Further Information (RFFI) from the Issuing Judicial Authority (IJA).²⁴⁴ The same procedure is followed in Northern Ireland, using the NCA as the international conduit for RFFIs.²⁴⁵ In Scotland prosecutors are more likely to make direct contact with IJAs via the EJM network, but they would always inform the NCA of the result of communications.²⁴⁶

In England & Wales EAW cases take an average of six hearings to conclude, which includes an initial hearing, a full hearing, any appeals, and bail applications or procedural variations. All of which require a court listing even if the subject is excused from appearing in person.²⁴⁷ Cases are appealed from Westminster Magistrates to the High Court and then, in rare cases, to the Supreme Court. The Part 1 case officer tracks the process through court databases and is informed by the court when surrender is ordered or if cases are discharged. In Northern Ireland and Scotland prosecutors update the NCA directly at the end of each hearing. The NCA update the issuing state at key points in the court process and provide detailed updates on request.

Most EAW subjects that are remanded in custody are held at HMP Wandsworth in London. Local police forces are responsible for monitoring bailed subjects and keeping track of bail conditions imposed by the courts. For local forces and for the

²⁴⁴ Transcript 57 - Prosecutor CPS

²⁴⁵ Transcript 53 - Prosecutor CSONI

²⁴⁶ Transcript 3 - Prosecutor Crown Office Scotland

²⁴⁷ Transcript 58 - Prosecutor CPS

NCA this aspect of cooperation is difficult as the Westminster Courts are extremely busy and there can be delays in database updates. This is particularly important when surrender is ordered as police agencies have only 10 days to surrender a subject. So even one day delay in notification can strain operations. Once surrender is ordered and the appeal deadline passed the case passes back into the hands of police agencies to arrange and conduct the surrender operation. This stage of the process is discussed in Chapter 7.

The court process in the UK has a major impact on mutual trust and prosecutors in other jurisdictions feel that that UK asks significantly more questions in RFFIs than other states.²⁴⁸ Some prosecutors feel that the questions asked by UK courts go beyond those anticipated by the FWD and that the process is unduly lengthy in some cases.²⁴⁹ Although these issues are not directly related to the police role in the system this issue was raised by police officers in Spain as the source of some frustration.²⁵⁰

The high rate of bail given to EAW subjects is also an issue for mutual trust from the perspective of police in issuing states. This is relevant to the police role in two ways. First, UK police must provide background information and make recommendations on bail. MG7 statements are the primary evidence available to prosecutors and courts considering bail applications, so the police can influence the outcome by providing detailed information. Second, UK police and NCA officers must respond to the frustration of overseas counterparts who question the wisdom of the UK court system especially if this results in failed surrender operations or discharged EAWs:

A lot of [other states] are surprised and there have been issues with Romania and other countries where [the subject] hasn't turned up on bail, quite rightly they are saying: "Why was this person on bail?" and "what are we now going to do to find them or bring them back?"²⁵¹

²⁴⁸ Transcript 38 - Prosecutors Poland

²⁴⁹ Transcript 38 - Prosecutors Poland and Transcript 26 - Prosecutors Spain

²⁵⁰ Transcript 24 - SIRENE Bureau Spain

²⁵¹ Transcript 41 - MPS Extradition Unit

So we do have failed handovers, where they get over here and the police turn up empty handed and [collecting police forces] just can't understand why that person was on bail. Because a lot of other countries take a harder line than we do in this country with things like that. And when we are telling countries that it has been discharged because the offence happened too long ago, passage of time, article 8, these rights to private life, things like that, they just - - I imagine, sometimes you feel it in the correspondence - - they are frustrated by that because they don't necessarily sign up to as much of it as we do. Like the different prison cell conditions and stuff like that. So I don't think we are that popular.²⁵²

Courts in Scotland and Northern Ireland also bail EAW subjects and in Northern Ireland courts occasionally bail subjects to addresses in the Republic.²⁵³ Sometimes courts in Northern Ireland will remand subjects once surrender is ordered. In other cases PSNI and Police Scotland manage surrenders by arranging for subjects to surrender into police custody the day before travel. This gives police the opportunity to track down subjects if they fail to surrender or to notify the collecting state so that officers do not travel to the UK unnecessarily.²⁵⁴

The issue of bail also causes frustration for UK police officers who express concern about their Part 3 EAW subjects being bailed and absconding.²⁵⁵ Some even suggesting they would decline to collect Part 3 subjects who were not in custody.²⁵⁶ Police have legitimate concerns that bailed subjects will abscond prior to surrender and that resources committed to collection operations will be wasted. This is supported by their experiences with domestic cases where handover operations do fail when bailed subjects do not surrender. Failed handovers impact mutual trust because they highlight the risk that police take when planning handover operations.

²⁵² Transcript 44 - SIRENE Bureau UK

²⁵³ Transcript 55 - PSNI

²⁵⁴ Transcript 4 - Police Scotland and Transcript 55 - PSNI

²⁵⁵ Transcript 15 - NCA Operational Team

²⁵⁶ Transcript 40 - Avon & Somerset Constabulary

Here mutual trust between police is not focused on the issues of proportionality or procedural and fundamental rights protection, it is rooted in practical operational reliability, which sits in tension with the former set of concerns.

5.5 Transnational cooperation during EAW execution

In general the pre- and post-arrest process for local police forces involves no direct contact with overseas counterparts. The NCA Part 1 team relies almost exclusively on bureau to bureau cooperation through formal SIS II and Interpol channels.²⁵⁷ Article 26 alerts are received and processed formally by the FCT and the Part 1 team develop intelligence through formal channels.

Local forces encounter EAWs through PNC alerts or via fugitive profiles from the NCA. Any international queries relating to intelligence, risk profiles, ID materials or case updates are sent through the NCA via SIS II or Interpol. This channel is also used to request EAW translations, and for prosecutors in England & Wales and Northern Ireland to send RFFIs and receive responses.

Police forces and prosecutors did identify exceptional cases where more direct contact might occur. The main reasons for having direct contact would be urgency or complexity and interviewees indicated that informal police work which resulted in EAWs being issued would always be followed up via the formal channel. Some officers suggested that they may use informal contacts for fast intelligence work, but that this was very rarely necessary and was officially frowned upon.²⁵⁸

There were two exceptions to this general pattern of extremely formal cooperation pre-surrender; the unique relationships between the UK and Ireland and the UK and Poland. The cooperation between the UK and Spain during the pre-surrender process is more typical of the general pattern of UK cooperation in the EAW system.

²⁵⁷ Transcript 44 - SIRENE Bureau UK

²⁵⁸ Transcript 2 - Lancashire Constabulary

Figure 5.3 - Part 1 Arrests by country

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Ireland	25	27	41	32	45	30	43	31	42
Poland	630	815	800	845	939	804	978	683	553
Spain	21	21	26	17	21	36	46	59	43

5.5a Spain

The bulk of EAW traffic between the UK and Spain involves Part 3 requests where Spain is the UK's number one partner. Although there are fewer Part 1 requests from Spain to the UK, Spain is still in the top 10 countries for incoming requests. Between April 2009 and March 2018 the UK arrested 290 subjects on Spanish EAWs.

Cross-border cooperation and communication during the pre-surrender process happens more or less exclusively through the formal SIRENE channel. This includes intelligence sharing and the transfer of ID material, as well as requests for and receipt of fully translated EAWs.²⁵⁹ Generally cooperation at this stage is fairly straightforward, but the UK system of flagging Article 26 alerts for administrative reasons does cause frustration and some confusion in Spain.²⁶⁰

Some complexity in the relationship between the UK and Spain in the part 1 process arises during court proceedings. The reason for this seems to lie in the significant differences between the UK and the Spanish legal systems and the "charge and try" provisions inserted into the section 12a of the EA 2003. The liaison magistrate in Spain explained the situation as follows:

I think two things to know about the Spanish system are [...] the things that cause difficulty between the UK and Spain are the different systems. The Spanish judges in particular don't realise-- they don't appreciate the scrutiny that things can be put under. They think it will just be taken at face value because that's the way they take them from other countries. They don't realise the scrutiny it's going to get from the adversarial system where everyone's fighting every word of it. They don't necessarily appreciate that

²⁵⁹ Transcript 61 - MPS Extradition Unit and Transcript 44 - SIRENE Bureau UK

²⁶⁰ Transcript 24 - SIRENE Bureau Spain

because they don't have it. The other aspect of it, the other side of it, is Spain is taking very seriously the mutual trust which this system is supposedly based on.²⁶¹

The CPS Extradition Unit agree that the difference in legal context is the root of misunderstandings:

There's no ill will between us but it's just, you know we are coming from such different perspectives and I think it can be very difficult for us to understand one another's way of working. What actually we're getting at when we, for instance, if we're asking for further information, I think sometimes they can be a bit baffled by why we are even asking.²⁶²

Even police officers in the Spanish SIRENE Bureau feel that the UK courts take an exacting approach to the accuracy of EAWs and translations, suggesting that small errors like missing full stops in translations could lead to problems.²⁶³ RFFIs are sent by the CPS and CSONI to Spain via the SIRENE Bureau, but prosecutors often contact the Spanish liaison magistrate in London as well,²⁶⁴ and Scottish prosecutors tend to deal directly with the liaison magistrate.²⁶⁵ As a member of the Spanish judiciary the liaison magistrate is well placed to speak directly to issuing judges and to resolve any misunderstandings.²⁶⁶

The relationship between Spain and the UK in part 1 cases relies heavily on formal police channels and the liaison magistrates helps to smooth relations where the significant differences in the legal systems creates friction. Similar to ILOs, this role is diplomatic in both form and function. Liaison magistrates utilise direct and informal contact to explain differences, reduce tensions and resolve queries, oiling the wheels of criminal justice cooperation (Andreas and Nadelmann 2006).

²⁶¹ Transcript 19 - Liaison Magistrate

²⁶² Transcript 58 - Prosecutor CPS

²⁶³ Transcript 24 - SIRENE Bureau Spain

²⁶⁴ Transcript 58 - Prosecutor CPS

²⁶⁵ Transcript 3 - Prosecutor Crown Office Scotland

²⁶⁶ Transcript 16 - Liaison Magistrate

5.5b Ireland

Ireland is one of the UK's primary partners in both incoming and outgoing cases. Between April 2009 and March 2018 the UK arrested 316 subjects on Irish EAWs. As the only country that shares a land border with the UK, one of the few adversarial common law jurisdictions in the EU, and the only country with a common language, the relationship between police forces is unsurprisingly unique. Police cooperation between Ireland and the UK, particularly with PSNI, is rooted in longstanding formal and informal relations (British-Irish Parliamentary Assembly 2008; Walsh 2011).

In EAW cases with Ireland direct contact between the Guards and UK police is common. This is the case for NCA officers²⁶⁷ and officers in local forces,²⁶⁸ especially those with dedicated extradition teams. The MPS Extradition Team has a close and informal relationship with the Guards Extradition Unit²⁶⁹ and PSNI cooperate with the Guards on a daily basis.²⁷⁰

Official documents, including EAW requests and ID materials, will be sent to the NCA via the Interpol channel as Ireland is yet to join SIS II.²⁷¹ Developing and sharing intelligence may take place via less formal routes and direct telephone contact is more common than in any other relationship. This contact could be with the Guards Extradition Unit or directly with Investigating Officers. This is especially true for PSNI who are able to email or simply pick up the phone and discuss cases with their counterparts across the border.²⁷² This Garda officer explained the arrangement between Northern Ireland and the Republic:

There are separate strategies and separate official channels between us and the PSNI and the security services in Northern Ireland too because of the

²⁶⁷ Transcript 44 - SIRENE Bureau UK

²⁶⁸ Transcript 21 - Sussex Police and Transcript 41 - MPS Extradition Unit

²⁶⁹ Transcript 50 - An Garda Síochána, Transcript 41 - MPS Extradition Unit and Transcript 61 - MPS Extradition Unit

²⁷⁰ Transcript 50 - An Garda Síochána and Transcript 55 - PSNI

²⁷¹ Transcript 44 - SIRENE Bureau UK and Transcript 51 - Interpol Ireland

²⁷² Transcript 55 - PSNI

nature of the cooperation that's going on there. There's a whole separate cross-border policing strategy and there's no mention of Interpol in the whole document and there's all sorts of mentions of information sharing and intelligence sharing and all that because it goes on directly as it needs to.²⁷³

Contact with other UK forces is usually initiated through formal channels before direct contact is established. Interpol Ireland do occasionally receive calls from English officers making direct inquiries, but they are always referred back to the official NCA channel.²⁷⁴

During the court process prosecutors at the CPS, CSONI and the Crown Office have direct contact with Irish Prosecutors to pursue RFFIs.²⁷⁵ Irish Courts take a similar approach to EAW cases as the courts in the UK. RFFIs are uncommon and similar legal systems as well as a shared language mean that additional questions are understood and direct contact is straightforward.

5.5c Poland

By far the largest number of EAWs executed in the UK are Polish. Between April 2009 and March 2018, the UK arrested 7,047 subjects on Polish EAWs. As the UK's number one partner in Part 1 cases and the European "leader"²⁷⁶ in issuing EAWs the relationship is vitally important to UK officers:

Poland, as we would say, are the biggest customer for European Arrest Warrants for the UK. So naturally we have a large amount of cooperation with them, but because of that, and that regular communication and working together, it becomes a really unique and special partnership. Because you don't work on that level with any other country.²⁷⁷

²⁷³ Transcript 51 - Interpol Ireland

²⁷⁴ Transcript 61 - MPS Extradition Unit

²⁷⁵ Transcript 57 - Prosecutor CPS

²⁷⁶ Transcript 30 - SIRENE Bureau Poland and Transcript 32 - Judge Poland

²⁷⁷ Transcript 45 - SIRENE Bureau UK

Because of the volume of cases Poland have a special arrangement to conduct surrenders from the UK via a regular military flight. The FCT at the NCA have personnel dedicated to managing the relationship with Poland. They are responsible for organising and managing the military flights and they act as Poland's EN-FAST contact in the UK.²⁷⁸

Officers in the Part 1 team are also in daily contact with the Polish SIRENE Bureau and intelligence is usually developed through bureau to bureau cooperation.²⁷⁹ Local forces do not have direct contact with Polish police unless they have seconded Polish officers within their force. In most cases inquiries and updates from local forces are sent to Poland via SIRENE.

UK officers mentioned that intelligence provided by Poland is often more precise and personal than UK officers could easily obtain. It was usually unclear whether intelligence came from communications surveillance, covert operations, human intelligence sources, or all three.²⁸⁰ Polish officers were absolutely clear that whilst they are able to share a broad range of information, they did not discuss or disclose sources or surveillance methods under any circumstances. They contrasted this to intelligence received from the UK which usually detailed the methods by which information was obtained.²⁸¹

Poland second police officers from the Polish National Police to UK local forces, sometimes on a regular basis. The MPS International Assistance Unit hosts two Polish officers on six-month secondments. Local police forces who have seconded Polish officers use them as a channel to develop intelligence with Polish Police especially in

²⁷⁸ Transcript 45 - SIRENE Bureau UK

²⁷⁹ Transcript 44 - SIRENE Bureau UK

²⁸⁰ Transcript 44 - SIRENE Bureau UK, Transcript 45 - SIRENE Bureau UK and Transcript 61 - MPS Extradition Unit

²⁸¹ Transcript 39 - Polish National Police

urgent and serious cases.²⁸² The MPS Extradition Team described intelligence exchange with Poland in these terms:

Poland's good for us because we've got the Polish officers. We send a lot back through the NCA but if you've got a direct link in like the Polish officers, if we ask the Polish officers to get some information, they'll be a lot quicker than trying to do it through the NCA.²⁸³

Police officers also mentioned the FLEC Officers posted at the Polish Embassy in London as a useful contact point for resolving urgent queries with ID materials.²⁸⁴ The staff in the UK SIRENE Bureau who manage the relationship with Poland also work closely with seconded officers and the Polish FLECs.²⁸⁵

The proportionality question, which looms large over Polish practice (Ostropolski 2014) is an issue for UK officers who express concern about the cost of executing EAWs and question the logic of doing so for minor offences. But officers are also clear that many Polish warrants are for serious offences and some question whether the sheer volume of Polish warrants skews police perception of the problem. The following quotes demonstrate a range of views about Polish warrants for minor offences:

I would say that there really is a 50-50 split. Poland tend to be the most broad ranging for the offenses and some other countries tend to be more solemn offenses, more serious crimes. Poland, they issue right across the board from more minor offenses to definitely more serious offenses, but other countries tend to be more solemn offenses.²⁸⁶

²⁸² Transcript 45 - SIRENE Bureau UK, Transcript 60 - Polish National Police and Transcript 61 - MPS Extradition Unit

²⁸³ Transcript 61 - MPS Extradition Unit

²⁸⁴ Transcript 61 - MPS Extradition Unit

²⁸⁵ Transcript 45 - SIRENE Bureau UK

²⁸⁶ Transcript 5 - Police Scotland

Poland are well within their rights to send a European Arrest Warrant to any country for any offence and everything else. But it might be a bit disproportionate to look at it that way because obviously a higher number are from Poland anyway, so it might be that you're just saying: "Well, there's more low-risk offences from Poland." But we've got a lot more European Arrest Warrants.²⁸⁷

I think it's a bit of a misconception in my opinion and I sit in the court quite regularly. [...] You do get serious offences and also if they are historic they have passed the proportionality test anyway and the judges are still deeming them appropriate to be extradited. So, I think we can say one thing but then the courts and the decisions then speak in another way.²⁸⁸

During the court process the SIRENE Bureau forward RFFI's from the CPS and CSONI directly to IJAs in Poland.²⁸⁹ Scottish Prosecutors tend to go direct to the IJA listed on the EAW or via the EJN contact points.²⁹⁰ This contrasts with the bureau to bureau transmission of RFFIs in most cases and is a special arrangement that reflects the unique relationship and the regional court structure in Poland.

SIRENE officers on both sides of the relationship spoke highly of the service they receive from their counterparts,²⁹¹ suggesting that high professional standards²⁹² and a shared sense of the diplomatic nature of their role²⁹³ supported this. The UK use of flags for administrative issues with Article 26 alerts does cause frustration in Poland as it does in Spain, but the closer relationship between the bureaux gives more opportunity for UK officers to explain the system and the reasons for the issue, which increases mutual understanding and eases tension.

²⁸⁷ Transcript 41 - MPS Extradition Unit

²⁸⁸ Transcript 45 - SIRENE Bureau UK

²⁸⁹ Transcript 44 - SIRENE Bureau UK

²⁹⁰ Transcript 3 - Prosecutor Crown Office Scotland

²⁹¹ Transcript 30 - SIRENE Bureau Poland

²⁹² Transcript 44 - SIRENE Bureau UK

²⁹³ Transcript 45 - SIRENE Bureau UK

5.6 Conclusion

In the UK processing of EAWs up to and including the subject's first appearance in court is exclusively in the hands of the police. It is they who cooperate with domestic and international counterparts to develop intelligence, locate subjects and execute arrests. The bulk of communication and cooperation takes place through formal channels and is supported by informal networks of ILOs, seconded officers, and EN-FAST contacts. Bureau to bureau cooperation is largely formal but, in some cases, dedicated staff manage crucial relationships, supporting practical cooperation and fostering mutual trust through diplomacy. Police deliver subjects to court and contribute to initial hearings through statements which provide key evidence on identification and bail, two of the major issues to be addressed by the court at this stage.

During execution of EAWs prosecutors and judges provide legal representation to the issuing state and adjudicate on the validity of EAW requests. Even here, when the EAW is most obviously a tool of judicial cooperation, prosecutors and judges rely heavily, although not exclusively, on police systems for transnational cooperation, sending and receiving RFFIs, criminal records, and ID materials for evidential purposes. In the relationship between the UK and Spain liaison magistrates play an important role using informal and direct contact to smooth complex relations at this stage.

The police are the key actors in the execution of EAWs, receiving and processing requests from issuing states, then, as the repository of the legitimate use of force, enforcing the law of the issuing state. As the major route for transnational cooperation in the EAW system positive relationships between SIRENE bureaux are key to mutual trust across the system. Officers understand the diplomatic nature of their role and work to increase understanding of one another's legal systems. This work increases mutual understanding between police forces and has the potential to impact upon mutual understanding between other criminal justice professionals who rely on the SIRENE network to ferry their requests across borders.

Police discretion plays a role in the execution of EAWs in the UK, with police exercising broad discretion over resource allocation and prioritisation of cases. In rare cases, police also exercise discretion over whether to execute an EAW at all. This discretion is limited in chance encounters where officers on the ground are faced with a snap decision and a clear instruction to arrest, in the form of a PNC marker. Police discretion in executing EAWs is also shaped by risk-based thinking, not only the risk that an EAW subject poses to the local community, but also the risk to the force's reputation if a decision not to execute an EAW is taken. Police are aware not only of their duty to protect but also of the need for reciprocity in transnational relationships that rely on mutual recognition.

6. Issuing

6.1 Introduction

Following on from the exploration of the police role in the receipt and execution of EAWs in the UK, this chapter discusses the process of issuing EAWs under Part 3 of the EA 2003. The focus is on the role of UK police agencies in the process.

In the UK the decision to request an EAW is police driven and police agencies are involved throughout the issuing process. The decision to request an EAW usually arises when an investigation suggests that a suspect or convicted offender has left the UK. The administrative and decision-making processes of police are interrogated in detail in this chapter. Police exercise discretion in deciding to pursue an EAW, thereby engaging the decision-making role of other criminal justice actors.

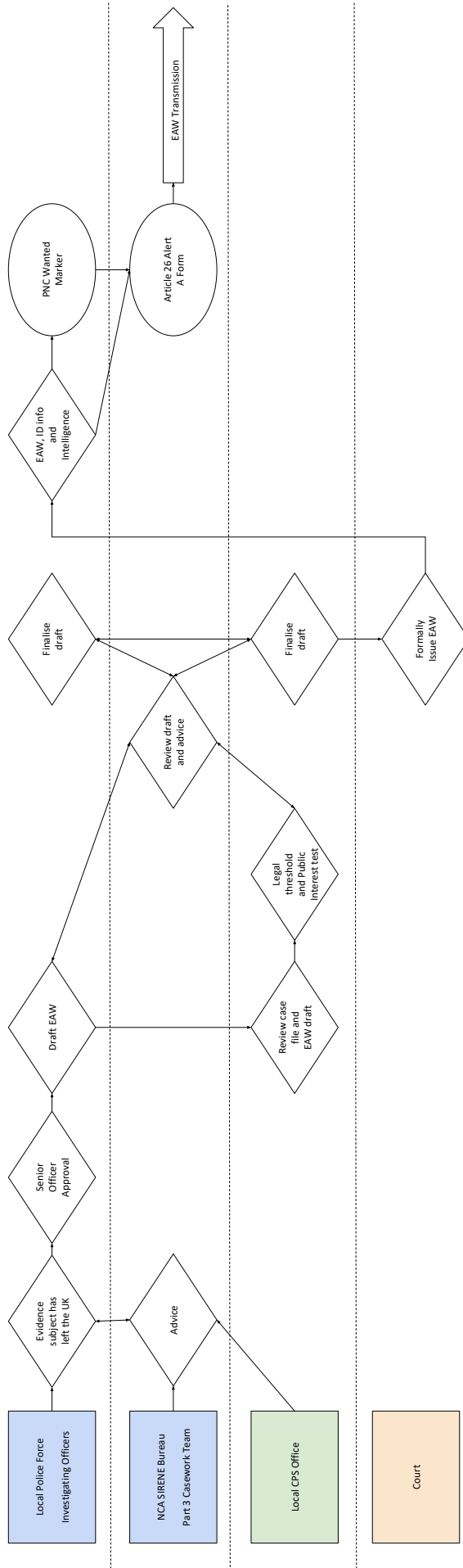
Understanding how police discretion shapes practice helps to identify the EAW as a policing tool and illuminates the role of risk-based thinking and resource considerations in the operation of the EAW.

This chapter also explores the transnational police cooperation involved in the transmission and execution of outgoing EAWs. It identifies the EAW infrastructure that facilitates this cooperation, describing practice in this small slice of the transnational policing field. The discussion sheds light on the theoretical distinction between formal and informal cooperation and contributes to understanding the role of mutual trust.

6.2 The issuing process

Generally, the process of issuing an EAW is initiated by local police officers who consult with prosecutors to agree to pursue a warrant. The NCA play an advisory role during the issuing process and transmit the EAW to international partners once it has been authorised by a court. Figure 6.1 is a simplified representation of the issuing process in the UK which the following chapter describes in detail.

Figure 6.1: Issuing Process



6.3 Investigation and search

EAW cases begin with a police investigation which indicates that the subject has left the UK. Extradition can be sought at any stage in the criminal justice process as long as authorities have sufficient evidence to press charges. EAWs cannot be issued for further questioning. Suspects may flee before charges have been officially laid or abscond before trial. Sometimes subjects abscond following a guilty verdict before the sentence is passed. Cases also arise post-sentence either because the subject has escaped or because they have been recalled to prison and have fled abroad.

Information that a subject has left the UK can come from a multitude of sources. Police may receive information from witnesses, family members or informants. In some cases, confirming that a subject has left the UK is as simple as running a national borders (NBTC) check which can confirm whether the subject travelled out of the UK under their own name. Other subjects are harder to locate and police may develop intelligence using covert methods, intercepting communications data or conducting surveillance of people associated with the subject.

Police are also able to issue SIS II alerts which do not authorise enforcement action but notify European law enforcement of the UK's interest in a subject. Article 36.2 alerts for discrete and specific checks or Article 34 alerts for persons sought to assist with judicial procedure prompt European partners to notify the UK of the subject's whereabouts. This action will be triggered if the subject comes to the attention of law enforcement, perhaps by crossing a border or during a vehicle or ID check. These alerts can be issued by local PNC bureaux or via the NCA with no resource implications. The process "takes seconds"²⁹⁴ and does not request any proactive commitment from receiving states.

Cross-border checks may be initiated following consultation with international units, EAW SPOCs or the NCA. Investigating officers can also initiate these inquiries

²⁹⁴ Transcript 29 - Northumbria Police

independently providing they are aware of the tools available to them. Some extradition units and EAW SPOCs take proactive steps to run checks on failure to appear warrants²⁹⁵ or prison absconder cases.²⁹⁶ Others contact investigating officers if they come across cases where an EAW may be a suitable option.²⁹⁷ Other extradition units are more reactive, only assisting in cases where investigating officers ask for advice.²⁹⁸

In most forces in England & Wales investigating officers can request an EAW without contacting their extradition unit as long as they are aware of the available tools and the process for making requests. Knowledge is not an issue for officers regularly engaged in international cases. But most locally situated officers come across serious cases with cross-border elements infrequently and prior knowledge of international tools is not guaranteed. In these cases, officers usually contact extradition units or EAW SPOCs for advice when suspects have left the UK and receive some guidance on issuing EAWs. The Part 3 team at the NCA are also able to advise on locating and returning fugitives.

A lack of knowledge of the EAW and other cross-border law enforcement tools is a major barrier to pursuing subjects beyond the UK border. Interviewees suggested that accurate understanding of the transnational criminal justice infrastructure is not common among UK police officers. Some EAW SPOCs report being contacted by investigators who assume that police in other jurisdictions can simply detain subjects on UK warrants²⁹⁹ and others do not know that they can pursue criminals beyond UK borders. There is also a common myth among police officers related to the “international arrest warrant” which does not exist in law but was nonetheless mentioned by several interviewees. Officers in the SIRENE Bureau reported receiving queries about how to issue international arrest warrants and here a Part 3 case officer describes the types of query that expose the knowledge deficit:

²⁹⁵ Transcript 29 - Northumbria Police, Transcript 21 - Sussex Police and Transcript 20 - Lincolnshire Police

²⁹⁶ Transcript 20 - Lincolnshire Police

²⁹⁷ Transcript 55 - PSNI

²⁹⁸ Transcript 41 - MPS Extradition Unit

²⁹⁹ Transcript 12 - Kent Police

Occasionally you'll have officers contact you and say: "Oh we believe the person to be in this area, or in this country, what do we need to do in order to go over and get him?" And you're like "no, no, no, no you can't just go over and get him, there is an entire process behind this. You don't have jurisdiction." And you have to explain to them that it is not as simple as them just getting on a plane and going over and bringing them back.³⁰⁰

The NCA and the Home Office give presentations to senior investigators in local forces, aiming to increase knowledge of transnational cooperation tools and promote the work of the NCA UKICB.³⁰¹ The introduction of SIS II in the UK has had a positive impact on knowledge among divisional police officers. Its introduction was accompanied by online training for investigators³⁰² and now that all EAWs have live PNC alerts more officers are coming into contact with them.³⁰³ Problems with a lack of knowledge do persist though as this NCA officer explains:

Whilst we have been live on SIRENE for nearly two years now, you will still get forces who phone up who don't know what SIRENE is. Or they will phone up and want advice on how they circulate a warrant and you will speak to them about it and they will say "oh I remember we did an [online] learning package on this but I don't know what it means and I don't know how that works and how it relates to PNC." But then equally you will find that the forces that have done it before use it repeatedly as a tool because it has worked so well for them in the past.³⁰⁴

Guille (2010b) notes that the proliferation of European law enforcement tools and organisations with ill-defined and overlapping remits has caused widespread confusion and incoherence. The ability of national hubs to transmit knowledge of transnational cooperation tools to the local level is impeded by a frenetic pace of

³⁰⁰ Transcript 42 - SIRENE Bureau UK

³⁰¹ Transcript 46 - SIRENE Bureau UK

³⁰² Transcript 62 - MPS Kidnap Unit

³⁰³ Transcript 12 - Kent Police, Transcript 14 - West Yorkshire Police and Transcript 21 - Sussex Police

³⁰⁴ Transcript 42 - SIRENE Bureau UK

change at the European level which results in a lack of awareness of the available and appropriate routes for cooperation. Even if this confusion is overcome police officer's knowledge is largely a product of their day-to-day role (see Chan 1996, 1997). As Dixon (1997:276) notes officers in different roles have different needs when it comes to knowledge of the legal tools available to them. Senior investigators have greater understanding of legal categories compared to beat officers and this understanding increases as the law becomes more relevant to their role. This was reflected in interviews with detectives who reported improved knowledge of transnational tools when they moved from squads largely concerned with domestic issues to ones often engaged in cross-border cases.³⁰⁵

Overcoming this knowledge deficit is key in engaging the discretionary decision to request an EAW. Knowledge is also related to mutual trust between states or trust in the system in general. As noted in Chapter 2 a feeling of trust is underpinned by "prior and continued knowledge" (Nicolaidis 2007) and officers are less likely to have faith in complex cross-border systems which they do not understand. Sometimes officers at the micro-level operate in a context that is far removed from the meso-level national hubs which link them to foreign counterparts. Improving the visibility of the NCA UKICB in the day-to-day work of local police forces could greatly improve effective use of, and trust in, systems for cross-border cooperation tools at a local level.

6.4 Drafting and issuing

Once officers have reliable information that a subject has left the UK, the process for requesting an EAW varies slightly from force to force. In most cases officers will receive advice from EAW SPOCs, Extradition Units and the Part 3 team at the SIRENE Bureau. Sometimes forces contact the MPS Extradition team for advice.³⁰⁶

³⁰⁵ Transcript 62 - MPS Kidnap Unit

³⁰⁶ Transcript 61 - MPS Extradition Unit

Cases must meet the legal criteria for an EAW. The sentence left to serve or the potential sentence on conviction must meet the threshold set by the FWD and the EA 2003. The remaining sentence to serve must be at least four months for a conviction warrant and the maximum sentence on conviction must be 12 months or more for an accusation warrant. A domestic warrant must have been issued or the CPS must have agreed to pursue charges. EAWs can only be issued when cases are “charge ready” and cannot be issued if further investigation is needed.

Investigating officers liaise with Extradition Units, the NCA and the CPS to explore options and agree to pursue extradition in principle. Some forces have a policy that investigating officers must consult with EAW SPOCs before taking an EAW request forward.³⁰⁷ The MPS Extradition Unit describe the advice they give within their own force:

It could be the MIT³⁰⁸ teams concerned with murders, Sapphire teams dealing with rapes and sexual assault, child protection. A few times obviously we would get a request from an officer within borough who’s looking for a PPO,³⁰⁹ who’s wanted for several robberies or several residential burglaries, fingerprints, DNA left behind. They’re like a serial burglar basically [...] and we can’t really let this person get away with this even though we suspect they’re out of the country. Then we’d [...] say: “Where are you at with that case? Have you spoke to the CPS to consider extradition?” First thing they have to get is the agreement of their crime manager, which is a DCI. The reason they need that is obviously to consider the cost issue. Obviously if they’re on borough then any cost is going to- somebody is going to be paying for it. And in the day of budgets, so whose budget does it come out of, and everything else? Also they have to meet the [legal] threshold test for extradition.³¹⁰

³⁰⁷ Transcript 12 - Kent Police and Transcript 55 - PSNI

³⁰⁸ Murder Investigation Team

³⁰⁹ Persistent and prolific offender

³¹⁰ Transcript 41 - MPS Extradition Unit

Senior officers must approve an EAW request. This is usually a Chief Inspector or Detective Chief Inspector, but some forces allow Inspectors to approve EAWs within their division. Police are under no obligation to pursue fugitives transnationally and a broad range of considerations are taken into account when deciding to request EAWs.

There are two layers of police discretion in the decision to request an EAW. First with the investigating officer who must pursue a case, confirm that the fugitive has travelled abroad, obtain advice and decide to request an EAW. Second with the senior officer who must approve the request and all the costs associated with returning the fugitive to the UK.

The law plays a role in shaping this discretion by creating the framework for requesting an EAW and setting the legal threshold. All officers mentioned the legal test as a starting point for considering whether to request an EAW. The EA 2003 leaves discretion in the hands of judges who *may*, rather than *must*, issue warrants that meet the legal criteria. Prior to the judicial approval of a warrant, police have total discretion whether or not to pursue an EAW through the CPS. Here the law determines the scope of police discretion but it does not dominate the decision-making process (Grimshaw and Jefferson 1987).

Investigating and senior officers consider a range of factors and there are no guidelines determining how much weight is given to each one. None of the forces included in the study had a policy to guide this discretion. Police officers are limited only by the legal criteria and the requirement of senior officer approval. All interviewees suggested that the seriousness of the crime is the most important factor in assessing proportionality and were clear that the UK does not issue warrants for lower level offences even if cases technically meet the legal threshold for an EAW:

For example [...] a burglary offence in Leeds and as part of the investigation it is identified that the offender fled abroad [...] some tangible evidence that

suggests that. It might be some information from crime stoppers that they are now staying in Spain. That would go to the Chief Inspector within Leeds district to say: "are we prepared, in relation to this person, to go down the line of requesting an EAW?" So there is a severity assessment but that severity assessment, it's not written down. It's a case by case basis.³¹¹

Obviously not your minor crimes. It's just not going to happen. The only EAW part 3s our office have got involved in have either been rapes or murders.³¹²

We all just don't have the time, the money, the resources, to seek EAWs for everyone that we come across. I think there's a huge judgment call as to the type of offense it is. I think that, yes, sex, drugs and rock n' roll crimes as I call them. Your rapes and indecent assaults, your big drug players, murders. I think all of that wouldn't be questioned, I think somebody who drove their car with no insurance is never going to fly.³¹³

There is loads of stuff that would fit the criteria for an EAW but wouldn't be in the public interest according to the purse holders. In the public interest it would not be proportionate to bring that person back for the offence.³¹⁴

The seriousness of the offence and the subject's offending history are often framed in terms of the risk that they pose. Risk considerations can pull in different directions when deciding to issue an EAW. On the one hand the risk that the subject poses to your community is significantly reduced as they are no longer there. On the other hand, they now pose a risk to a community abroad and a decision not to pursue on this basis alone poses a reputational risk as forces could be seen as exporting risk and disowning it. Successful extraditions for serious offences can also have a positive effect on force reputation, creating a "good news story"³¹⁵ and delivering justice to

³¹¹ Transcript 14 - West Yorkshire Police

³¹² Transcript 12 – Kent

³¹³ Transcript 29 - Northumbria Police

³¹⁴ Transcript 14 - West Yorkshire Police

³¹⁵ Transcript 20 - Lincolnshire Police

victims. These considerations demonstrate the contradictory and opposing pressures that risk based thinking places on police officer's discretionary decision-making (Ericson and Haggerty 1997:32).

As some of the quotes above indicate the cost of surrender is another factor that shapes the decision to request an EAW. Officers need to consider at an early stage if the cost implications of surrender are proportionate to the seriousness of the offence. Senior officers often mentioned cost:

There's quite a significant financial impact, an operational impact on your ability to return somebody back to the UK. Either on an EAW, and similar applies to international arrest warrants as well, although slightly different. We now have an informal procedure, where if you're applying for one of these and it's a bit odd you need to discuss whether it's operationally feasible to do it in the first place.³¹⁶

There's a lot of issues [...] with the costing bits. I'm very conscious now that any time an SIO phones, that they are told in the first instance: "Before you go for a European Arrest Warrant or an extradition request you must know that [...] division will need to pay for this, so the cost will fall back on you." I'd be very thorough and make sure the team know that and make sure they know before they go down that route. So we don't get this at latter stages when it's too late, they've been ordered, they have to come back.³¹⁷

Several officers suggested that potential costs are a barrier to pursuing EAWs:

On a practical level you have got the cost of extradition, so you will have some forces who just don't particularly look to get EAWs because they know that each extradition is going to cost a couple of thousand pounds.³¹⁸

³¹⁶ Transcript 1 - Lancashire Constabulary

³¹⁷ Transcript 5 - Police Scotland

³¹⁸ Transcript 49 - SIRENE Bureau UK

The EAW process is resource intensive and can be very expensive, especially when collecting very high-risk subjects. Officers estimated that the base cost of a collection is around £1,500 but can increase dramatically depending on the time of year and flight availability. Surrenders are always arranged at short notice, so cheap flights are rarely available and surrenders by land, train or sea are even more expensive. Costs can rise to anywhere between £15,000 and £80,000 if a private plane is required. Surrenders in private aircraft are rare but they do happen and although forces would almost certainly request an EAW in such serious cases the mounting costs of multiple surrenders for mid-level offences weigh just as heavily on police budgets, especially in a time of austerity.

Cost is a major factor in the proportionality assessment from the perspective of senior officers. An unquantified cost commitment must be balanced against the seriousness of the offence and other issues, including the rights of the victim and the rights of the fugitive. Even so officers noted that extradition outside of the EAW scheme was even more costly and that the seriousness threshold would be higher in non-EU cases:

You can afford 5 EAWs for one extradition from Pakistan.³¹⁹

Non-EAW extradition, the severity test has to go up because the process is so much more costly, so much more time-consuming. [Cases where] you might say yes to an EAW, I'm not sure we'd say yes to an international. [The EAW] means [we] probably will bring back burglars and probably will bring back people involved in high-level theft. [...] Of course we are going to bring back people that have committed serious assault, murder, attempted murder, serious sexual offences, drug trafficking, firearms criminality, going forward, cyber-criminality, human trafficking; we'll bring them back from anywhere in the world. If we call them tier 1 offenses. Tier 2 offences where there's still a

³¹⁹ Transcript 21 - Sussex Police

victim, we will get [a] prosecution outcome for that victim from an EAW because the process is so good, smooth and streamlined. With international [...] we might have to have that awkward conversation where we say, we might not.³²⁰

Forces can request EAWs for subjects located in third countries who might travel into the EU. This offers an efficient and cost-effective way of apprehending some individuals, especially when there are political or legal barriers for extradition from the non-EU state. The NCA advise forces to request EAWs even when subjects are outside of the EU and had examples of cases where subjects were apprehended travelling through EU airports:

Interviewee 42.2: I mean even if they are not in Europe we would still recommend getting an EAW because there is always the chance they travel back into Europe and we can get them on our borders then, so –

Interviewee 42.1: Yes like the one we spoke about where I said the guy was flying from America to Cairo but he was transiting through Germany, that's a classic example. If the EAW hadn't been in place, then we couldn't have done anything about that.³²¹

Some of the barriers to police pursuing an EAW are described in this quote including cost implications and lack of knowledge. This is also a good example of the way that police think about risk from multiple perspectives and how risk-based thinking can pull in different directions:

Interviewer: do you think there are circumstances when your force might choose not to request an EAW?

³²⁰ Transcript 14 - West Yorkshire Police

³²¹ Transcript 42 - SIRENE Bureau UK

Interviewee: Cost, yes. They'll look at how old the offence is, what risk they pose to the UK if you bring them back. What if they get found not guilty? Then if it's a domestic abuse case, an accusation at court, are you bringing the person back to the UK? Is he creating more risk and safeguarding issues? Whereas if you leave him alone say in Latvia, well, what risk do they pose over there? [...] What's to stop him flying in? Risk wise is perceived risk against real risk, and in competing demands and everybody's busy. I think there are some cases where police don't issue warrants when maybe they should do just purely based on cost and time, and officer knowledge, as well. There's a lack of officer knowledge which could do with improvement.³²²

The sentence and charging requirements of the EA 2003 are the only external guide for police decisions to request an EAW. Beyond the law police consider a broad range of factors in the discretionary decision to pursue an EAW. These vary from case to case,³²³ from force to force, and probably from officer to officer.³²⁴ This decision is made independently of prosecutors but only with confirmation that the CPS is prepared to request a domestic warrant and in principle pursue an EAW. Senior officers weigh the costs of surrender against the seriousness of the offence and also consider the rights of victims and fugitives. Risk considerations include the risk posed by the subject both within the UK and abroad as well as potential risks to the reputation of the police force and the UK as a whole, both in the eyes of the public and from the perspective of European partners.

The decision to request an EAW is police driven. Prosecutors also exercise discretion and may decline to take an EAW request forward. At this stage prosecutors in England & Wales are reviewing accusation cases to ensure they can take them to trial and applying a full code test under the Code for Crown Prosecutors.³²⁵ Prosecutors in Scotland and Northern Ireland apply similar tests under the respective prosecution codes of conduct. The test has two stages. The evidential stage confirms that there is

³²² Transcript 20 - Lincolnshire Police

³²³ Transcript 14 - West Yorkshire Police

³²⁴ Transcript 20 - Lincolnshire Police

³²⁵ Transcript 57 - Prosecutor CPS

sufficient evidence to bring a fugitive to trial and the public interest stage considers the proportionality of a prosecution and an EAW request. The public interest test is also applied to conviction warrants.

The factors that prosecutors consider are similar to those taken into account by police, but codification of the test theoretically places more limits on discretion. Scholars note that, similar to the police, discretion defines the role of the prosecutor who “possess broad discretion at various stages of the process.” (Hodgson and Roberts 2010:15) Others doubt whether codification does limit prosecutor discretion in practice, arguing that “prosecutors have an almost unfettered discretion concerning whether or not to prosecute” (Young and Sanders 2004:205). This presumably extends to the discretionary decision to request an EAW although this research did not interrogate prosecutor decision-making in detail.

The police officers I interviewed did have examples of prosecutors declining to pursue cases, because they didn’t think the case was serious enough³²⁶ or because the EAW would fail the double criminality test.³²⁷ In some cases it was unclear to officers why the CPS refused to pursue a case via an EAW when they would have pursued domestic charges.³²⁸ Some forces felt that EAWs were not prioritised by prosecutors, sometimes taking months to progress. This was particularly so where CPS offices did not encounter EAWs often. Police thought that EAWs were seen as complex and were put on the back burner.³²⁹

³²⁶ Transcript 12 - Kent Police

³²⁷ Transcript 21 - Sussex Police

³²⁸ Transcript 2 - Lancashire Constabulary

³²⁹ Transcript 21 - Sussex Police

Other forces had issues with some CPS offices insisting that police provide a precise location for the subject before an EAW would be requested:³³⁰

I've heard from various officers when they've been to CPS in the past [...] they are saying, "No you can't go for extradition because you don't know where the subject is." Well that's the whole point of Schengen.³³¹

As the quote suggests this is a misunderstanding on the part of some prosecutors. The implementation of SIS II allows EAWs to be circulated across the EU without specific intelligence on the subject's whereabouts. Police were usually able to overcome this hurdle and the officers I interviewed felt that EAWs were agreed by the CPS in most cases.

The EA 2003 allows police or prosecutors to draft EAWs and to present them to the court for authorisation. In Scotland³³² and Northern Ireland³³³ EAWs are always drafted by prosecutors responsible for international cooperation, based on information provided by the police and the prosecutor in the domestic case. In England & Wales some police officers did complete initial drafts of EAWs to be reviewed and finalised by prosecutors.³³⁴ In other cases, police provided the necessary information and prosecutors completed the draft. In England & Wales prosecutors tended to ask police to obtain domestic warrants prior to drafting the EAW but prosecutors in Northern Ireland were happy to request domestic warrants from the court alongside the EAW.

³³⁰ Transcript 12 - Kent Police and Transcript 2 - Lancashire Constabulary

³³¹ Transcript 20 - Lincolnshire Police

³³² Transcript 3 - Prosecutor Crown Office Scotland

³³³ Transcript 53 - Prosecutor CSONI

³³⁴ Transcript 62 - MPS Kidnap Unit

Draft EAWs are usually reviewed by the Part 3 team in the SIRENE Bureau before being authorised by a judge:

Draft versions of EAWs come to us either via the force, the officer in charge, or via the local CPS who are dealing with it. Sometimes we will receive phone calls for advice and guidance prior to a warrant coming to us so that forces know exactly how to begin that process. We generally then take responsibility for that EAW and see that through to conclusion and circulation.³³⁵

The NCA review the domestic warrant and the ID material along with the draft EAW. They also conduct PNC searches to ensure there are no additional offences to add to the EAW and to identify any risk factors which should be communicated to receiving states.³³⁶ They advise on the language and clarity of the EAW, ensuring they can be understood by international partners and that the subject's role in the offence is explicit.

There can be a lot of back and forth during this part of the process which police officers found frustrating but understandable:

There's times these warrants are sent to the NCA. You think that something's perfect. It's got everything it needs. But when the NCA review it and send it back they say: "No, that needs changes. There's a mistake."³³⁷

Painful, really. Really painful, yes. They're just pedantic, which is fair enough because if you have words that don't translate very well, it's got to be quite -- it's got to be put forward in layman's terms and you forget being in the police force for God knows how many years. [...] You get used to the jargon sometimes, you use words that just aren't translatable within different

³³⁵ Transcript 42 - SIRENE Bureau UK

³³⁶ Fieldnote 9 - SIRENE Bureau UK

³³⁷ Transcript 55 - PSNI

languages. So, you've just got to be mindful of that really, but it's just the last time I had it, there must have been 50 emails to and from saying "correct this and correct that."³³⁸

Once a draft is finalised it is presented to a court to be authorised for transmission. Part 3 EAWs can be issued by local magistrates or crown courts. In Scotland prosecutors always present the warrants to court, in Northern Ireland CSONI prosecutors and police from the Extradition Unit appear in court. In England & Wales police or prosecutors can present draft EAWs to courts for authorisation. It was not clear if this was decided by local CPS policy, by the preferences of courts, or whether it varied on a case-by-case basis.

Judges review EAWs independently in line with requirements of the EA 2003. The discretionary judicial decision applies a final layer of scrutiny to outgoing EAWs. I did not collect sufficient data about this stage of the process to state with any certainty how often judges decline to issue EAWs, or indeed if they do so at all. I did not come across any examples of UK judges refusing to endorse warrants, but the process is not automatic, and judges do request changes to warrants and ask for more information about cases.³³⁹

In chapter 2 a question relating to the role of judges in scrutinising EAW requests at the issuing stage was raised. It was asked whether, by placing compliance with the FWD in the hands of the issuing state and minimising the review of requests in the executing state, the EAW provides a sufficient independent review of police action at either end of the process? Viewing the EAW as a policing tool highlights the possibility that when prosecutors and judges issue EAWs they are engaged in policing - authorising the use of force in pursuit of law enforcement goals - rather than independently reviewing police action. In some systems investigating judges initiate requests for EAWs themselves and with the agreement of prosecutors authorise the police to transmit them. When judges and prosecutors issue EAWs in cases they are

³³⁸ Transcript 62 - MPS Kidnap Unit

³³⁹ Transcript 62 - MPS Kidnap Unit

actively investigating can they provide a sufficiently independent review of the case for extradition? The data from this project does not provide an answer to this question. But viewing the EAW from the perspective of policing does raise the question whether judges and prosecutors are engaged in policing rather than adjudication when they are authorising the use of force within the territory of another state?

In most cases the decision to request an EAW is police driven in the first instance and police are involved, along with prosecutors, in drafting EAWs and presenting them to court. SIRENE Officers advise police and prosecutors throughout the issuing process and assist in finalising the draft. Police exercise broad discretion in deciding to pursue EAWs. This decision is shaped by the law in the first instance, but merely meeting the legal requirements will not mean an EAW is automatically issued (Grimshaw and Jefferson 1987). Police take a range of factors into account when making this decision, including the seriousness of the offence, the cost of the surrender operation and a range of risk considerations. The risk considerations are contradictory and applied in an ad-hoc fashion rather than through the application of actuarial tools. In the decision to request an EAW police think about risks in terms of possibilities rather than statistical probabilities (Ericson 2005; Ericson and Haggerty 1997; O'Malley 2004). In making the decision to request an EAW police engage the discretion of other criminal justice professionals (Goldstein 1960:543). Prosecutors apply a discretionary layer of scrutiny to outgoing warrants and ultimately the decision to endorse an EAW for transmission lies with a judge.

6.5 Transmission

The NCA receives judicially endorsed EAWs for transmission from police or prosecutors. The local PNC Bureau creates a wanted marker in PNC which allows a Part 3 case officer to create an Article 26 alert in SIS II. The alert consists of the original EAW, ID documents, fingerprints and an A Form which provides a summary of the EAW. This can be accompanied by intelligence on the whereabouts of the

subject, sent using an M Form. The case officer validates the alert which transmits it in real time to the national copies of SIS II in all member states.

The UK circulates Article 26 alerts to all SIRENE member states and sends the EAW to Ireland, Cyprus and Croatia via the Interpol systems. Red notices are only issued in very high-risk cases or if the executing state requires one in order to action the request. In cases with targeted intelligence on the subject's location the Part 3 team can request specific action from the SIRENE Bureau or NCB in the relevant state.

In cases where there is limited or no targeted intelligence the Part 3 team can assist local police forces and police in executing states to develop intelligence. They have access to the same domestic databases and intelligence tools as the Part 1 team, which were discussed in chapter 5. They also have close links with the UK's overseas network of ILOs and the EN-FAST network. The kind of resources that are engaged and time expended in searching for EAW subjects varies from case-to-case:

Depends on the country, depends on what intel [local police] have already provided us with. For example, some of them, like historic sex offences they'll probably just give us an address so we will just send that on to the country and the country will look into it and they will get the arrest quite quickly. But then when you are dealing with OCG members that have got lots of contacts, access to false documents, it can be a bit more difficult.³⁴⁰

During the field work there were eight case officers in the Part 3 team, some dealing with outgoing EAWs being executed in specific countries and others with a general case load covering the rest of the EU.³⁴¹ The team's priorities are largely reactive and driven by what is happening on any given day. The Part 3 team organises collections of subjects being surrendered to the UK and the 10-day time limit dictates that this is the first priority. Case officers also develop and relay intelligence on a regular basis, and although their role is to "be the international conduit, as the law enforcement

³⁴⁰ Transcript 42 - SIRENE Bureau UK

³⁴¹ Fieldnote 10 - SIRENE Bureau UK

agency to pass [information] out internationally”,³⁴² they are obviously invested in cases and in the relationships that they build with international partners.³⁴³

The UK issues far fewer EAWs than it receives. For the most part cases are serious and subjects are often high-risk individuals. Case officers see themselves as having a responsibility to notify a country if they suspect that a high-risk offender is in their jurisdiction.³⁴⁴ The main channel for cooperation with other states is via the network of SIRENE bureaux using SIS II, but in serious or urgent cases the Part 3 team can use the EN-FAST network and other resources including ILOs. The main channels for cooperation also depend on the relationship and the infrastructure in the executing state. Some of the relationships are unique, especially with those countries that execute high numbers of UK EAWs. Some examples are discussed below.

One of the key benefits of SIS II and the SIRENE network is that EAWs are live in all police systems across the EU, meaning that any subject who comes to the attention of European law enforcement will be arrested. SIRENE Officers had several examples of subjects being located by chance in cases where intelligence pointed to a different jurisdiction or where there was no intelligence at all.³⁴⁵ The possibility of EAW subjects being located in this way is seen as one of the major benefits of SIS II membership in both Part 3 and Part 1 cases. SIRENE Officers spoke about it in these terms:

Interviewee 42.1: I think we have all got good examples [...] I personally had a guy in the Netherlands where we thought he was in Sweden and he was just stopped for speeding in the Netherlands and he was picked up and returned really quickly. It’s all because of SIRENE.

Interviewee 42.2: Yes, serious offenders. You’re not talking about low level criminals either. They are threats to the public in those countries. So could be

³⁴² Transcript 42 - SIRENE Bureau UK

³⁴³ Fieldnote 10 - SIRENE Bureau UK

³⁴⁴ Fieldnote 9 - SIRENE Bureau UK

³⁴⁵ Fieldnote 9 - SIRENE Bureau UK

CSE,³⁴⁶ could be murderers, could be drugs. So I think it's excellent even one result of catching a rapist or a child sex offender in those countries it would have been worthwhile. But we are getting so many positive results from it. I think it's just an excellent tool we have now.³⁴⁷

6.6 EN-FAST

The EN-FAST network links Fugitive Active Search Teams (FAST) from across the EU, the structure of the network is discussed in chapter 4. It is made up of nationally situated contact points. Individual police officers usually employed in national FAST or extradition units, who can be contacted directly by email or phone by anyone in the network. The Part 3 team are able to use these contacts when a need arises:

So it will very much depend on the nature of the case, because we only put our most serious cases through EN-FAST really, because it's a valuable resource that we don't want to abuse and we also want to protect the relationship that we have with those teams as well.³⁴⁸

EN-FAST teams are able to act on information very quickly, to deploy significant resources at short notice and may be able to dedicate more time to tracking down a subject than local law enforcement could.³⁴⁹ There are no specific criteria for a case to be put through EN-FAST but it isn't used as a matter of course or for day-to-day cases:

Interviewee 42.1: I don't think we would go out to an EN-FAST team if it was a very speculative enquiry. I don't think we would go out to them and say "well we haven't really got any direct targeted intelligence to say they are in your country but can you have a look for us?" We would need to have something

³⁴⁶ Child sexual exploitation

³⁴⁷ Transcript 42 - SIRENE Bureau UK

³⁴⁸ Transcript 42 - SIRENE Bureau UK

³⁴⁹ Transcript 49 - SIRENE Bureau UK

relatively good to take to them to say “look we think they are here or we have got this intel please can you do some work around it?”

Interviewee 42.2: Yes [...] the EAWs on part three a lot of the time they are going to be serious offences anyway so there is no sort of criteria that they have to be a certain amount of years served or anything like that, or that imprisonment has been imposed. For example, with Sweden we got them to look into a fraudulent dentist, and they actually arrested him whilst he was operating on someone in Sweden. So, it can be a variety of offences, it’s not like murders or drugs, it could just be anything really.³⁵⁰

EN-FAST contacts are sometimes asked to execute provisional arrests while an urgent EAW is issued or to conduct constant surveillance of located subjects if provisional arrest isn’t possible in the executing state. In these cases EN-FAST officers are expending significant resources or using legal powers of provisional arrest on the basis of trust in their professional contacts:

So it is a really good way of just ensuring that, if there is something like that where you have not got the EAW in place, or you know some intel is coming, because you have met them face-to-face... if I phone someone up and say “this is going to be on the way, it’s going to be with you in an hour.” They know it’s on the way and it’s going to be with them in an hour. If you send that request via Interpol or SIRENE, there is no trust --- there is trust but there is no need to trust, so you are automatically suspicious, you think “well they might not send it so we can’t put those resources into it.” Whereas EN-FAST take it sort of personally.³⁵¹

Spanish EN-FAST officers explain that requests for provisional arrest can be beneficial for the executing state in terms of managing risk to their own communities and highlight the need for issuing states to follow up with official documents quickly:

³⁵⁰ Transcript 42 - SIRENE Bureau UK

³⁵¹ Transcript 49 - SIRENE Bureau UK

It's an informal contact [...] When the NCA contact you it's an important target for them too. [...] A [high-risk] target [...] maybe they are not under [a] European Arrest Warrant, but they can be dangerous for us too. Sometimes you have to check because if they are a paedophile for example, is interesting for us to know if we have him here.

Sometimes we can do the first check[s] to know if they're here. But normally with the UK we don't have problem because the delay is only one day or two days. It's not like other countries that say: "You can check?" Yes, I can check and in three months they will give you the Red Notice or the request. But with the United Kingdom no. It's only one day, two days [...] They work very well.³⁵²

The informal relationships built up through face-to-face meetings at conferences and regular professional contact are key to developing the trust needed to support this kind of work. Officers in the network can communicate as if they were members of the same national unit, picking up the phone, emailing and even communicating by WhatsApp.³⁵³ Work in the EN-FAST network can be very busy and the serious nature of cases means that work is always urgent:

[T]he reason it works well is because it is informal, because you don't have this sort of --- these structures to go through in terms of getting a case accepted. You'll pick up the phone, you'll speak to your counterpart and say "right we have got this one case, it needs some extra resources" and they will say "that's fine yes" and it works, it works really well actually.³⁵⁴

The above quotes make the link between informal contact and trust explicit. They also demonstrate the importance of effective and reliable practical cooperation for trust between policing partners at the micro-level. Officers in the EN-FAST network

³⁵² Transcript 18 - Policía Nacional

³⁵³ Transcript 18 - Policía Nacional

³⁵⁴ Transcript 49 - SIRENE Bureau UK

trust each other because they have had informal face-to-face contact and have specific knowledge of the officer they are dealing with. Or they trust each other because they have good prior experience of working with a particular country, so they feel confident that a commitment to deliver a formal request will be honoured. This demonstrates that direct informal contact helps to build trust (Hufnagel 2017) and how trust is supported by prior and continued knowledge of a particular partner, an individual officer, or a country (Nicolaïdis 2007). EN-FAST officers act on requests because they feel confident that their partner will fulfil their commitment to issue a formal request (Block 2017).

The final quote makes it clear that EN-FAST officers are able to exercise the discretion to deploy additional resources or execute a provisional arrest, supported by trust, because they are acting outside of the formal structures that the majority of EAW cases go through. It is important to note that although this network relies on informality, cases can only be concluded because officers trust that requests will be followed up via the formal channels. This is not simply the “old boys network” of transnational policing at work (Anderson et al. 1996). The EN-FAST network is itself formally established and the formal SIRENE and Interpol networks play an integral role, without them the informal EN-FAST network would be unable to action requests with or without trust.

Another important point is that the formal networks do not require the same levels of trust to function. This suggests that in formalising police cooperation in extradition the EAW has reduced the reliance on trust based informal relations in the majority of cases, potentially improving the prospects of effective continuity in cross-border relations and making cooperation a less risky undertaking (Block 2017).

6.7 JITs

EAWs may also be issued in connection with a Joint Investigation Team. JITs can be established under a memorandum of understanding (MOU) that facilitates the “structured secondment of foreign police officers and prosecutors for the purposes

of assisting with cross-border criminal investigations.” (McDaniel 2015:136) The MOU establishing a JIT also provides for the sharing and transfer of evidence related to the investigation. The UK usually runs JITs through Eurojust³⁵⁵ although there are a few routes available (McDaniel 2015:135–38).

JITs are focused on a specific criminal investigation which must involve two or more EU member states. EAWs might be issued in the course of the investigation when suspects are regularly travelling between jurisdictions:

One we’re dealing with at the moment where we've put the case up for the CPS in anticipation that they will issue EAWs, because this particular group we’re looking at, they are in and out of the country every month, but for a couple of days at a time so we can’t really nail them down to any specific time. The easiest way of getting them all is to issue EAWs. If they’re in the country, we’ll arrest them, if they’re not then we've got a warrant for them, so it’s like a catch-all really.³⁵⁶

Alternatively, EAWs may be issued at the end of a joint investigation when the bulk of arrests have been executed:

For the last one I dealt with, where we issued four or five [EAWs]. It was quite a large organised crime group where there were 13 suspects, all were quite transient between here and Hungary. We had a really good line of communication with the Hungarians, but on any given day one or two would be out the country, so we never actually knew who was in the country at any one time.

So, there obviously comes a point in the investigation where you've got to proceed to arrest, that date was fixed, the resources were put in place, the

³⁵⁵ Transcript 9 - Eurojust UK Desk

³⁵⁶ Transcript 62 - MPS Kidnap Unit

arrests went ahead, and then obviously post-arrest you realise who's missing and the warrants are issued immediately.³⁵⁷

Generally, EAWs related to JITs are drafted by prosecutors in conjunction with the police. Prosecutors are heavily involved from the inception of JITs. From the initial meeting and drafting of the MOU, throughout the investigation phase, to arrest and final prosecution. One of the key questions in establishing a JIT is determining the jurisdiction where prosecution of key suspects will take place:

[Meetings take place] at a relatively early stage in an investigation. You could be discussing EAWs at that stage, because you'll be discussing jurisdiction and you'll be discussing venue. By jurisdiction I mean you'll be discussing who has the legal authority to prosecute X, Y, Z suspects for which offences, because the criminality could be in two or three countries. One country could have [jurisdiction] to prosecute them for everything they're doing in the different countries. One country may only have jurisdiction to prosecute for criminality taking place in their own country.³⁵⁸

Police and prosecutors routinely involved in JITs are likely to have more experience with EAWs and tools for cross-border cooperation than local police officers and the JIT creates direct routes for cooperation in locating subjects. Officers therefore require less assistance from the NCA in the early stages of the process, but they still consult with the NCA before presenting the EAW to a judge and the authorised warrant is still transmitted via the SIRENE Bureau.

6.8 Post arrest

Post-arrest the Part 3 team receive arrest notifications and requests for translations of EAWs from executing states. They arrange for translations, notify issuing forces of the arrest and forward RFFIs from executing authorities to issuing prosecutors. It is

³⁵⁷ Transcript 62 - MPS Kidnap Unit

³⁵⁸ Transcript 9 - Eurojust UK Desk

possible for executing authorities to send RFFIs direct to issuing prosecutors, so although police systems are involved, this stage it is not entirely reliant on them.

Once surrender is ordered the Part 3 team liaises with the issuing police force and the executing state to plan the surrender operation. This process and its theoretical implications are discussed in detail in chapter 7.

6.9 Transnational cooperation when issuing EAWs

The process of issuing EAWs is instigated by local police forces, often in collaboration with their EAW SPOCs or Extradition Units, prosecutors and the NCA. For the most part this involves no direct contact with international counterparts. Case officers in the SIRENE Bureau are responsible for the transmission of EAWs and international cooperation when locating and arresting subjects. JITs, which involve close cooperation between police officers in a specific case, are an exception to this general rule.

The vast majority of international cooperation and communication with NCA case officers takes place via the formal SIRENE and Interpol channels. The EN-FAST and ILO networks can be called on to engage additional resources in serious and urgent cases. This general pattern of cooperation can vary depending on the seriousness or urgency of the case and on the specific relationship between the UK and executing state.

The relationship with Poland is fairly typical of cooperation between the UK and the rest of the EU when issuing EAWs, relying almost entirely on formal channels. But the UK relationships with Spain and Ireland are unique and provide two examples of variation from the norm.

Figure 6.2 - Part 3 Arrests by country

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Ireland	29	30	18	31	33	25	27	48	9
Poland	10	7	10	5	7	9	13	22	22
Spain	32	41	36	33	54	49	20	32	34

6.9a Spain

Spain is the UK's number one partner for outgoing EAWs. Local Police describe surrender operations from Spain as their "stock trade [as] most of our criminals tend to fly to Spain."³⁵⁹ Between April 2008 and March 2018 Spain arrested 331 subjects on UK EAWs. The UK's relationship with Spain is unique and the UK's well-established ILO network plays a regular role in EAW cases. The two countries also run Operation *Captura* focused on UK EAW subjects with links to Spain.

Spanish cases have a dedicated NCA Part 3 case officer. This case officer circulates EAWs via Article 26 alerts in SIS II and sends EAWs with specific Spanish intelligence to an ILO, who passes them to the Fugitive Unit at the *Policía Nacional*. Part 3 case officers are able to call on ILOs to initiate intelligence checks before or after an EAW is issued. They describe the ILO role in locating suspects in this way:

They have got an excellent relationship with local law enforcement [...] so they can do checks on a bilateral basis with them and look to locate [subjects]. The problem is Spain-- [...] unless the case is judicialised you can't get stuff like comms data or stuff like that. That would require an ILOR, but there is some stuff you can do on a bilateral basis. So [the ILOs] do that for us.³⁶⁰

The fugitive unit at the *Policía Nacional* often receive EAW requests through ILOs before they arrive via SIS II:

We have two different ways. The first one; the [quickest] is the liaison officers. Every day that there [is] a new European Arrest Warrant, I will receive by mail from the NCA liaison officers and [via] SIRENE.³⁶¹

³⁵⁹ Transcript 2 - Lancashire Constabulary

³⁶⁰ Transcript 42 - SIRENE Bureau UK

³⁶¹ Transcript 18 - Policía Nacional

ILOs officers have close relationships with local law enforcement and with the Fugitive Unit in the *Policía Nacional*. They are able to make urgent inquiries and facilitate rapid communication between the NCA and Spanish police. The ILOs also fulfil a liaison role when choosing targets for Operation *Captura*.

Operation *Captura* is a crimestoppers media campaign and has been running for over ten years. It is aimed at:

the most wanted fugitives that are believed to be in or have links to Spain. So, we have had 96 subjects on *Captura* and we have had 79 arrests so far.

Ranging offenses, so obviously you have got your drugs offenses, CSE, murder, everything really but it is mainly the higher criminality that we look at.

Quite a lot of the time the arrests don't actually take place in Spain. It's the initial intel that leads us to include them [...] In this day and age it is quite common for criminals to have lots of contacts and move about freely within Europe and outside of Europe. So, it's not really outside of the realms of imagination for them to travel from Spain, especially when their faces are all over billboards.³⁶²

The Part 3 case officer responsible for Spanish cases identifies a preliminary list of 10 subjects with links to Spain and compiles a reserve list. Each case is approved for inclusion with the local UK officers in charge of the case. The list is then passed via the ILOs to the *Policía Nacional* and the *Guardia Civil* who deconflict cases and approve a final list. As the list is based on existing intelligence subjects are often arrested in the run up to an operation. In 2016 half of the subjects on the original list were arrested before the launch and replaced by subjects on the reserve list. This is indicative of the pace of EAW execution which can be very fast indeed.³⁶³

³⁶² Transcript 42 - SIRENE Bureau UK

³⁶³ Transcript 42 - SIRENE Bureau UK

Operation *Captura* is an advertising campaign including billboard posters, TV adverts, news reports and online advertising. The advertisements are aimed at all communities in the region but the goal is to generate intelligence from British communities living in southern Spain. Adverts include telephone numbers for British and Spanish crimestoppers hotlines so members of the public can make reports in their own language.

The operation has been hugely successful. At the time of writing 84 of the 96 fugitives included in the campaign had been arrested (National Crime Agency 2019). The intelligence reported to crimestoppers is passed from the NCA case officer to the ILOs in Spain who liaise with local police and the Fugitive Unit to take action. Some subjects have handed themselves in after seeing advertisements, some have been identified at borders as the campaign inspired them to travel. Others have been arrested outside of Spain based on intelligence provided by the public:

Sometimes they just admit defeat and hand themselves in. Sometimes they go to ground. Or sometimes we just get really good intel on them and they get found straight away. But a lot of the time I think, especially if it's in an expat area and you see a big van with a billboard on it driving past, it's going to lead you to think you better do a runner.³⁶⁴

We have had some big successes with it. Arrests all over the world, Ghana, Greece, all over Europe really.³⁶⁵

The police relationship between Spain and the UK has unique features and liaison magistrates in both jurisdictions add an additional route of cooperation for prosecutors. The NCA does have some contact with the liaison magistrates, but usually prosecutors contact them to assist in complex cases and to help smooth relations when needed.³⁶⁶

³⁶⁴ Transcript 42 - SIRENE Bureau UK

³⁶⁵ Transcript 42 - SIRENE Bureau UK

³⁶⁶ Transcript 3 - Prosecutor Crown Office Scotland and Transcript 42 - SIRENE Bureau UK

The informal liaison roles of the ILO and liaison magistrate act as a direct link between practitioners in both jurisdictions. They are able to expedite requests and aid the flow of information between national actors, supplementing rather than replacing formal channels of cooperation. In these semi-diplomatic postings ILOs and liaison magistrates represent their home states and form part of a transnational community that provides the “oil and glue of contemporary international law enforcement” (Nadelmann 2010:468).

6.9b Ireland

Ireland is the UK’s second most frequent partner in Part 3 cases. Between April 2009 and March 2018 250 subjects have been arrested on UK EAWs in Ireland. As discussed in chapter 5 the Guards have a unique relationship with the UK, particularly with PSNI who they cooperate directly with on a daily basis.

PSNI,³⁶⁷ other local forces³⁶⁸ and the NCA³⁶⁹ all reported being in direct contact with the Guards Extradition Team at points in the Part 3 process. Usually in relation to organising surrender operations,³⁷⁰ but also occasionally when developing intelligence on the location of a subject.³⁷¹

When subjects are known to be in Ireland the Part 3 team sends the EAW to the Interpol NCB and directly to Ireland’s central authority at the Department for Justice and Equality.³⁷² Part 3 EAWs are reviewed by the central authority and passed to the CSSO who presents them to a High Court judge for endorsement.³⁷³

³⁶⁷ Transcript 55 - PSNI

³⁶⁸ Transcript 61 - MPS Extradition Unit

³⁶⁹ Transcript 42 - SIRENE Bureau UK

³⁷⁰ Transcript 2 - Lancashire Constabulary

³⁷¹ Transcript 40 - Avon & Somerset Constabulary and Transcript 41 - MPS Extradition Unit

³⁷² Transcript 42 - SIRENE Bureau UK

³⁷³ Transcript 52 - Central Authority Ireland

The Irish Extradition Unit cannot execute an arrest until an EAW has been endorsed by the High Court. This process is not mirrored elsewhere in the EU, where a valid Article 26 alert provides authority for arrest. Although the UK is currently alone in certifying Article 26 alerts before a marker is placed in PNC it is possible that Ireland will adopt a similar procedure when it joins SIS II.³⁷⁴

If further information relating to an EAW request is needed requests are sent via the central authority to the NCA who liaises with UK prosecutors.³⁷⁵ Intelligence sharing and development usually takes place via police channels, through Interpol or via the ILO based in Dublin. Some cases involve direct contact between the Part 3 case officer and the Guards Extradition Unit after the EAW has been issued. The NCA and the Irish Interpol NCB discourage direct contact between local forces and the Guards. So any direct contact to develop intelligence prior to issuing an EAW is replaced by Bureau to Bureau communication post-issue.³⁷⁶

The relationship between the Extradition Units in the Guards and PSNI is an exception. They are in daily contact and PSNI can simply “drop an email or pick up the phone and speak to [the Guards] down the road.”³⁷⁷ They are able to plan operations and share intelligence informally and directly. PSNI can also contact the Irish Interpol NCB directly to make inquiries and even speak with local Irish officers if needed. Unlike other direct contact that interviewees discussed throughout the fieldwork, informal contact between PSNI and the Guards is rarely followed up via formal channels (Walsh 2011).³⁷⁸ The NCA are informed only at key stages in a case, for example when an arrest is executed, or surrender ordered.

³⁷⁴ Transcript 51 - Interpol Ireland

³⁷⁵ Transcript 52 - Central Authority Ireland

³⁷⁶ Transcript 42 - SIRENE Bureau UK and Transcript 51 - Interpol Ireland

³⁷⁷ Transcript 56 - PSNI

³⁷⁸ Transcript 55 - PSNI

6.9c Poland

Although Part 1 cases constitute the bulk of EAW traffic between Poland and the UK, Poland still ranks highly in terms of Part 3 UK cases. Between April 2009 and March 2018 Poland arrested 105 UK EAW subjects. The process that the UK follows in issuing EAW requests for execution in Poland is typical of the standard process. Bureau to bureau cooperation is well established and UK officers speak highly of the service they receive from Poland.³⁷⁹ Although the NCA does have access to an ILO in Warsaw, the Polish EN-FAST contact, and a Polish FLEC officer stationed in London, these routes for cooperation are rarely utilised in Part 3 cases:

We have got a really good relationship with [Poland]. And we won't really EN-FAST Poland cases because we know that the Polish SIRENE Bureau are really good and they will get the work done anyway. So we just send it to them and usually we get a response as to what has happened as well and they will tell us exactly what they have done on the case.³⁸⁰

The Polish National Police have a clear policy that all international communication and cooperation requests must be channelled through the ICB.³⁸¹ The hierarchical structure of the Polish National police facilitates clear communication of information and intelligence to officers in the ICB, who in turn update international partners. The ICB can facilitate direct contact between local Polish officers and international counterparts or ILOs, but only do so in rare cases and only on the basis of official requests.³⁸²

The Polish EN-FAST team did report direct contact from other members of the EN-FAST network but only mentioned cooperation with the UK in relation to Part 1 cases. They were very clear that from their perspective an EN-FAST contact is an official and formal channel and so they wouldn't necessarily follow up through the

³⁷⁹ Transcripts 44 and 45 - SIRENE Bureau UK

³⁸⁰ Transcript 42 - SIRENE Bureau UK

³⁸¹ Transcript 30 - SIRENE Bureau Poland

³⁸² Transcript 30 - SIRENE Bureau Poland

SIRENE Bureau.³⁸³ This shows the flexibility in the way that police understand formal and informal channels. Although EN-FAST involves direct contact and no formality to initiate requests, it is still a formally established network with a defined remit. Cooperation through this network does rely more heavily on trust than cooperation through the more formal SIRENE channel, but this trust isn't necessarily interpersonal as contact is made through a formally established and universally shared contact list and trust can rest on the reputation of the country as a whole.

6.10 Conclusion

In the UK the majority of EAW requests are initiated by local police forces. Police officers exercise discretion in the decision to pursue an EAW. The scope of this discretion is determined by the law, but law does not dominate the outcome of police decisions (Bowling and Marks 2017; Grimshaw and Jefferson 1987). Investigating and senior officers take a range of considerations into account when exercising this discretion, including the seriousness of the offence and the financial cost of the ultimate surrender of the subject. Risk-based thinking influences the exercise of discretion and risk factors can pull in different directions.

Local police forces and the NCA work in collaboration with prosecutors to request EAWs and police officers and Part 3 case officers are closely involved in the drafting of warrants. Police officers sometimes appear in court to get the EAW authorised by a judge. SIRENE officers are then responsible for the transmission of the EAW and for cross-border cooperation with the executing state, including intelligence development and sharing. Part 3 case officers can engage additional resources from the EN-FAST or ILO networks in serious or urgent cases. Post-arrest the SIRENE Bureau is also able to act as an international conduit for RFFI's from the executing

³⁸³ Transcript 39 - Polish National Police

state to issuing prosecutors in the UK. This process relies largely on formal routes for cooperation but there are exceptions to this rule, including the regular use of the ILO network in Spanish cases.

Mutual trust between policing officers underpins transnational relationships between police forces, especially when engaging more direct and informal cooperation. This is even more so if something is being requested outside of the norm, such as a provisional arrest or surveillance prior to an EAW being issued. What is important here is for police to trust that commitments to produce an EAW will be honoured, that their time will not be wasted and that any effort will be reciprocated. Police officers, particularly those engaged in transnational policing on a daily basis, are keenly aware of their diplomatic function. They are careful not to abuse systems for informal cooperation and to follow up informal requests with formal documentation in a timely fashion.

7. Surrender

7.1 Introduction

The EAW process culminates in the physical handover of the EAW subject from the authorities of the executing state to the authorities of the issuing state. Once the courts order the surrender of a subject it falls to police agencies to arrange and conduct handover operations. The use of coercive force is authorised by the EAW and applied by the policing agents of both executing and issuing states to physically transport the subject to the territory of the issuing state.

Arranging the surrender and return of an individual EAW subject requires detailed administrative planning and cooperation between domestic police agencies, criminal justice institutions, private companies, other government agencies and international policing partners. Although the process involves a significant volume of knowledge work and logistical planning, this stage is really about the application of coercive force. The handover of an EAW subject is not just an administrative process; it relies on the police monopoly on the legitimate use of force to exercise coercive control not just across national boundaries but domestically, in transnational or international spaces, and in the territory of other states.

This chapter documents the processes that police agencies follow in facilitating, organising and conducting surrender operations. It examines the process in the UK for arranging outbound and inbound surrenders, using relationships with Ireland, Spain and Poland for illustration. It discusses the surrender planning process, explaining the role of the NCA, local police forces and the commercial airlines who ferry the majority of EAW subjects and their police escorts to and from the UK. It highlights some of the challenges faced by local forces in conducting surrender operations and discusses the role that risk assessment plays in determining how surrender operations are carried out. The chapter then describes surrender operations in practice, drawing on interviews and a small number of observations of

outbound surrender operations. The observation of physical surrender was the only stage in the research that EAW subjects came clearly into view as individuals rather than simply the subjects of police processes.

The chapter also details the training local officers receive before carrying out extradition operations on commercial airlines. It explores police understandings of the legal regime governing their powers when transporting prisoners across borders. Finally, it discusses the problem of failed handovers and their impact on mutual trust.

7.2 Surrender planning

Figure 7.1 depicts the process for planning an outbound surrender via London Heathrow airport and figure 7.2 portrays the process for planning an inbound surrender, also via London Heathrow airport. This is a commonly used route for non-Polish surrenders into and out of the UK, although other airports are sometimes used, and occasionally surrender operations take place via land or sea. The flow charts depict a linear process, but as the time police have to plan and surrender subjects is so short - only 10 days, unless an extension is granted by the courts - much of the planning and communication takes place simultaneously.

Figure 7.1: Outbound Surrender Planning Process

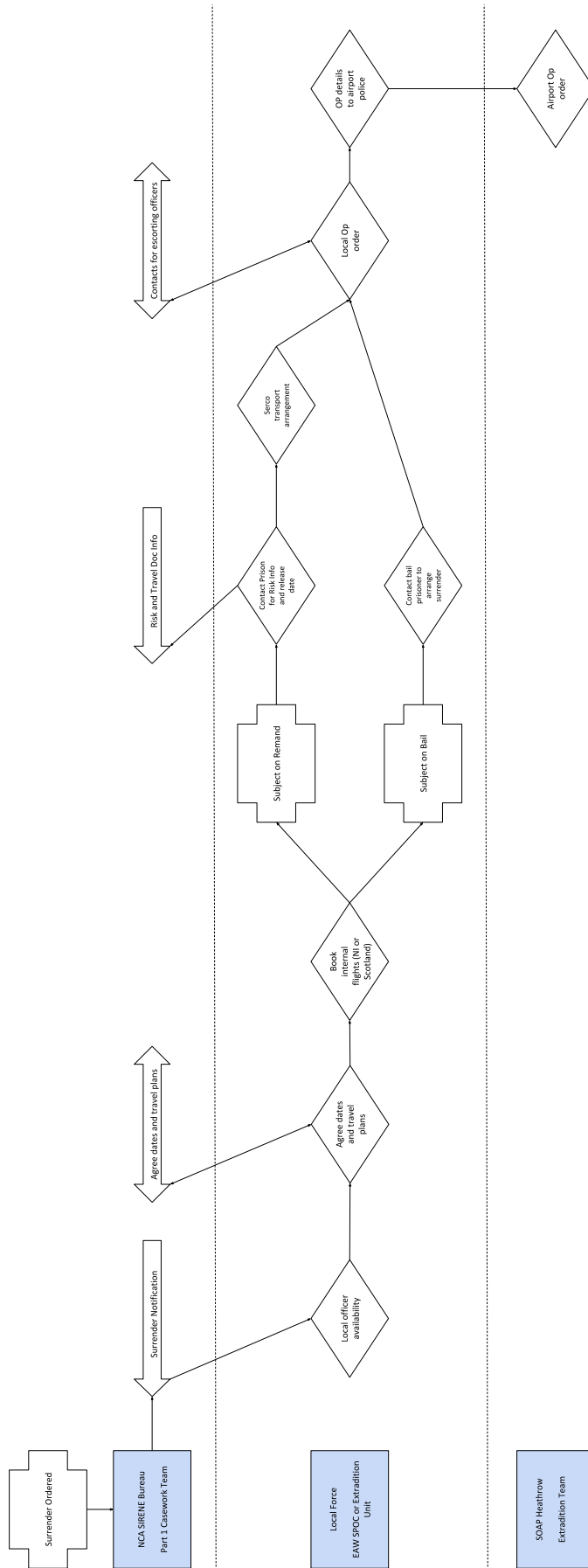
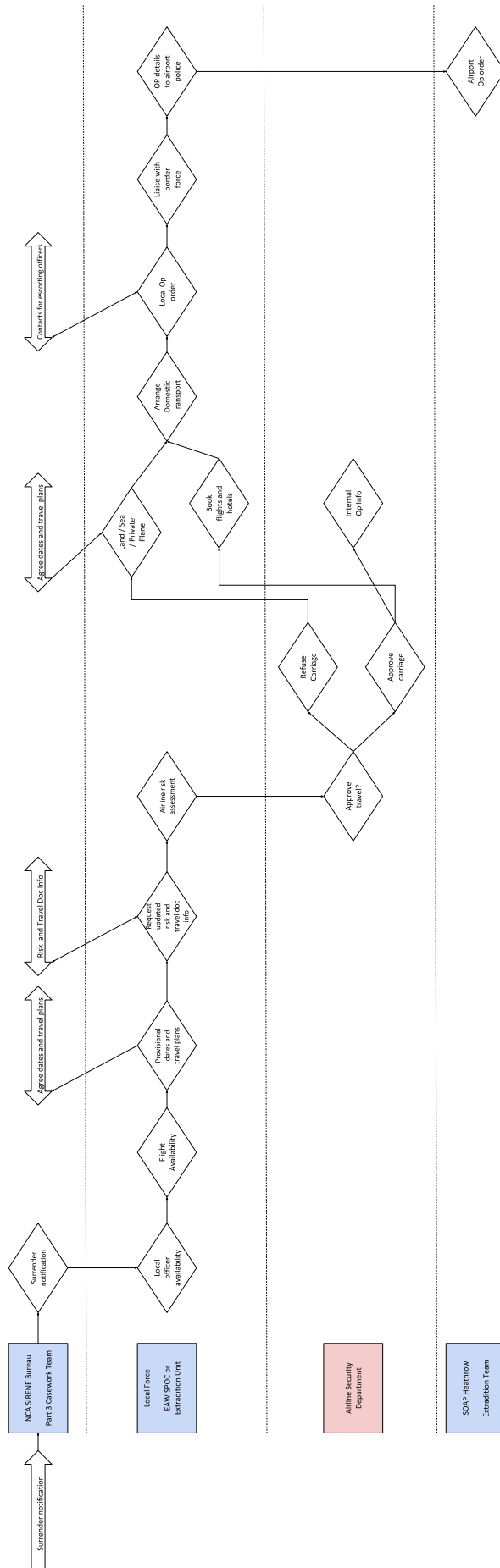


Figure 7.2: Inbound Surrender Planning Process



7.3 The NCA role in surrender planning

In all extradition cases, EAW or otherwise, police officers travel from the issuing state to collect the subject being surrendered. The NCA is responsible for facilitating outbound part 1 surrenders and outbound part 3 surrenders. The local force responsible for conducting the physical surrender will be the arresting force³⁸⁴ for outbound surrenders and the force that issued the EAW in part 3 inbound cases. The part 1 team at the NCA deals with outbound surrenders and the FCT arranges and manages the Polish military flight. The part 3 team deals with incoming surrenders.

The NCA's main role in supporting surrender operations is to facilitate transnational communication between the local force and the issuing or executing state. The 10-day timer starts when part 1 case officers receive notice that surrender has been ordered from the English courts or from prosecutors in Scotland or Northern Ireland. Part 3 case officers will receive notification of surrender from the executing state.

NCA case officers initiate communication with the local force responsible for the case and with the SIRENE Bureau in the issuing or executing state. Both parties are asked for their preferred travel dates and this information is communicated by the NCA. Ultimately the party crossing borders to collect a subject will have most influence on the travel plan, but efforts are made to accommodate both parties' needs.

For part 1 cases, local forces are required to provide up-to-date risk information on the subject, including medical needs and likelihood of violence. They are also asked to confirm what ID or travel documentation is available for the subject. This information is transmitted to the SIRENE Bureau in the requesting state via SIS II. For part 3 cases, this information is sought from the executing state and passed to the local force that will be collecting the subject.

³⁸⁴ Even if the subject is remanded at HMP Wandsworth or bailed to another force area.

The NCA liaises between the collecting state and the local force throughout the planning stage, acting as a conduit for information and working towards an agreed travel plan. When the plan is finalised, details of escorting officers are confirmed and the NCA provides direct contact information to all parties so they are able to make direct telephone contact on the day of surrender if needed.

Surrender operations to and from Poland are planned and conducted in a unique way as the Polish regularly send a military flight to the UK to collect Part 1 EAW subjects. They are also able to transport part 3 subjects back to the UK on this flight. When surrenders are ordered to Poland, the Part 1 case officer asks the FCT to allocate the subject a place on the next available flight. This information is passed to the local force, who arrange to present the subject for the flight. Requests for extensions to the 10-day time limit are common in Polish cases and are arranged by Part 1 case officers. The NCA provide a statement to the court which follows a standard format and the extension is usually granted as a matter of course.

The NCA also plays a key role in requesting extensions in non-Polish cases when the 10-day deadline cannot be met. An NCA officer explains the process:

If it is sitting with Westminster, so the subject consented to extradition, or didn't consent but it didn't get to a full appeal hearing, the matter is deemed to sit back with Westminster. So, we submit time extensions under either s.47 of the Extradition Act for a consented subject or s.35 for those that didn't consent and it's directly to the court outlining the reasons why the handover can't be realised [within] the 10-day removal period. And more often than not they will grant those time extensions. It's commonplace with the military flight because they know how many Polish we are dealing with and how far in advance the flights are booked up. But in terms of surrenders via commercial flights when we have situations like that, more often than not if we can give a justifiable reason, they will grant the time extension.³⁸⁵

³⁸⁵ Transcript 44 - SIRENE Bureau UK

In cases where an appeal has been heard in the High Court the process is slightly different. The CPS make the request, including a statement from the NCA:

If it goes to the admin court, it is because it has been to a full appeal hearing and they have dismissed the appeal, so the matter is deemed to still be with them. So they require a MG11, a s.36 request from us. We send it to the CPS who submit their own stuff with our MG11 request, they make a payment to court. And the admin court is less inclined to grant time extensions, they don't like multiple time extensions. So for example I have a case at the minute, the guy can't be removed, he is unfit to fly, he has got DVT, we have no timescale for when he can commence treatment, when treatment will be completed, when he will be fit to fly. But they won't grant us an open-ended time extension. So whereas Westminster would say, "ok, well, just 10 days from when we know he is fit to fly", the admin court won't do that. So I have had to say, "but you don't like multiple time extensions and that is likely the way that this is going to go." They have said "we appreciate on this occasion it is likely to be multiple time extensions".³⁸⁶

Irish cases are also arranged somewhat differently as they tend to involve direct contact between local forces and the Guards. Once surrender is ordered, the Guards simply request that the EAW SPOC contact them directly to make arrangements.³⁸⁷ The final arrangement will always be confirmed via the official channel to keep the NCA and the Irish central authority informed.

The NCA act mostly as the international conduit, a "travel agent"³⁸⁸ in the surrender process. The major logistical work, operational planning and the physical handover is dealt with by the local force responsible for the case.

³⁸⁶ Transcript 44 - SIRENE Bureau UK

³⁸⁷ Transcript 21 - Sussex Police and Transcript 41 - MPS Extradition Unit

³⁸⁸ Transcript 17 - NCA Legal Team

7.4 Local police force role in surrender

EAW SPOCs deal with surrender planning for local forces. They are contacted by the NCA on receipt of the surrender notification. Sometimes there are delays in this notification, which puts pressure on all involved, including the NCA:

We hit problems when this happens on a Friday afternoon and perhaps notification has come in out of hours. So, we do have instances where we lose that weekend, so we lose the Friday, Saturday and Sunday to be initiating plans.³⁸⁹

And local forces:

So they'll say to me: "right, they haven't appealed. Ten days." It's a ludicrous amount of time. [laughs] It's just sometimes it's a logistical nightmare because it all depends on the day you get notified, because if it's a Friday, I haven't got a chance because it's—there is so much to organise. The prison needs at least three working days. Sometimes if the notification comes over a bank holiday weekend, I think, well, there is just no way, I've lost four days straight away. Ten days isn't a long time really.³⁹⁰

This is a problem in both outbound and inbound surrenders:

One of the problems as a practitioner that we have, or that I have, is that very often the extradition will be ordered on a Wednesday in say Holland, I will not find out about it until say a Friday afternoon. By which time I have already lost Wednesday, Thursday, Friday, Saturday, Sunday. Then I've got to have them out by Friday.³⁹¹

³⁸⁹ Transcript 44 - SIRENE Bureau UK

³⁹⁰ Transcript 29 - Northumbria Police

³⁹¹ Transcript 15 - NCA Operational Team

7.4a. Outbound surrender planning

Once EAW SPOCs are notified they immediately provide their preferred dates and airport locations to the NCA:

We send back: "These are our dates, times." That message goes back to the NCA, that goes back out to the requesting state. They'll speak to local officers, their travel plans will come back to say: "Great, no problems we can do Tuesday, our flight details are ... coming in at 9am to Heathrow, flying out at five o'clock." Depending on whether the person was in custody or on bail would then lead on to how we will then arrange that removal.³⁹²

Final travel plans for outbound surrenders may not conform to the dates or locations requested by the local force. The NCA will help the local force and the collecting state to finalise travel plans, passing messages back and forth via SIS II.

Some countries can only fly direct to London airports, meaning that escorting officers often have to travel to London even if subjects are on bail. Flights may not be available on preferred dates, or the collecting force may not have sufficient resources to collect on a specific day. Police officers from forces in Northern Ireland or Scotland may need to book internal flights to London and those from other parts of England and Wales may have to drive to London in order to surrender the subject.³⁹³

The surrender of bail subjects is organised differently across the UK. In Northern Ireland, judges often remand the subject when surrender is ordered or they are required to surrender to police custody the day before the handover operation.³⁹⁴ In Scotland, bailed subjects are required to surrender the day before travel.³⁹⁵ This policy ensures that the subject will be ready to collect; if they fail to surrender the

³⁹² Transcript 41 - MPS Extradition Unit

³⁹³ Transcript 4 - Police Scotland, Transcript 56 - PSNI and Transcript 13 - West Yorkshire Police

³⁹⁴ Transcript 56 - PSNI

³⁹⁵ Transcript 4 - Police Scotland

police have an opportunity to apprehend them or to notify the collecting state so that officers do not travel needlessly. In England and Wales, surrender is arranged for the day of the handover, either at the subject's home³⁹⁶ or at the airport itself if close by.³⁹⁷ This policy risks failed handovers, as police have little or no notice if the subject absconds. This has cost implications for collecting forces who have travelled to the UK in vain and impacts mutual trust.

Subjects on remand must be collected from HMP Wandsworth by the escorting officers or moved to police custody by a private transfer company. EAW SPOCs contact the prison to arrange the release and ask for any risk information, including medical needs or violent or non-compliant behaviour. If prisoners are being moved by private prisoner transport to a custody suite near the airport, transport is booked and the relevant police custody suite notified.

EAW SPOCs communicate with the collecting state via the NCA throughout the planning process and pass any relevant risk and ID information via this channel. They complete local operation orders and book resources, including transport, equipment and officers. If the surrender is taking place at Heathrow airport, the EAW SPOC makes a formal request to SOAP at Heathrow. SOAP is the MPS special operations unit responsible for policing Heathrow Airport and provides support to local officers conducting surrenders there. On receipt of a request from a local force, SOAP will book the resources needed for the "prisoner movement."

7.4b. Inbound surrender planning

Inbound collections are also the responsibility of local forces, who must send officers to the executing state to collect the EAW subject. Upon notification that a subject has been ordered for surrender, the EAW SPOC assesses the suitability of using a commercial airline. Most collections are conducted this way; police can discuss borderline cases with an airline before attempting to pursue surrender by air.

³⁹⁶ Transcript 13 - West Yorkshire Police

³⁹⁷ Transcript 41 - MPS Extradition Unit

Sometimes this stage of planning begins before surrender is ordered, as EAW SPOCs are usually aware that a potentially high-risk subject is going through the court process in the executing state.

If commercial air travel is thought suitable, EAW SPOCs identify suitable flights and confirm availability of extradition-trained officers. They send a proposed travel plan to the executing state via the SIRENE Bureau and receive risk and travel document information in return. At the same time EAW SPOCs complete an internal risk assessment and a risk assessment for the airline. This is forwarded to the airline security department to approve or refuse carriage.

If the airline approves carriage, flights and hotels are booked and travel details are confirmed with the executing state. If the airline refuses, the EAW SPOC and the part 3 case officer consider alternative modes of transport:

I have done three [...] refusals. And then you have to look at the reasons why they have been refused and what the intelligence is regarding the people. So, your options, if you can't get them on a commercial airline, vary slightly depending on where they are coming from. You can bring them back on a ferry, you can bring them back on a train, you can drive them, or you can charter an aircraft. Those are effectively your four options.³⁹⁸

Private air travel is very expensive, costing anywhere between £10,000 and £30,000³⁹⁹ depending on distance. One interviewee noted: "Madrid I think is about £15,000. We did Bulgaria recently, that was £30,000."⁴⁰⁰ Another commented:

We have done extraditions on private aircraft, private charter [...] the ones that we've done have usually been short haul flights. Amsterdam, Ireland, Paris. Places like that. That's just luck that it's been [...] only a short-haul

³⁹⁸ Transcript 15 - NCA Operational Team

³⁹⁹ Transcript 15 - NCA Operational Team. This can rise to over £80,000 when travelling outside the EU.

⁴⁰⁰ Transcript 15 - NCA Operational Team

flight. We're going to be flying out at eight o'clock on Monday morning. Pick up has been agreed for two o'clock in the afternoon. That person can be delivered armoured escort or whatever that may be, because they're so high risk or medication or media or whatever that may be. [They are] handed over to us in exactly the same fashion [...] same documentation, still ordered from the court and everything else. But the commercial airlines have refused to take that prisoner. They are well within their rights to do that because it's not Metropolitan Police Air. [laughter] It's a company and they want profit and they don't want any problems on their airlines.⁴⁰¹

Land and ferry removals are complex, especially when they involve travelling through multiple jurisdictions. Police officers do not have powers outside their own jurisdiction, so passage must be prearranged with the authorities in each state, police must be given permission to transport a prisoner, and in most cases they must be escorted by domestic police officers. The SIRENE Bureau assists in arranging land and ferry operations, liaising with relevant authorities in each state on behalf of the local force. An operational NCA officer described a land removal from Holland:

Then you have the big jurisdictional issue, which as you say—I am a British officer, in any country other than the UK I haven't got any powers, how am I going to restrain him? What power have I got to restrain him? What power have I got to detain him? If he runs away what can I do? So we have done one by road, we did it fairly recently because the bloke was scared of flying and basically we were threatened by some solicitors that if we insisted in taking him back on an aircraft they would sue us. So my management decided that we would drive him, and we drove him from Holland. So the Dutch drove him to the Dutch/Belgian Border. We took control of him at the Belgian border [...] there was a whole load of Belgian officers waiting and [the Dutch officers] just opened up the back of the van and there was a load into Belgian cars, and he came into ours. The Belgians wanted a route from us. They wanted to

⁴⁰¹ Transcript 41 - MPS Extradition Unit

know what time the handover was, what our routing was, what our vehicles were, who was doing it and when we would be exiting Belgium. So, we gave them a route on Route Planner and they went: "Fine, just go through Belgium, you have our authority to do it." Which we got from the Belgium prosecutor. [...] So, they gave us effectively powers to bring him through. When we got to France we had to meet a French car at the border, and they escorted us, French car in front, French car behind, through France. Right to the channel tunnel.⁴⁰²

Once international travel is booked, EAW SPOCs book domestic transport to be used on return to the UK. This may include internal flights to Northern Ireland or Scotland, or transport from the airport to police custody or prison. The home leg of the operation can be low or high risk and planning will vary from case to case. A West Yorkshire officer described a high-risk inbound surrender operation:

The most high-risk prisoner I've done was an extradition from Madrid to Liverpool airport that had eight officers. We had taser authority on the plane for that person. We did not have Body Cuff for that person, we went escort cuff, such were their risk. As the plane landed, we had the plane deviated to a separate area of the airport to let this person off first [...] he [...] departed the airport premises through covert means, which meant we had to get border officials there to ensure we went through the border process and all of that [...] So, Category A prison escort with helicopter support on the way back to West Yorkshire to custody. The risk with that individual was identification that he was on the move, and the crux point was breakout when he got onto UK soil.⁴⁰³

This can be contrasted with low-risk collection, where escorting officers and subject leave the airport through normal channels, queueing at border control and exiting through baggage reclaim and customs. The subject may be driven to the local force

⁴⁰² Transcript 15 - NCA Operational Team

⁴⁰³ Transcript 14 - West Yorkshire Police

area in a saloon car by the escorting officers or may be booked into local police custody and transferred to court or prison by a private company.

Once the details are finalised, the local operation order is signed off by a senior officer. If the subject does not have a valid travel document, UK Border Force is contacted to arrange a waiver for entry at the UK border. If the incoming surrender is taking place at Heathrow, SOAP will be contacted and an operation order put in place.

Most transnational communication during surrender operations planning takes place via the NCA's formal channel. The only exception mentioned by UK police officers is in cooperation with Ireland, where many EAW SPOCs have direct contact with the Guards Extradition Unit. The PSNI and MPS Extradition teams are most likely to pick up the phone to the Guards, but they always confirm final arrangements with the NCA. I asked the Guards about direct contact with UK forces during surrender planning and they explained:

We see a lot of repeat business, maybe with say the guys in [MPS] for example, we deal with them on a first-name basis because we do a good volume with them. Outside of that then, depending on which force, if it was a force maybe that might do one a year, it's generally just through the NCA and the NCA will give us the name and we'll just make that arrangement.⁴⁰⁴

This direct contact was unique to the UK; the Guards did not have the same direct contact with police forces in other member states. This was attributed to shared language and the significant volume of EAW traffic in both directions. This suggests that direct cooperation in the EAW system is more likely between states that are similar and supports other scholars conclusions that cooperation works best in these cases (Sievers 2007).

⁴⁰⁴ Transcript 50 - An Garda Síochána

The surrender planning process presents a logistical challenge to police forces if surrender is to take place within the 10-day deadline. Administrative processes and operational planning are heavily influenced by risk-based thinking. EAW SPOCs and NCA officers are knowledge workers (Ericson 1994; Ericson and Haggerty 1997) in the planning phases, generating knowledge in the form of risk assessments and exchanging this information with foreign counterparts via SIS II. As Sheptycki (1998) rightly states, transnational policing is largely concerned with knowledge work: the development and cross-border exchange of information, intelligence, official requests and evidence. While the planning stages of the surrender process reflect this, policing the physical handover operation relies not on knowledge work but on the police capacity to legitimately wield coercive force, both within the territory of the state and beyond it.

7.5 Airlines

All commercial airlines can carry EAW subjects under police escort but are not obliged to do so. Police must seek approval from airline security departments and provide detailed risk assessments. Airlines refer to several categories of people as Passenger Under Escort, including those subject to removal or deportation orders, passengers not admitted on arrival at a border, and prisoners either under police arrest or being repatriated to serve a sentence in their home jurisdiction. EAW subjects fall into the category of “potentially disruptive passenger” and airlines are legally obliged to manage the risk they pose. The risk assessment provided by police officers helps airlines fulfil these obligations.

EAW SPOCs contact airlines as early as possible when planning inbound collections. The risk assessments contain the subject’s offending history and risk profile, including any violence, medical issues or details of uncooperative behaviour in prison or elsewhere. Police must explain how they will manage the operation, including how many officers are travelling, their experience and training in extradition, and any equipment to be used. A key issue for airlines is the attitude of the EAW subject to

surrender; those who consent are, unsurprisingly, considered less risky than those who contest surrender.⁴⁰⁵

The risk assessment for the airline is linked to the internal police risk assessment that will be used as the basis for the operational plan. It guides decisions on allocation of resources, equipment and mode of transport.⁴⁰⁶

The primary concerns of the police risk assessment include the risk the subject poses to the police, to him or herself and to the public. Commercial airlines also have to consider other potential risks, including reputational risk to the airline and risk to the smooth operation of the flight. Airlines are not only interested in risks related to a prisoner's behaviour but also the risk that they might be recognised by passengers or that the case may attract media attention. The police understand this and try to provide as much detail in their plans to mitigate potential disruption:

What we've deemed a medium risk [the airline] have at medium to high, but because of the risk assessment, what we've done, and we've said we're using: three trained staff, they're all extradition trained, they're experienced, they've done several collections, we have seat covers, we have spit hoods, we are first aid trained, we're defib trained, we're personal safety trained. We've done what we can to meet the risk side, so using the old "reasonably foreseeable worst-case injury" we've done what we can. But for them I can fully appreciate that they are a business, and the last thing they want is an incident on an airline where everybody suddenly gets their phones out, and it's on Facebook and YouTube and on the BBC press mid-air still, and then last thing is do you want a diversion somewhere.⁴⁰⁷

As Ericson and Haggerty argue (1997:17) how airlines as private companies conceive of risk fundamentally influences the risk-based thinking and practices of police.

⁴⁰⁵ Transcript 5 - Police Scotland and Transcript 22 - Airline Security

⁴⁰⁶ Transcript 2 - Lancashire Constabulary

⁴⁰⁷ Transcript 20 - Lincolnshire Police

Police are obliged to produce risk-based knowledge in the form of risk assessment and a plan for mitigation that addresses not only the risk-based concerns of the police but also the broader commercial risks of the airline, including smooth operation of the service and reputational risks.

7.6 Training and equipment

Police forces run specifically designed training courses for extradition and use specific equipment to mitigate safety and reputational risks. Most forces only send “extradition-trained” officers on incoming surrender operations. This training is provided by SOAP; where SOAP have been unable to train forces outside of MPS, training has been delivered locally based on the SOAP course.

The course involves an overview of the EAW process, advice on navigating airports with prisoners under escort, briefings on the medical implications of flying and the legal framework governing police powers to detain, and officer safety training specific to prisoner movement on aircraft.

The legal aspect of the training is designed to give police an understanding of their powers and the almost-seamless framework that covers officers’ powers from the moment plane doors close until they cross the UK border. It is complicated, and the instrument that applies varies depending on specific details, including the registration of the plane. As discussed in more detail below, officers are generally sketchy on the details of this and interviewees provided varying accounts of police powers and their sources. Dixon notes that teaching the specifics of law to police is complex and that few police forces “pay sufficient attention to the difficult task of teaching law” (Dixon 1997:277). Dixon’s observation is borne out in this research, and an incomplete understanding of the legal basis for their powers was the source of some anxiety to police. It did not, however, impede their ability to conduct handover operations, even in circumstances where officers may not have any powers at all. In these cases, the capacity to wield force implied by being a police officer,

even outside one's own jurisdiction, appears sufficient to maintain operational control.

The physical aspect of the training includes use of restraint equipment, including the Body Cuff (see figure 7.3) and leg restraints. It teaches procedures for boarding and disembarking an aircraft, providing food and drink, and using the bathroom. It also includes basic pressure point control techniques that can be used safely in the confined space of an aircraft.⁴⁰⁸ Police officers apply these techniques in role-plays of safety scenarios on a mock-up aircraft.

Figure 7.3: Body Cuff



All forces included in this study use the Body Cuff on inbound surrender operations; subjects are usually placed in the restraint before boarding the aircraft. Airlines prefer this type of restraint to traditional handcuffs as the prisoner will be able to move and use their hands in an emergency situation. An operational NCA officer describes the Body Cuff:

Big belt, it's got tethers on it like nylon straps that go around the wrists. So they can sit there and read the paper, have a drink, get something to eat,

⁴⁰⁸ Transcript 63 - MPS SOAP

they can let themselves out of their seatbelt. If they misbehave, those straps are on a ratchet system, you just pull them [...] and they have no movement whatsoever. And that's how they stay. And they are told that in no uncertain terms. The way it works is you've got loops on the end of the tethers, you stick those through the seatbelts of the escorting officers. So you [sit] escort, prisoner, escort. Prisoner stands up, they move but the tethers don't and their arms go down automatically. So they are under no illusion that if they play up we can stop them from doing anything.⁴⁰⁹

The Body Cuff can be worn under clothes if needed and is less obtrusive than traditional handcuffs. This is useful when navigating the public channels of airports as it attracts less attention. The Body Cuff effectively applies coercive force but is more subtle than normal handcuffs, mitigating risk for airlines in aircraft emergencies and not drawing the attention of other passengers, safeguarding the smooth operation of the flight and the airline's reputation.

7.7 Surrender operations

While the details of surrender operations vary from place-to-place and case-to-case, there are common procedures. Figures 7.4 and 7.5 show the number of surrenders between the UK and Ireland, Poland and Spain. Most surrenders with Spain take place via Madrid airport. Surrenders between the UK and Ireland are conducted either at the border with Northern Ireland (if the subject is being surrendered to or from PSNI), or via airline to or from mainland Britain. The following sections discuss two of the most common settings for outbound surrender operations from the UK. The first is via a commercial flight from London Heathrow Airport and the second is via the Polish Military Flight, which collects the majority of Polish EAW subjects from the UK. Operations using these routes account for the majority of outbound surrenders.

⁴⁰⁹ Transcript 15 - NCA Operational Team

Figure 7.4 - Part 1 Outbound surrenders by country

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Ireland	23	19	36	31	32	35	24	32	26
Poland	451	708	618	627	640	586	620	620	459
Spain	14	16	13	13	18	20	20	28	23

Figure 7.5 - Part 3 Inbound surrenders by country

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	2015-16	2016-17	2017-18
Ireland	24	22	20	24	22	14	20	31	18
Poland	7	4	7	6	6	9	11	15	11
Spain	27	38	34	31	48	42	24	29	30

7.7a Heathrow operations

Extraditions on Part 1 warrants via Heathrow airport are similar to operations via commercial airlines from other airports. Heathrow, uniquely has a dedicated Extradition Team as part of the MPS SOAP Unit that polices the airport and a police station and custody suite, Polar Park, within the airport estate. Many UK police explained that police stations and cells within airports are common across Europe but not in the UK. When remand prisoners are surrendered from other airports, they are collected from a local police station or direct from HMP Wandsworth. As an example, Crawley police station is used for removals via Gatwick airport. If the extradition is taking place via Heathrow, local forces arrange for prisoners to be transferred from HMP Wandsworth to Polar Park.

Polar Park is a police station in a building a bit like an airport hangar. It is located in the Heathrow Estate but a drive or a bus ride away from the terminals. It is so hard to find that MPS bail prisoners now meet police at the terminal or before travelling to Heathrow rather than get lost trying to find the police station.⁴¹⁰

If morning flights are scheduled, remand prisoners can be housed overnight at Polar Park. They cannot be housed there over the weekend, however, so if surrender operations are scheduled on Monday mornings then local forces usually collect prisoners directly from HMP Wandsworth. Polar Park custody officers can decline to house high-risk prisoners overnight, in which case local forces must collect them from prison.

Subjects on bail are generally driven to Polar Park by escorting officers. Police forces local to London may arrange for bailed subjects to surrender at the airport itself. Police officers from PSNI or Police Scotland usually fly to Heathrow with EAW subjects, which the SOAP Extradition Team treat as incoming prisoner operations. Prisoners are booked into custody at Polar Park and escorting officers are issued with

⁴¹⁰ Fieldnote 11 - Heathrow Extradition Observations

airside passes by the SOAP Extradition Team. These passes allow local officers to accompany SOAP officers through the back channels of the airport when the prisoner is moved to the plane. A UK officer describes a Heathrow surrender:

They get transported by SERCO⁴¹¹ from Wandsworth to Heathrow. We'll go collect them from Heathrow. [We] basically meet the officers from the other country and book our prisoner in. Because obviously we'll have his ID documentation to book him onto the plane while he's still in the cells. We'll book any property - if it's a large amount of property he's got - onto the plane. [...] Then we'll see them then basically at the plane door. [So we] say goodbye to them, go back to the police station, get our prisoner out, go airside with our prisoner. At the plane door, hand him over to the other authorities to take him on the plane.⁴¹²

Escorting officers from the collecting state meet local UK officers in the airport departure area. SOAP officers usually accompany the local officers to check-in. This is usually the only time local police officers meet their international counterparts in person. Here officers exchange paperwork, provide ID or travel documentation and hand over the luggage of the person being surrendered. Local officers describe this meeting:

I've done a few and I think generally, when you meet police from other countries everyone's always quite friendly and trying to help each other because you're both doing the same kind of job [...] Usually I think the guys [...] send somebody that is English-speaking. And we expect everyone else to speak our language, and it does help. [...] I think everyone realises it's quite an important job to do this properly, you don't just turn up to the airport and say, here you go, och we're away.⁴¹³

⁴¹¹ Private prisoner transport company.

⁴¹² Transcript 13 - West Yorkshire Police

⁴¹³ Transcript 4 - Police Scotland

I would meet the foreign officers two hours before [...] make sure they've got their tickets, make sure [the airline staff] are okay [...] One of the main reasons we would need to meet the officers is we need to get their handcuffing equipment through the screening process at Heathrow [...] Obviously there's no good in them saying to the security officer at Heathrow: "Well, I'm a foreign officer." That doesn't mean anything to security. You can't walk through with handcuffs [...] We would go through via an alternative route because we've got airside passes to get through. They would go through as a normal boarding passenger. We would meet them at the gate, they would meet the prisoner, sign for the prisoner, hand-over, they go on board and away they go. The only difference with any of that, if there was a bail prisoner, is we would arrange for the bail prisoner to meet us at the check-in desk with the foreign officers. [...] They have no power of law here to deal with that person on foreign soil, so we stay with them and the prisoner until [they] board.⁴¹⁴

Local officers may assist with check-in, ensuring that airlines place officers and prisoners in adjacent seats at the back of the aircraft. They will hand over prisoner luggage or ensure that luggage being held at Polar Park is expected. Some bail prisoners will be escorted through the main airport channels by local police and collecting officers, others will be taken airside by SOAP officers and surrendered to collecting officers at the plane door. In UK airports, collecting officers must clear airport security in the normal way. If they have restraint equipment SOAP or MPS officers will take those through to meet the collecting officers at the departure gate.

Local UK officers rarely encounter European counterparts more than once during these operations, but lasting impressions are made during this short period. Bad experiences can affect officers' trust in whole systems. One officer explained how racially charged comments made him question the motivation of an EAW:

⁴¹⁴ Transcript 41 - MPS Extradition Unit

And some of the comments that are being made by certain - I won't name the countries - when in the hall, the check-in desk area for Manchester Airport: "You must work 24/7 here." "Why is that?" "Because of all the immigrants." Looking around half the people there weren't white. Really? Do I feel comfortable with this situation? Can I be sure this --? Because it's all gone through the courts. They're satisfied it's all legal. But what's the motivation here? ⁴¹⁵

The same is true for European officers who have poor experiences at UK airports, especially officers who do collection operations regularly and have other countries against which to compare the service. Even UK officers were clear that in other jurisdictions the service at airports was sometimes much better than in the UK. Police stations were frequently based in airports, making collecting prisoners much easier, and officers were often escorted through back channels, avoiding queues for check-in or security.

7.7b Surrender in action at Heathrow

SOAP and local officers return to Polar Park after check-in and collect remand prisoners from custody or drive bail prisoners to the departure gate in some cases. In other cases bail prisoners and collecting officers are escorted through public airport channels by UK police.

I was able to observe this stage of a surrender operation at Heathrow: a remand prisoner was being surrendered by MPS officers to Romanian police. I accompanied the SOAP officers during the handover.

This was one of the few times in a year of research that EAW subjects became real people for me. Outside of these observations they only existed on paper, as the subject of the EAW, the A Form, the PNC alert, the ACRO check, the risk assessment.

⁴¹⁵ Transcript 13 - West Yorkshire Police

The cornerstone of my investigation was their capture and transfer, but I was so focused on the process that the individual fugitive was invisible until one stood right in front of me.

The following account is adapted from my fieldnotes of the observation:⁴¹⁶

The prisoner is young, skinny, dark hair, wearing a tracksuit and has a look similar to other young prisoners I have seen at extraditions. He projects an unconvincing confidence covering what I assume is nerves. As we stand in the car park in the sunshine, the SOAP officers explain what is going to happen and let the prisoner smoke a cigarette. Someone explains who I am and I instantly wish they hadn't. The news that I am not a police officer draws the prisoner's attention to me and seems to unsettle the mood.

There are four officers, three to conduct the operation and one to look after me. Two officers, the prisoner and me travel in a van with a cage at the back. The other two officers follow in a car. The prisoner gets into the cage at the back of the van and we set off. I sit in the front seat.

The drive to the runway is long as we have to drive around the outside of the airport. The prisoner keeps standing up and messing around with one of the cameras, the officer next to me asks him firmly to sit down, then shouts at him. He stops playing with the cameras; instead he keeps leering at me in the mirror. We try to ignore the protests from the cage. Our conversation is punctuated by the second officer turning around to tell the prisoner to settle down, he can't have a cigarette, he can't go to the toilet, the time for that is passed.

Then we get to the gate to the runway. There is a security post and a boom barrier. We show our IDs to the security guards and they let us through. It is

⁴¹⁶ Fieldnote 11 - Heathrow Extradition Observations

clear that police do not need to do this and wouldn't in an emergency, but they see it as a courtesy to their security colleagues and like to say hello. Driving on a runway is exciting; planes taxiing right in front of us. I take some photos and we head to the gate. The car with the other two officers is still following.

The prisoner's mood worsens. He starts asking for his stuff, angry and palpably nervous about what is going to happen. He wants his TV, the stuff he has worked for. The officers tell him they can't help. He gets really worked up and keeps shouting. I start to feel sorry for him, dragged away from his life in the UK. I realise I don't know what he is accused of and I never get a chance to find out.

We arrive at the gate and park by the jet bridge through which passengers board the plane. You wouldn't ever find yourself here as a passenger. The van's back doors open and I hear three officers arguing with the prisoner, telling him to calm down. The prisoner is swearing, talking about his stuff; he isn't calming down.

A decision is made to fetch the Romanian officers to speak to the prisoner. The prisoner continues to complain but more quietly than before. As soon as the Romanian officers arrive he is quiet. They speak to him briefly in Romanian and the back doors slam shut. He is sitting down now and quiet.

One of the officers speaks to my escort, joking about how the Romanians soon shut him up. The implication is that they won't stand for any nonsense and that UK police aren't as scary. I've heard this a few times during the research, the perception that foreign prisoners think UK police are soft.

One of the UK officers has been to speak with the captain of the plane and they are ready to board now. The prisoner is taken out of the back of the van, flanked by the Romanian officers. I follow behind.

At the top of the stairs we meet an officer from the MPS Extradition Team here to officiate the handover. The Romanians handcuff the prisoner and shake hands with the MPS officer as you would when completing a business deal, thank each other and say goodbye.

The prisoner has been silent since the Romanian officers arrived. As they handcuff him he gives me one last leering wink, trying to mask his trepidation. The airport police are responsible for the prisoner until he is on the plane, so we follow him and the Romanian officers down the jet bridge to the plane doors, where the Romanian officers politely shake hands with the airport police and disappear, with the prisoner into the plane.

The handover is the culmination of the whole EAW process and the goal of cross-border cooperation between local, national and transnational officers. All the EAW infrastructure supports cooperation leading to this point, the transactional handover of an EAW subject from one local police force to another at the doors of a commercial aeroplane.

Officers describe managing risk at handovers as having potential flashpoints, the most challenging being the steps up into the plane itself. During the observation at Heathrow, planes coming into view sparked an extreme reaction from the young man being surrendered, perhaps because this was a visual confirmation of what was about to take place. I came across very few examples of handovers that failed because of prisoner action at the airport, but they do happen:

If you had a prisoner showing any sort of resistance or violence they wouldn't go on a plane anyway. They wouldn't be allowed on a plane, at which stage you just need to call it off and start again.⁴¹⁷

⁴¹⁷ Transcript 4 - Police Scotland

Returning subjects to HMP Wandsworth if a handover fails is risky. Sometimes when a subject resists removal using a particular tactic, perhaps by claiming asylum on the steps of the plane, this can lead to a spate of EAW subjects doing the same thing. The prison's rumour mill is so notable, the NCA call it "the Wandsworth effect."⁴¹⁸ This is not unique to the UK; the Department for Justice in Ireland also mentioned a spate of prisoners claiming a fear of flying after one subject successfully resisted removal in this way.⁴¹⁹ As a result police are determined to follow through with handover operations as soon as possible after a failure and will consider means other than commercial airlines if necessary. They need to send a clear message that one way or another the extradition will happen.⁴²⁰

We often talk about the Wandsworth effect, where so many of them are held in the same place they pick up on what each other is doing to try and put barriers in place to their extradition. So it used to be asylum but [recently that] has changed to more fear of flying and these kinds of things and swallowing of things to get them taken to hospital and things like that. So it's in those kinds of situations that we would consider land removal.⁴²¹

7.7c Surrender in action: Polish military flight

The largest single partner for outgoing part 1 surrenders from the UK is Poland, accounting for over half of all surrenders from the UK between 2009 and 2018. As mentioned, the UK SIRENE Bureau and the Polish Convoy Unit organise a regular dedicated military flight to collect EAW subjects. This flight is managed by the FCT at the NCA and runs roughly every two weeks from a private airfield in southern England. There are peaks and troughs in demand, and it can be hard to anticipate how many spaces will be needed. A flight must have a minimum of 15 EAW subjects scheduled or it will be cancelled. Extensions of the 10-day deadline are common in Polish cases, as this NCA officer explains:

⁴¹⁸ Fieldnote 1 - SIRENE Bureau UK

⁴¹⁹ Transcript 52 - Central Authority Ireland

⁴²⁰ Fieldnote 9 - SIRENE Bureau UK

⁴²¹ Transcript 44 - SIRENE Bureau UK

For example, if there is a decision in the appeal court with Polish cases stood behind it, you can think well if that gets dismissed then potentially 120 cases are going to come through over the next few weeks. So, it is really hard to plan and yes, time extensions go in a lot. We don't generally have an issue getting a time extension, but we are doing more to make sure we explain the background to the military flight, why that flight is full. For example, if Poland have got a bank holiday so they can't fly, we would make sure we write that, so that there is a better understanding there for everybody.⁴²²

When booking flights, there is more to consider than space on the plane. If the Polish National Police or one of the local UK forces have big events to oversee, the capacity to run a large surrender operation may not be available. The capacity of the airfield to supply a waiting room, additional fire safety, security and an immigration officer for any inbound surrender, must also be taken into account.⁴²³

Judges have expressed concern about the number of extensions being requested and some prisoners being held on remand for long periods waiting for a flight. In an attempt to manage these concerns and increase understanding, the NCA have arranged for judges from Westminster Magistrates Court and the High Court to observe a military flight. This has fostered greater understanding, as this officer explains:

The relationship with Westminster has definitely improved [...] and I think with the High Court the same as they have been to see the military flight [...] I had the pleasure of showing [the judges] the Polish flight ... Now when they are signing off time extensions they understand why and they understand the implications of what happens when there is an out-of-time appeal.⁴²⁴

⁴²² Transcript 45 - SIRENE Bureau UK

⁴²³ Fieldnote 5 - Observations Polish military flight 1

⁴²⁴ Transcript 46 - SIRENE Bureau UK

The Polish military aircraft used for most surrender operations is a CASA transporter that carries up to 25 prisoners, 26 convoy officers and three military personnel.⁴²⁵

Occasionally a double operation will be organised using two CASA aircraft or one Hercules Transporter capable of carrying up to 45 prisoners.⁴²⁶ I was able to observe two such surrender operations: one single flight and one double flight.

Most of the subjects booked on the military flight are the responsibility of forces from England and Wales; officers from the Polish Convoy Unit usually travel to the UK on commercial airlines to collect subjects from Police Scotland or PSNI.⁴²⁷ When EAW subjects are booked on military flights, the local EAW SPOC is notified and books local transport and officers. Operations can involve handing over more than one subject, and sometimes police surrender both bail and remand subjects on the same flight.

Local officers travel to Wandsworth to pick up remand prisoners. The process of releasing prisoners from prison can be very time-consuming; there are only three holding cells in the release area and a double flight can involve releasing over 30 prisoners. "There could be 15 police vans outside Wandsworth. It is crazy."⁴²⁸

Prisoners are not given advance notice of surrender; after breakfast, they are simply told to pack up their things. This is to reduce attempts to prevent surrender by barricading themselves in the cell, self-harming or creating other incidents. Prison officers "maintain an element of surprise."⁴²⁹

On one of the flights I observed a prisoner had barricaded himself in his cell and wouldn't come out. He was eventually removed from his cell and released to the custody of MPS officers, who had several other subjects also being surrendered. The operation succeeded in the end but took much longer than planned. The process of

⁴²⁵ Transcript 34 - Polish National Police

⁴²⁶ Transcript 34 - Polish National Police

⁴²⁷ Transcript 5 - Police Scotland and Transcript 55 - PSNI

⁴²⁸ Transcript 20 - Lincolnshire Police

⁴²⁹ Fieldnote 5 - Observations Polish military flight 1

releasing a prisoner into police custody takes about 30 minutes. Most days they are given packed lunch by the prison, but on one of the days I attended this did not happen and no explanation was given. The NCA officers running the operation were concerned that prisoners would get very hungry as the flight takes several hours and they would then be transported to prison before having any opportunity to eat.⁴³⁰

If police officers also need to collect bail prisoners before heading to HMP Wandsworth, the shift can be very long indeed. Some forces will allow officers to spend a night in a hotel before or after completing a handover on the Polish flight, but this is not always the case:

The minimum I've done [the Polish flight] in has been sixteen hours. The longest has been nineteen and a half.⁴³¹

After collecting bailed subjects and travelling to HMP Wandsworth to collect remand prisoners, officers head to the airport in time to hand subjects over. On one observation day, officers from West Yorkshire had started at 4am to collect four bail prisoners before driving to the airfield. They were to drive back the same day. Officers from Northumbria had been granted permission to spend the night in a hotel before travelling back the next day.⁴³²

Officers from the FCT travel to the airfield to run the operation. They send three or four officers and an interpreter to each operation. At the airfield, remand prisoners and their escorts wait outside in the vehicles they travelled in, whereas bail prisoners and their escorts wait in the small terminal building.

The following account is adapted from my observational fieldnotes: ⁴³³

⁴³⁰ Fieldnote 5 - Observations Polish military flight 1

⁴³¹ Transcript 13 - West Yorkshire Police

⁴³² Fieldnote 7 - Observations Polish military flight 2

⁴³³ Fieldnote 5 - Observations Polish military flight 1 and Fieldnote 7 - Observations Polish military flight 2

The room is like a cross between a departure gate and a school staff room. There is a table in front of the door where NCA officers tick subjects off the list as they arrive with their police escorts. Long rows of chairs fill the room, which has a full-length window facing the airfield. Two private planes sit on the tarmac and small aircraft take off and land 400 metres away.

At the end of the room, doors open onto the airfield and a tall desk stands next to them. In front of that are two tables with chairs on either side. At the other end of the room is a metal detector and a luggage scanner. The toilets are just beyond. Past the toilets is an immigration desk, like passport control at a normal airport. Initially the desk is unstaffed, later a border control officer attends for an incoming surrender.

On my first visit there are 22 prisoners escorted by 14 different police forces booked on the flight and an incoming part 3 surrender. Two bail subjects fail to report, and one prisoner has an out-of-time appeal accepted. This means that only 19 of the 22 expected prisoners are surrendered.⁴³⁴ On my second visit there is a double flight with two CASA planes. There are 38 prisoners escorted by 18 police forces: 24 bail subjects, 14 remand prisoners (including one category A prisoner being surrendered by the prison service) and one incoming part 3 surrender. Among the 38 booked prisoners, two have out-of-time appeals accepted and 3 bail subjects abscond.⁴³⁵

Bail prisoners detained for the purposes of surrender sit with their escorting officers in the waiting room. Subjects on bail are identifiable because they each have a bag. Some officers are in uniform, but not all. Officers chat quietly with one another or to prisoners. Others sit looking bored; some of the prisoners look nervous.

⁴³⁴ Fieldnote 5 - Observations Polish military flight 1

⁴³⁵ Fieldnote 7 - Observations Polish military flight 2

They drink tea and coffee and eat biscuits. Prisoners are escorted to the toilets or to smoke cigarettes. Sometimes a remand prisoner in handcuffs is escorted in from the car park to use the toilet then taken back outside. When new bail prisoners arrive with their escorts, the NCA officers sign them in and provide a property bag so that escorting officers can bag and tag any valuables to be handed to the Polish police.

For those who arrived early, the wait is long. An NCA officer tells me the plane can be delayed because of weather or technical issues. As arrival time approaches, there are whispers of delays or technical problems; officers dread the plane “going technical” and having to find overnight accommodation for their prisoners. Some officers suggest this happens a few times a year but the NCA officer thinks this is an exaggeration.

I hear the plane before I see it. The large military plane comes to a standstill right outside the waiting room. As soon as the plane comes into view the atmosphere changes. Police seem relieved. Prisoners seem nervous. I remember NCA officers talking about risky “trigger points” throughout the operation when the situation can become unpredictable. This is probably the key moment.

The doors at the end of the room are opened. We go outside as the hatch at the back of the plane opens. There are four of us: the airfield security, the NCA operation manager, me and my NCA escort. The convoy commander disembarks and shakes hands with us. Then 22 Polish police officers, all male, all young, file off the plane. They too shake hands with each of us in the greeting party. We say dzień dobry, Polish for ‘good day’ and the officers enter the waiting room behind us.

The inbound subject being surrendered on a Part 3 warrant is brought off the plane and taken into the terminal building to complete the surrender. The subject and escorting Polish officers are met by the collecting officers and a

Border Force official at the immigration desk. The prisoner is searched by the collecting officers. The Polish police remove their handcuffs and the UK officers put a Body Cuff on the subject. Handover documents are signed, a UK escorting officer officially arrests the subject on the domestic arrest warrant and they head to a waiting police vehicle.

I am taken to look inside the plane. It has a bare military feel; nothing to keep the cold out when the plane is in the air. I understand why subjects are advised to bring jumpers and jackets for the flight.

In the terminal building, police are preparing to hand over bail prisoners. The NCA interpreter and the flight commander begin matching prisoners with Polish escorting officers. ID documents are examined; if none are available, prisoners sign an 'ascertainment form' sent by the embassy. The prisoners' property and valuables are booked in and the handover documents signed. Four prisoners are processed at a time and things move fairly quickly.

Prisoners stand against the wall and are thoroughly searched. They are handcuffed, escorted outside and up the ramp into the plane. The UK officers sit down to wait. They can't leave until the plane takes off as they are still legally responsible for the prisoners.

Next the remand prisoners are processed. Some are already in handcuffs and their property is in clear plastic sacks. On both visits the remand prisoners are younger than those on bail. They exude more bravado and more anxiety. The handover process is very formal and the Polish officers deal with the remand prisoners more severely than the bail prisoners. When they are searched and handcuffed, they carry their own bags to the plane with an officer holding their arm.

The highest-risk prisoners are processed only when all the others have boarded the plane. The high-risk subjects are the MPS prisoner who

barricaded himself in his cell during my first visit and the Category A prisoner, who is transported in a prison bus rather than by police, during the second visit. They are driven around the building to the rear of the plane. They are led into the terminal building and allowed to use the toilet. The category A prisoner changes from his yellow and green suit into his own clothes. On both occasions the prisoners are young and they shrink under the stares of a roomful of police officers. They shrink even more as the Polish officers confirm their ID. They are quickly handcuffed and led to the plane.

As the plane gathers speed on the runway the UK officers begin to leave. By the time the plane is out of sight the room is almost empty. The cleaner comes in and the airport security staff pack up the tables. The NCA officers pack up, thank the airport staff and head to the carpark.

The Polish flight is controversial among local forces. Some prefer to surrender multiple prisoners - more cost effective - while others prefer only one - easier to manage the risk, especially as for forces not local to the airfield it is a significant resource burden:

It annoys the hell out of us, taking so many Poles back. And it's expensive, each one's costing us fifteen hundred quid to get down there, stick the officers up overnight, diesel up and down the motorways, delays. We've had a lot of issues with the [Polish] flights, and flight delays, we've had problems with the NCA booking two people for us at the same time and we haven't the resources to do it.⁴³⁶

But as the NCA point out, it remains an effective way to handle the number of Polish EAW subjects:

⁴³⁶ Transcript 1 - Lancashire Constabulary

Because of [...] the high number of arrests and extraditions, we have to have a special agreement to extradite suspects back to Poland. Because [when we extradite] to any other country within the European Arrest Warrant agreement we can do that on a commercial aircraft. Pilots will allow normally up to two on a commercial flight. If we did that for Poland you would have police there twice a day, every day, all year.⁴³⁷

Local police also agree that handing over subjects en masse is the best solution:

It was hugely beneficial to the Polish authorities because otherwise they would have regularly been flying into the UK to do extraditions. Now, you could probably argue that there's one at least every two weeks, where they take in excess of 20 fugitives back over to Poland. I think it works well.⁴³⁸

It is certainly cost-effective from the Polish perspective. In 2015 Poland extradited over 600 prisoners from the UK in 30 military convoy operations. The average cost per prisoner is eight times cheaper than using a commercial airline.⁴³⁹ The military flight is also used to surrender a small number of EAW subjects from Poland to the UK, saving money on those operations as well.

Although failed handovers are a major issue for trust, in the Polish relationship this issue is mitigated because even if a bail subject fails to surrender, an out-of-time appeal is accepted or a subject cannot travel for medical reasons, little money is wasted since the flights are transporting others anyway.⁴⁴⁰ With enough notice the NCA can sometimes fill the vacated space, but they still have to explain when bail prisoners abscond:

The majority of people are on remand, but you do get a good amount who are on bail [...] Last week we had three absconders, which out of 10 on bail is

⁴³⁷ Transcript 45 - SIRENE Bureau UK

⁴³⁸ Transcript 41 - MPS Extradition Unit

⁴³⁹ Transcript 34 - Polish National Police

⁴⁴⁰ Transcript 34 - Polish National Police

not too bad really. It's difficult to explain absconders to Poland, because [...] they don't always understand the UK's decision to bail someone. But the more we communicate with them, the more they understand that.⁴⁴¹

Most of the contact during planning is through formal channels and there is direct contact between the Polish Convoy Unit and the UK SIRENE Bureau on the day of the flight. The relationship between Poland and the UK is unique because of the number of Polish EAW subjects surrendered from the UK. The UK flight is the only regular military flight with EAW subjects being returned to Poland; the convoy unit no longer runs regular flights from France and Spain.

7.7d Conducting incoming surrenders

Collecting EAW subjects being surrendered to the UK under Part 3 EAWs is the responsibility of the local force that issued the EAW. During the extradition itself many issues can arise, from flight delays, diversions or cancellations to problems being admitted at the UK border. Detailed risk assessment and operational planning attempts to foresee hurdles and put in place contingencies, but: "I would say I'm more surprised now when we have a smooth extradition. Yes, we have hurdles, we always have hurdles."⁴⁴²

We did this job last year where we went out and [...] we were gonna change at Brussels I think, and then there was an air strike [...] Then we get a team stranded, and then there's an issue, can we get them back? And can we get them back within the timing of the warrant? 'Cause that expires the day after, 'cause you've generally 24 hours grace, by the time we actually get here.⁴⁴³

We did an extradition, Schiphol to Manchester. It was a day of really really bad snow and weather. The flight got diverted in the air to Birmingham. We

⁴⁴¹ Transcript 45 - SIRENE Bureau UK

⁴⁴² Transcript 5 - Police Scotland

⁴⁴³ Transcript 1 - Lancashire Constabulary

knew that on the loudspeaker, and you're just sat there thinking I've policed this, I've planned for this, but it's never happened to me. I hope my oppo [...] is on the ball. I think it was Jet2 we were flying that day. Bang on. They picked up on the deviation, it highlighted that there was a prisoner under escort, they rang up the Bronze Commander. This was an escort by a police van from Manchester airport. Notified the officers that it went [to] Birmingham, and as we got off the plane at Birmingham they were there waiting for us. That's how that sort of system works.⁴⁴⁴

Officers will usually travel the day before, stay overnight and collect the prisoner in the morning. Some forces do run operations with outbound and return flights on the same day, but only to places where the flight time is relatively short. Each force approaches this differently and there are no national guidelines on training, staffing or operational planning for extradition.

On the day of surrender, officers usually collect prisoners from police stations within the airport, but sometimes local police take prisoners to the airport and hand them over in the terminal. UK officers prefer to meet prisoners before boarding the plane to introduce themselves and try to build some rapport.

Then I usually have a 10 to 15 minute chat with the detainee and just inform them that this is what it is, this is what we're going to be doing, manage their expectations a little bit there. "We're going to get on a flight, so you know you're not having any alcohol, neither are we, that's a non-starter. But play the game with us, you can have magazines, have a sandwich, have some food, whatever you want; do you know what I mean? It's going to be a straight journey, back to Heathrow, book you and then transport you to Bristol." Nine times out of 10 they're calm and they're chilled out. Most of them are just glad to be getting back to the UK.⁴⁴⁵

⁴⁴⁴ Transcript 14 - West Yorkshire Police

⁴⁴⁵ Transcript 40 - Avon & Somerset Constabulary

Skinns et al. (2017:605) note that rapport-building in police custody is key to managing the relationship between detainee and custody officer, defusing tension and distinguishing the custody officer from the arresting officers. Police escorts building rapport with EAW subjects similarly builds a cooperative relationship for the journey ahead. Several officers were clear that a key part of this rapport-building was to distinguish themselves as escorts from the investigating officers. Just as Skinns observes, in the custody process this rapport-building is a “deliberate strategy” aimed at securing compliance and mitigating risk through soft rather than coercive power.

Depending on the jurisdiction, police officers receive varying levels of support at the airport. Local officers may meet collecting officers the day before; on the day they might help with check-in, assist with priority security checks, or escort collecting officers through back channels straight to the departure gate:

It all depends on where you go as well, so when we went to Malta, the Maltese officers looked after us really well. They met us at the airport, took us to the hotel and collected us in the morning, so that was easy. Greece we had to do it ourselves, but even then that was quite easy. Romania, our liaison officer in Romania picked the guys up from the airport and took them back the following day and went to the airport to help them with anything that they needed. So it varies country to country but our [ILO] officers in Spain know there is no need for them to attend because we have done it like - I mean personally I think I have done nearly 20 extraditions from Madrid. I can do it standing on my head.⁴⁴⁶

Airlines and police prefer to seat ‘passengers under escort’ and their escorting police officers in the back row of the aircraft. If possible, they will also clear the row in front to create a buffer. Police and prisoners board the aircraft first and usually only after

⁴⁴⁶ Transcript 15 - NCA Operational Team

speaking with the captain, who has the power to refuse to carry any passengers under the Toyko Convention:

So usually they get handed to us, and it's just a bit of an anomaly really because we've got no legal power when we're in the foreign country. Then you've got no real law as such which governs your powers on the flight or the ferry. It's the law of the captain. We just have to be sensible about it, really, so what we always agree is that I always use Body Cuff, I like it. It's really a good bit of kit, and it's certainly better for [the subject] than being in handcuffs.⁴⁴⁷

But the captain has a say. So if he decides, he sees the demeanour of the prisoner and says, "I don't want him on my flight," he has the veto.⁴⁴⁸

Every time I've ever done it I've always spoken to the captain, be it the ferry or the airplane, just introductions, this is our proposal, this is what we want to do, and most of them have come across it at some point before so there's not an issue. They're really interested; they usually ask a few questions, not to be problematic, just because they're interested.⁴⁴⁹

Prisoners are officially handed over at the doors of the aircraft; UK police do not have a power to detain the subject until the doors of the aircraft are closed. The legal basis of the police power to detain EAW subjects during surrender changes depending on the stage of the journey. The legal framework is complex and something that many police were unclear about in interviews. A combination of international and national laws give police a seamless power to detain from the moment the plane doors close, but where this power flows from varies depending on the situation.

⁴⁴⁷ Transcript 40 - Avon & Somerset Constabulary

⁴⁴⁸ Transcript 13 - West Yorkshire Police

⁴⁴⁹ Transcript 40 - Avon & Somerset Constabulary

Some officers were under the impression that power to detain flows from the Extradition Act 2003:

A real area of risk for the police - around the custody status of the individual - is when they are handed over to us until they get to UK soil. As you'll be aware, the Extradition Act 2003 gives us our powers during that period of time. The Spanish police will release the person to us and we haven't got into the UK where PACE comes into play. PACE gives us some real definitive rules and regulations on what we need to do with people's welfare."⁴⁵⁰

The issue that we have, and it's as well-highlighted and everyone would say the same, it's the handover. The moment when I'm most nervous is when I'm at the handover. I've been given this prisoner who we then put in handcuffs, so am just sat in the Dublin departure lounge at the gate with this prisoner. If he says, "Let me out, let me out," actually, I've got no power to keep him there."⁴⁵¹

But it was highlighted in chapter 4 that domestic legislation is silent on the power to detain individuals under a Part 3 warrant and the UK government cannot extend police powers beyond British territory. Because of this many police forces only use British-registered carriers:

We can use foreign-registered aircraft but there is a certain amount of discussion as to whether your powers differ on an aircraft registered in a different country. That no one can ever give us a straight answer to."⁴⁵²

Most officers had a sense that the Tokyo Convention governed their powers on the aeroplane and that the captain has a key role to play in authorising any use of powers:

⁴⁵⁰ Transcript 14 - West Yorkshire Police

⁴⁵¹ Transcript 40 - Avon & Somerset Constabulary

⁴⁵² Transcript 15 - NCA Operational Team

But basically, my understanding from what I read is that whilst [...] I am in Spain and the plane door is open we are under Spanish legislation and I have no power. Once the door closes Tokyo Convention swings into action and the captain is the king of this little country called aeroplane and if the captain knows you're on board and says: "Yes, you can do it." Then you can do it. Once you get into British airspace PACE kicks in and I can do what I want irrespective of whether it's a foreign aircraft or not. That is my understanding.⁴⁵³

I mean there's Civil Aviation Act 1982. There's Extradition Act. There's Tokyo Convention 1953. There's Montreal Protocol 2014. There's Air Navigation Order 2016 which revokes the one in 2005/2009 [...] When the doors are open, there's no power, Civil Aviation Act kicks in. Yes, the captain could order those cops from overseas to take charge of him or they could order us, as cops. We've all got jurisdiction but we would say: "Hold on, until they get on that plane and that door is shut, they're ours."⁴⁵⁴

The view of UK airlines is that:

Police officers may restrain disruptive passengers under their own powers. They have got powers as constables to restrain people and also as a UK aircraft, we're effectively in UK jurisdiction, particularly when you're in international airspace because it's one of those things you get with disruptive passengers [...] It's effectively UK territory when you're in international airspace, which is why again we only allow UK police officers because they have technically still got jurisdiction when you're at 35,000 feet over the middle of the Atlantic. They can exercise their own powers. Now, it says subject to the authority of the captain, however again it does go on to say, they don't have to wait for the captain's permission to use restraints if that is

⁴⁵³ Transcript 15 - NCA Operational Team

⁴⁵⁴ Transcript 20 - Lincolnshire Police

the only effective way of -- You wouldn't put your hand up and say - "Do you mind if I restrain this individual?" - while he's kicking off. You restrain him first, notify the crew afterwards.⁴⁵⁵

Police power throughout the surrender operation relies on officers convincingly using soft power, including rapport-building, combined with coercive power even when they have no legal right to use it. Police officers will usually place the Body Cuff on the subject and take physical custody before boarding the aircraft, at which stage the subject is still legally the responsibility of the executing state and the Tokyo Convention or any police powers flowing from the registration of the aircraft do not take effect until the plane doors close or the flight enters international airspace.

Police have procedures for boarding, managing food and drink, toilet breaks and possible on-board disruption. As mentioned in relation to outbound surrenders, there are a number of trigger points for a change in mood. None of the officers interviewed spoke of needing to use physical restraint on aircraft and they have clear strategies for dealing with any risks posed by a prisoner.

No one has ever kicked off. I have had people who don't want to be there, yes. Have I had people who won't talk to me the whole flight? Yes. Have I had anyone try and refuse to get on the aircraft? No. Have I had anyone kick off on the aircraft? No [...] Some of them want to be there, depending on where you're bringing them back from. Some of them hate it so much they are more than happy [...] So you've got to watch out for it, but actual kicking off, no. Some of them just won't speak to you.⁴⁵⁶

Most of the difficulties encountered during physical surrender operations are logistical, as the quotes about strikes and diversions indicate. Several officers mentioned encountering issues at the UK border, either because subjects were

⁴⁵⁵ Transcript 22 - Airline Security

⁴⁵⁶ Transcript 15 - NCA Operational Team

without valid travel documents or because they were subject to deportation proceedings alongside an EAW case:

Hopefully, the detained person that is going to be coming back has a document of national identity that can be used as a travel document. We hope for a passport, if not a passport we hope for a document of national identity [...] If we don't have those things, we need to obtain the individual a waiver from UKBA for him to be able to come back into the country. That can be a really lengthy process and something that has, in my experience, little consistency to it. The fact that you got one with person A [...] doesn't necessarily mean that you're going to get one with person B. I was engaged in an extradition to Doncaster airport from France, and the last one I did was about three months ago and the person was a Slovakian national coming back on Slovakian papers, Slovakian passport into the UK, wanted for a people-trafficking offence. But we really struggled to get that person through immigration control at Doncaster. And we actually ended up detained for about four hours [...] nobody perceived a problem in the operational plan until that passport was physically scanned. Here we have a Wanted Person. He was with the police officers who want him, he was with those officers, detained by them for movement into the judicial process, where he was going because he had been sentenced in his absence. He's going straight to jail. But yet the immigration legislation meant that he would just be refused at the border.⁴⁵⁷

When the collecting officers return the subject, that subject is arrested under the domestic warrant and transported to court or prison. The SIRENE Bureau withdraws the Article 26 alert from SIS II and the process is completed.

⁴⁵⁷ Transcript 14 - West Yorkshire Police

7.8 Failed handovers

Failed handovers are one of the biggest operational issues for mutual trust between police forces in the EAW system. Extradition is costly in terms of flights, overnight stays and also in terms of police officer resources. When police fail to hand over a subject because he or she has absconded, an out-of-time appeal has been accepted by the courts or for some other reason, operational trust between the issuing and executing state is damaged. Some countries find the UK system, where prisoners can be bailed even after surrender is ordered, particularly hard to understand:

So we do carry absconder cases, where the case is at the point of surrender, but because of the imposition of bail they have been able to do a runner. And it's something a lot of countries have questioned. We went through a period last year of it happening over and over and over again. Particular countries like Hungary and Romania were asking the question: "Why can't you hold them in custody once extradition has been ordered?"⁴⁵⁸

This is not just an issue for forces collecting subjects from the UK. Some UK officers suggested they would not support an operation to collect a subject not held on remand:

There was one that I was made aware of a little while ago in the Czech Republic [where the magistrate] decided that the person had been arrested on a European Arrest Warrant, but they were suitable for bail pending coming back. I just wiped my hands of that, I'll have nothing to do with that. I said, "I'm not going over to Czech Republic, to Prague, on the off-chance that the prisoner may be there for our collection, no chance." [...] Unless he's in custody and he's being handed to you handcuffed, we're not have anything to do that.⁴⁵⁹

⁴⁵⁸ Transcript 44 - SIRENE Bureau UK

⁴⁵⁹ Transcript 40 - Avon & Somerset Constabulary

Other UK officers expressed concern about the bail system in Ireland which, like the UK, can see serious offenders bailed, especially if the EAW is an accusation rather than a conviction warrant:

It's a child protection matter, he is wanted for quite serious offences, what's the update from court? The update is from court is he's been given bail. "He's been given bail? Well, Christ, are we ever going to see him again?" [...] That's not to say that they won't be collected or won't turn up, but we're talking about quite—severely dangerous people walking around the streets.⁴⁶⁰

Failed handovers and other bad handover experiences have a negative effect on mutual trust. As Block (2017) argues, entering into an agreement to conduct a cooperative operation like a handover carries the risk that one of the parties will fail to fulfil their commitment, and this can undermine trust and positive working relations. Officers in the SIRENE Bureau play a key role in responding to failed handovers, working to increase mutual understanding and repair trust:

You could have officers from whichever European country stood at the airport waiting to collect somebody and there could be information not received from the court that we get late, to the extent that the escorting officers from the UK have to say: "Sorry, we can't take the subject now, you have to turn around and go home." [...] And obviously that is hugely impactful cost-wise. Reputational damage. And that can all be because there has been a breakdown in the flow of information. So yes, there has been a lot of work done to try and outline that risk [to the courts] and to do something about it. Having said that, because of the number of agencies involved I think it doesn't take much for that information to break down, and the impact can be huge.⁴⁶¹

⁴⁶⁰ Transcript 41 - MPS Extradition Unit

⁴⁶¹ Transcript 46 - SIRENE Bureau UK

Something like that with failed handovers, because of the risk involved, obviously you have got offenders that are awaiting extradition, the financial implications and reputation implications, it would be dealt with on a senior level [...] Something like that they would contact the head of SIRENE and Interpol UK and discuss it.⁴⁶²

Connections between national bureaux through networks established at supranational level are key to maintaining and rebuilding trust following failures. Nationally situated officers engaged in transnational work have a clear vision of the mutual understanding needed to ensure positive and effective relations. Through networks like EN-FAST, SIS-VIS and the SIRENE network itself, these officers build relationships and knowledge of each other's systems which help them avoid problems and respond appropriately when issues arise. There is a diplomatic aspect to transnational policing which relies heavily on trust to function (Bowling and Sheptycki 2015e; Sheptycki 1998). Officers in national bureaux are at the forefront of this policy diplomacy, and this is particularly evident in their response to operational failures.

7.9 Conclusion

The physical surrender of the subject is the final act of the EAW process. The handover relies on policing power: law enforcement through coercive force, soft power and physical restraint, in an airport, a port or at a border, all transnational places where the powers of police sometimes stand on shaky legal ground and morph as they move from waiting room to aeroplane, from national to international airspace, from dock to ferry, from one side of a border to another.

Police use a range of strategies including what Skinns called “soft power” techniques such as rapport-building and communicating accurate and detailed information about the process to the EAW subject to secure compliance. Police also have a range of “hard power” tools at their disposal including sheer manpower, the Body Cuff, spit

⁴⁶² Transcript 45 - SIRENE Bureau UK

hoods and in extreme cases tasers. Just as police custody officers “employed ‘softer’ forms of authority to compensate for the overtly coercive nature of police authority in custody suites” (Skinns et al. 2017:610), police escorts use similar tactics to mitigate for the overtly coercive experience of being placed in a Body Cuff and physically escorted across borders to face the criminal justice system in another jurisdiction.

The surrender process is entirely in the hands of police agencies unless an extension of the 10-day time limit for surrender needs to be requested. This is a tight deadline and the process is highly managed and meticulously planned; but there are many practical things that can go wrong. Travelling through commercial airports can be unpredictable; weather, strikes and other incidents can result in cancellation, delay and diversion. Subjects can behave in unpredictable ways or courts can accept out-of-time appeals. Throughout, police rely on their foreign counterparts to provide accurate advance information, guide them through the transnational space of the airport and facilitate their custody of the subject until the plane doors close.

Police in the national SIRENE bureaux and the EAW SPOCs act as knowledge brokers, gathering, compiling and exchanging risk information between police forces across borders and with national airlines. Almost all communication and cooperation during the planning stages of the surrender process takes place through the most formal channels, with the exception of planning between Ireland and some regular UK partner forces. When things go wrong, police officers in national bureaux play a key diplomatic role in placating partners who have been let down, explaining the reasons for failed handover operations and repairing mutual trust and understanding.

It is only during the final act, the surrender operation itself, that local police officers come face-to-face with their foreign counterparts. Surrendering and collecting officers meet, greet, exchange paperwork, assist with security procedures and hand over the subject, shaking hands at the door of the plane or ferry or at the border. As the collecting officers and the EAW subject leave the executing jurisdiction and arrive in their home state, the EAW process is complete. The power of the state to enforce

the criminal law has successfully travelled, though the infrastructure of the EAW, from one state to another and back again, delivering the subject into the hands of the criminal justice system in the issuing state.

8. The European Arrest Warrant: a transnational policing tool

8.1 Introduction

This final chapter draws together the theoretical themes which have been discussed throughout the thesis. Suggestions for further research are made as issues arise and the chapter returns to the questions raised in chapter 2, setting the empirical work in the context of the literature. The chapter begins by outlining the central argument of the thesis: that the EAW is a transnational policing tool. The role of police discretion and its relationship with the legal framework is revisited and the role of risk in shaping this discretion is also explored. The chapter goes on to set the infrastructure of the EAW within structural theories of transnational policing and reflects on how the power to police moves from one state to another. This leads to a discussion of the supposed dichotomy between formal and informal cooperation which highlights the largely formal nature of cooperation within the EAW system. The differences and similarities in the relationships between the UK and Ireland, Spain and Poland are discussed, and some tentative explanations are provided. The penultimate section discusses the implications of viewing the EAW as a policing tool for understandings of mutual trust and makes the case for further research in this area. The final section returns to the EAW literature and explores the implications of viewing the EAW through the lens of policing.

8.2 The EAW is a transnational policing tool

The central argument of this thesis is that the EAW should be understood as a transnational policing tool. In the EAW scheme the principle of mutual recognition uncouples the power to enforce the law from the territory of the issuing state. It co-opts the criminal justice agencies of the executing state to enforce a warrant using intrusive measures and coercive force where necessary. What is recognised in the EAW scheme is the issuing state's monopoly on the use of force which is given effect in the executing jurisdiction (Lavenex 2007). This monopoly on the use of legitimate

force is the defining feature of the police (Bowling et al. 2019:7) who initiate the process to issue an EAW in one state and ultimately give it effect in another.

The functional definition of policing explored in chapter 2 suggested that *law enforcement*, one of the core aims of policing, is intimately linked to the use of force (Bayley 2005; Newburn and Jones 1998) and is particularly relevant to the EAW. Through a horizontal transfer of sovereignty (Lavenex 2007:771) the EAW extends the law enforcement capacity of the issuing state into the territory of the executing state to track down, arrest and ultimately surrender the subject. At its heart the EAW is about police cooperating towards the goal of *transnational law enforcement*. Using intrusive surveillance and coercive force against an individual to apprehend them and return them to the issuing state to serve a sentence or to face trial in a court of law, literally *enforcing* the law upon their person.

As shown empirically in chapters 4 - 7, the system could not function without the police, their networks, databases, and capacity to use force. The police role is central to the system and other criminal justice actors are reliant on the police infrastructure to support their role, by transmitting requests and providing vital information for identification and risk assessment. The supranational and national infrastructure of the EAW was explored in chapter 4. When the full spectrum of institutions involved in the EAW and their overlapping competencies are brought into view it is clear that defining the EAW as a tool of judicial cooperation alone obscures a large part of the picture. Judges and prosecutors play an important role in the system, authorising the use of force and legitimising police action.

Chapter 6 explained that local police initiate requests for EAWs. Sometimes officers draft requests themselves and, after consultation with prosecutors, request court authorisation. NCA officers advise local police and prosecutors and comment on draft warrants. Police exercise a broad discretion on whether or not to seek an EAW and, in exercising this discretion, shape EAW practice throughout the criminal justice system: defining the ambit of prosecutor and judicial discretion in their decision to pursue an EAW (Goldstein 1960). Once authorised, law enforcement officers in the

SIRENE Bureau summarise and transmit the EAWs to other police agencies throughout the EU, automatically providing authority to initiate investigations and to use intrusive surveillance to track down the subject within the confines of the executing state's domestic legal framework. The transmitted EAW creates a live alert in police national computers around the EU and authorises the use of force to apprehend the subject.

Chapter 5 explained that, in the UK, the execution of incoming EAWs is entirely in the hands of the police. When EAWs are received, officers in the SIRENE Bureau validate and certify the alerts and create a wanted marker in PNC. NCA officers in the FCT conduct intelligence checks on incoming warrants. If a UK connection is found, officers in the part 1 casework team use a range of methods, from basic checks to intrusive surveillance, to develop this intelligence and allocate the EAW to a local police force for enforcement action. Local police forces develop this intelligence further, searching for subjects and conducting arrests. Here police in the UK exercise discretion to prioritise cases, allocate resources to investigations, and ultimately decide whether or not to execute a warrant at all.

Local police execute arrests, either following an investigation and search or as a result of a chance encounter. Once an arrest is made, police are responsible for confirming the subject's ID and delivering them to court. Police write statements for court and may communicate across borders to obtain identification information and criminal histories. The NCA is involved, providing support for local officers and acting as the international conduit for requests. Prosecutors and judges are responsible for the case as it progresses through the adjudication process, but even at this stage the police infrastructure plays a supporting role as the NCA transmit RFFIs from judges and prosecutors to IJAs.

Once surrender is ordered police are responsible for arranging and conducting the physical handover operations described in chapter 7. The SIRENE Bureau act as a liaison between the local force responsible for the surrender and the issuing state, or between the collecting local force and the executing state. Most surrender

operations to and from the UK take place via commercial airlines and local police forces liaise with airlines to approve the carriage of subjects. The surrender operation itself is the culmination of the process, the physical handover of the subject from the agents of the executing state to the agents of the issuing state. Here police come into direct contact with European counterparts, subjects are handcuffed and taken (by force if necessary) to face justice in the requesting state. Police use physical force and soft power techniques (Skinns 2012a) to secure the compliance of the subject. Along with the arrest, the physical surrender process relies on the police power to detain the subject and their “bottom-line power to wield [...] force” (Bowling et al. 2019:7) even where this is not strictly legitimate: outside of their own jurisdiction.

Seen from the perspective of the police the EAW is all about police cooperation to enforce the law of the state beyond national boundaries. The practical operation of the EAW relies on the police capacity to use force and intrusive measures to apprehend and surrender individual subjects. Through mutual recognition the policing capacity of the executing state is seamlessly employed by the issuing state in pursuance of its criminal law enforcement goals. Officers in the SIRENE Bureau and ILOs in embassies act as knowledge brokers (Ericson and Haggerty 1997; Sheptycki 1998) exchanging intelligence, information and official requests across borders. Local police contribute to this knowledge exchange, providing data on subjects and creating risk assessments to share with foreign counterparts, commercial airlines or other travel companies.

There is obviously a counterpoint that the EAW does facilitate cross-border cooperation between judges and prosecutors at particular points in the process. Judges and prosecutors are able to make direct contact with each other to request further information and resolve queries. Although many judges and prosecutors do indeed have direct contact, in some jurisdictions like UK and Ireland it is not common practice. Even where there is direct contact it represents just a small part of the EAW process and in some cases judges and prosecutors rely on the police infrastructure to transmit requests. Of course, judges and prosecutors provide vital oversight in the

system reviewing, authorising and legitimising police cooperation when investigating crimes, obtaining warrants and executing arrests. In executing states prosecutors represent the issuing state and judges rule on the validity of warrants and order surrender, thereby authorising the police use of force to transfer the subject to the issuing state.

It may also be argued that police are simply administering judicial decisions in the form of arrest warrants and surrender orders. But when the police decision-making processes are put under a microscope it is clear that law enforcement agencies are not simply carrying out judicial instructions. At least in the UK, police officers exercise a margin of discretion at various points in the process independently of judges and prosecutors and the way that police exercise discretion in their use of this transnational policing tool shapes national practice.

Questions remain over the role of judges and prosecutors during the issuing phase which this thesis does not explore. What is the scope of prosecutorial and judicial discretion when issuing EAWs? And how does this discretion operate in practice? In some states, judges and prosecutors review police requests for EAWs independently from the police and from each other. But it is not clear whether this provides a sufficiently impartial review in all jurisdictions. When judges or prosecutors are closely involved in investigating the underlying crime it seems possible that they are themselves policing, acting in the interest of *law enforcement*, rather than providing an independent assessment of the case for extradition. This potential issue is most evident in cases where investigating judges are able to issue EAWs without any external review. As the decision-making process of judges and prosecutors were not interrogated in detail this research is unable to resolve these questions. But given the vast difference in competencies between prosecutors and judges around the EU (Hodgson 2011b:618, 2019) comparative research exploring their role during the issuing phase is needed to assess whether officials actively engaged in investigation provide a sufficiently robust review of EAW requests.

8.3 Discretion and law

In the UK the EAW legal framework leaves scope for the operation of police discretion at different stages of the process. The transposition of the FWD into the EA 2003 does not include an obligation to execute valid EAWs and a margin of discretion remains in the hands of police officers over whether to certify EAWs, to execute them, or to issue them. The parameters of this discretion are determined by the law, but law does not dominate how it operates in practice (Grimshaw and Jefferson 1987). At each stage in the process other factors play a role in shaping police practice.

When the NCA certify incoming EAW they assess validity and proportionality in line with a clear internal policy. The law leaves scope for discretion but the internal guidance and policy of approval by legally trained NCA officers limits the exercise of individual officer discretion. This discretion operates at an institutional level of policy development rather than at the level of individual officer decision-making. Only those EAWs which clearly fail the proportionality test are not progressed and any borderline cases will be evaluated by the courts.

Local police forces are not legally obliged to execute certified EAWs⁴⁶³ but whether or not police actually exercise discretion in practice varies. The nature of the encounter between police officer and EAW subject has an effect on the scope of discretion with chance encounters leaving less scope for individual decision-making. When officers encounter PNC alerts for wanted subjects they only have a notification that the subject is wanted by the NCA and an instruction to arrest. Without information on the underlying crime or the subject's circumstances interviewees agreed that officers would almost certainly make an arrest. Here technology mediates the encounter and effectively negates any scope for officers to exercise judgement (Chan 2001; Ericson and Haggerty 1997).

⁴⁶³ Within the UK Police Scotland is an exception where the institutional relationship with prosecutors limits police discretion. Transcript 3 - Prosecutor Crown Office Scotland

Even when officers are specifically tasked with an EAW request they only seem to exercise discretion in very limited cases. The more contact officers have with the EAW the more likely they are to acknowledge that they have discretion over whether to execute but many forces were clear they could not pick and choose. Some officers recognised a need for reciprocity with issuing states and were conscious of a reputational risk if they declined to execute a warrant. This idea of reputational risk was broad. It included the force reputation in the eyes of the media and the public and extended to the reputation of the UK in the eyes of foreign partners, where a refusal to execute an EAW could negatively impact mutual trust.

Although the NCA strongly encourage forces to pursue all cases and execute warrants whenever possible, they cannot oblige forces to do so. Local officers who did acknowledge the margin of discretion afforded to them were clear that they would only refuse to execute warrants in exceptional cases. All interviewees felt their force could prioritise warrants and to allocate resources according to their own judgement but most indicated they would attempt to execute warrants eventually.

Again, risk played a key role in shaping discretion here. The NCA explicitly “pass the risk” related to an EAW on to a specific force. This limits the scope of local force discretion in refusing to execute a warrant at all, by effectively making them liable if anything were to go wrong. Risk assessment, usually based on the seriousness of the offence, is also key to prioritising EAWs and deploying resources at a local level. Here the concept of risk is not just focused on identification of potential dangers, it is used as a tool of governance (Johnston and Shearing 2003:28) to attribute liability and influence police action.

Interviewees indicated a few circumstances where they would not execute an EAW, in most cases the seriousness of the offence and the personal circumstances of the subject were relevant. These cases included where the subject was much too ill to travel and unlikely to ever be well enough, where the subject was travelling to the requesting state and the force was able to notify that state so they could arrange arrest on arrival, or where the subject was in the process of being deported and the

offence was relatively minor. In most cases the issuing state would be contacted to explain the decision and sometimes to request the withdrawal of the EAW.

At the issuing stage police discretion is of vital importance as a positive decision to request an EAW is the first step in engaging the criminal justice system to authorise the use of force across international boundaries. A decision from senior officers not to authorise the pursuit of a fugitive via an EAW puts an end to the matter. As Goldstein (1960:543) notes, in making negative decisions about engaging the law the police define the ambit of discretion for prosecutors and judges. Although prosecutors and judges in the UK exercise independent discretion when requesting or authorising an EAW, this discretion is not even engaged if police do not initiate the process.

As Dixon (1997:276) explains, knowledge of the law is key in engaging any discretion to invoke it and knowledge of the EAW and other transnational policing tools is far from universal among local police officers. Even once the knowledge barrier is overcome and a local officer does consider requesting an EAW for a fugitive, the law and local force policy play a role in setting the limits of the discretionary decision to do so. Any case must fit the requirements for an EAW under Part 3 of the EA 2003 and the police must have a decision to charge from the CPS.

If these legal criteria are met then risk plays a key role in shaping discretion. Serious offenders are seen as the risky property of the local force. This risk is exported when the suspect or offender leaves the jurisdiction. They no longer pose a risk to the local population but pursuing them across borders helps to manage the exported risk and also to avert risk to the reputation of the force which may suffer if they fail to apprehend suspects. The EAW is a tool that helps police officers manage risky subjects both at home and abroad and provides an “achievable option to pursue justice”⁴⁶⁴ for victims.

⁴⁶⁴ Transcript 21 - Sussex Police

Resources also play an important role in the discretionary decision to pursue an EAW. The surrender process is expensive, and the cost is unquantified until the operation takes place. Prices are affected by the jurisdiction in which the subject is apprehended and the time of year that surrender is ordered. Risk may also be a factor as the most violent and unpredictable subjects or those with complex medical needs may need specialist, private and therefore more expensive transport.

The resources commitment from local forces is unknown when an EAW is issued; senior officer sign-off is needed precisely because each EAW effectively requires a blank cheque to be written to cover the operational costs for the surrender. There was some suggestion that an ad hoc assessment is being made between the seriousness of the offence and the cost of returning the subject. Subjects accused of the most serious crimes will usually be pursued even where private transportation is required but there is room for individual officer discretion in mid-level cases to balance risk and resources as they see fit.

Even at the surrender stage police discretion to plan operations and allocate resources plays some role in the process. This is affected by local force policy in relation to extradition and also by the requirements of airlines or other private transport companies. However, police forces do not have discretion over whether to collect a subject at all. Once the law enforcement resources of the executing state have been engaged to apprehend a requested subject and judicially approve surrender, local forces are obliged to collect them.

As Dixon notes, in making generalisations about the relationship between law and the operation of discretion one must be aware of national differences (Dixon 1997:275). This is evident when viewing the EAW as a transnational policing tool. The margin of discretion left to police and other criminal justice actors by the FWD applies to all member states but takes very different shape in national law and practice. The issue of proportionality in EAW use in Poland and Romania is partly caused by a lack of discretion vested in police and prosecutors, who have no legal right to exercise discretion when applying the law. At the other end of the scale

some improper use by investigating judges issuing EAWs to further investigations, although outside of the law, is a product of the broad discretion vested in the investigating judge or prosecutor.

Law shapes discretion in the EAW system, setting the scope of discretion vested in specific actors. Law determines the scope of police discretion by laying out some of the criteria that cases must meet for an EAW to be considered. But law alone cannot explain whether police will pursue an EAW, whether they will execute one, how they will prioritise cases, or what resources they will expend (Bowling and Marks 2017; Grimshaw and Jefferson 1987). Here the seriousness of the underlying offence and the perceived dangerousness of the subject play a central role in the decision. Other risk considerations, including risks to reputation and risks to mutual trust, also influence police decisions. All of these issues must be counterbalanced with resource implications when senior officers approve the decision to pursue an outgoing warrant.

This research did not interrogate the scope of police discretion in non-UK jurisdictions in detail but some comparisons are clear. In Ireland the scope of police discretion when issuing EAWs is similar to the UK and prosecutors stated that the Guards Extradition Unit filtered less-serious cases before asking prosecutors to pursue warrants. In Poland the principle of legality applies throughout the criminal justice system. Police and prosecutors must pursue all cases and execute all warrants, although judges are now developing a principle of proportionality when issuing transnational requests. In Spain the question of police discretion was not directly addressed in interviews, but the Fugitive Unit were clear about their discretion to prioritise cases and allocate resources independently. The data from the UK highlights police discretion as playing a key part in shaping national practice overall and given the low-visibility of police discretionary decision-making (Goldstein 1960) and transnational policing in general (Bowling and Sheptycki 2015d) further exploration of the role that discretionary decision-making plays in the system would provide valuable insights into the EAW as a policing tool across the EU.

When the role of police discretion in shaping practice is laid out and the role of police is made explicit, it is clear that the EAW is a policing tool. An EAW engages transnational law enforcement cooperation through the national, supranational and global infrastructure in pursuit of the policing goals of the issuing state. Extradition represents the most formal end of cross-border police cooperation and exploring the transnational policing infrastructure of the EAW provides a clear picture of how the power to police moves from issuing to executing state and back again.

8.4 The social-spatial dimensions of the EAW Infrastructure

The EAW infrastructure connects local and national criminal justice actors transnationally through national, supranational and even global institutions, databases and networks. The legal framework that enables these connections and supports law enforcement practice has been enacted at multiple levels and its operation requires involvement from a plethora of criminal justice agencies.

One of the biggest challenges that scholars face in studying transnational policing cooperation is the complexity of the inter-institutional nexus that is dispersed “throughout the structure of power that it helps to constitute” (Bowling and Sheptycki 2012:22). The field as a whole is so complex and developments in practice so fast-paced that it tends to defy precise description. A few scholars have developed useful theoretical frameworks which provide a lens through which to understand transnational police cooperation and impose order on a chaotic system. These typologies focus on the conceptual goals of policing in line with Brodeur’s (1983) concepts of high and low policing (Bowling and Sheptycki 2012:24), the internal and external aspects of state or European security (Bigo 2006) and the *macro*, *meso* and *micro* levels of governance, infrastructure and policing activity (Benyon 1996). All of these frameworks are appealing at a theoretical level, but when applied to the transnational policing field as a whole they encounter an interlinked, interdependent set of institutions and networks with ill-defined boundaries and competencies which criss-cross the divisions of the frameworks.

Benyon's (1996) three level typology of transnational policing governance, applied to the EAW in chapter 2,⁴⁶⁵ clearly illuminated the EAW as a policing tool. It delineates macro-level political and legal frameworks; meso-level operational support networks, procedures, policies and databases; and micro-level work of specific investigations, issuing and executing warrants, arresting and surrendering subjects. On closer interrogation many of the agencies that operate at a micro-level are also central to the infrastructure at the *meso-level*. Playing a role in coordination, cooperation and building trust across borders, whilst simultaneously being involved in national and transnational investigations. Most SIRENE bureaux fulfil both meso and micro-level functions, although some have more overlapping functions than others. In particular the NCA simultaneously fulfils a role as an administrative central authority and provides support for investigations to local forces and transnational partners.

Identifying this complexity is useful since it furthers understanding of the polycentric nature of policing power at a transnational level and helps to identify blurred boundaries and dependent relationships. But it is not analytically satisfying since it does not result in a fully accurate or complete description of what is happening on the ground and it invites a more detailed analysis of the precise functions of the many agencies involved in the EAW system.

When considering the infrastructure of the EAW Bowling and Sheptycki's (2012:25) socio-spatial typology for transnational policing is particularly useful. Drawing on Michael Mann's (1997) ideas, they delineate four ideal-typical levels of social-spatial interaction; the global policing entities that have global reach, regional or supranational security structures and associations, national security structures that coordinate nationally and link with international partners, and the local or 'glocal' (Hobbs and Dunninghan 1998) police agencies linked transnationally, either through responses to transnational criminality or via transnational law enforcement tools like the EAW.

⁴⁶⁵ Figure 2.1 page 41

Bowling and Sheptycki (2012:26) note that applying this typology to the entire field of transnational policing is challenging because of the complexity of the field and the need to explain “how these various levels co-articulate in practice.” One benefit of studying the EAW as a transnational policing tool is that it focuses on a small slice of the transnational policing field, facilitating exploration of the infrastructure and institutional architecture in detail and grinding a lens through which to describe this co-articulation. Figure 8.1 below, adapts and expands on this typology, applying it not only to the police organisations within the EAW system but to its entire infrastructure.

The table is divided in two, with policing institutions and infrastructure on the left, and legal, political and criminal justice infrastructure on the right. Although the FWD on the EAW creates the framework for the entire system at a regional level the actions of national and local actors are determined almost entirely by national law, except during surrender when regional and international law also governs the powers of the police to detain and restrain subjects. Supranational and domestic legal frameworks provide the foundations for the infrastructure of the EAW, creating the tool itself and providing the legal basis for the databases that link police forces transnationally and transport law enforcement power from the issuing to the executing state.

Local police officers are linked most closely to local prosecutors and courts, or to those at a national level if no local prosecutors are involved. Officers at a national level allocate the execution of some EAWs to local officers and provide operational or technical support and assistance. Officers at a local level have very little direct contact with counterparts in other jurisdictions, except during the surrender process when they occasionally speak on the phone and meet in person to surrender subjects. The bulk of communications at a local level go via national level infrastructure and through regional databases and networks.

Figure 8.1 A socio-spatial typology of the European Arrest Warrant Infrastructure

Locus	Networks	Policing the EAW in the UK, Ireland, Poland and Spain	Legal frameworks and institutions in the UK, Ireland, Poland and Spain
		Police and Enforcement: Databases , Networks	Law , Prosecutors, Judges , Courts, Departmental of Public Bodies , Networks
Global	Infrastructure with a global reach	Interpol, i24/7 , ICIS	Tokyo Convention
Regional	European regional security infrastructure	EUROPOL , SIS II , SIENA, SIRENE, ENFAST, ECRIS	EAW Framework Decision, JTs, Suspect Rights Instruments, Civil Aviation Regulations, Schengen Acquis and SIRENE Regulations, EUROJUST , CIEU, ECtHR, eu-LISA, DG Home, DG Justice , EIJ
National	National infrastructure created to coordinate a national response and to work with international partners, located within the state or based abroad	UK: NCA UKICB, Border Force, ILOs, FLEC, PNC , PND , IDENT 1 , ANPR , NBTC , ACRO	UK: Extradition Act 2003, Supreme Court, NPCC , Home Office
		Northern Ireland: PSNI Extradition and International Mutual Assistance Unit	England & Wales: CPS Extradition Unit, Westminster Magistrates Court, High Court
		Scotland: Police Scotland International Assistance Unit	Northern Ireland: PPSN , Crown Solicitors, High Court, Court of Appeal
		Ireland: An Garda Síochána Extradition Unit, Interpol NCB	Scotland: Prosecutor Fiscal Crown Office Scotland, Sheriff Court, Sherriff Appel Court, High Court of the Judiciary
		Spain: Policía Nacional Extradition Unit, SIRENE Bureau, Interpol NCB, Guardia Civil Extradition Unit, Personas	Ireland: European Arrest Warrant Act 2003, DPP , CSSO , High Court, Court of Appeal, Department of Justice and Equality (Central Authority)
Local/Glocal	Local criminal justice institutional architecture and transnationally linked directly or by the EAW	Poland: Polish National Police ICB, Convoy Unit, Fugitive Search Unit, National Operational Units, Polish Military, National Police Database , Population Database	Spain: Law 23/2014 Title II, Fiscalía Antidrogas, Fiscalía for Terrorismo y crimen organizado, Audiencia Nacional, Juzgados Centrales de Instrucción, Ministry of Justice (Administrative central authority)
		UK: Local force EAW SPOCs, Seconded Officers from European Jurisdictions, Airport Police Forces	Poland: Code of Criminal Procedure Chapter 65, Penal Code Chapter 13, National Prosecutors Office, Supreme Court, Constitutional Court
		England & Wales: Metropolitan Police International Assistance Unit, County Police Forces, Local city or borough police, Specific Crime Units, PNC Bureau, Local Intelligence Databases	England & Wales: Local CPS Offices
		Northern Ireland: Local police officers, Specific Crime Units, Local Intelligence Database	
		Scotland: Local police officers, Specific Crime Units, Local Intelligence Database	
		Ireland: An Garda Síochána Divisional Officers	
		Spain: Provincial Officers Policía Nacional, Provincial Officers Guardia Civil	Spain: Local Prosecutors, Penal Courts, Investigatory Courts
		Poland: Voivodeship and Municipal Polish National Police Officers, Criminal Investigation Units, Criminal Intelligence Units, Convoy Units, Targeted Search Teams	Poland: District Prosecutors, District Courts, Regional Courts

Adapted from: Bowling and Sheptycki (2012) *Global Policing*. London: Sage. p25.

National police agencies are the epicentre of international criminal justice cooperation. SIRENE bureaux and Interpol NCBs act as national hubs for the regional and international infrastructure within the state, linking national and local criminal justice actors with their international counterparts. In all of the jurisdictions studied police institutions at a national level are involved in advising local officers and liaising with local or national prosecutors and courts to finalise and transmit warrants, to receive incoming warrants, arrange their execution and convey messages throughout the court process.

National or even local prosecutors and courts often have direct cross-border contact during the court process, sometimes using the regionally established Eurojust and EIJN to contact counterparts at the same level. In most cases national policing hubs will be looped into the communication and will always be informed at key stages in the court process, for example for bail variations, when appeals are lodged, or when subjects are ordered for surrender or discharged.

Closely examining the EAW system through this lens helps to describe how the power to police and enforce the law travels from a local level, up through national police and criminal justice infrastructure into an EAW request then out into the regional security infrastructure. The request then moves back down into another state, through national policing hubs, to local and national operational officers and criminal justice institutions who act to enforce the warrant. It also corroborates the claim that the national policing infrastructure plays a central role in the EAW, not only from the perspective of the police but for the wider criminal justice system, which is heavily reliant on regionally linked national policing hubs. Officers in these national hubs are transnational knowledge workers (Sheptycki 1998) and police diplomats (Bowling and Sheptycki 2015e; Nadelmann 1989). They link local officers, most of whom have largely domestic responsibilities, with partners in other states; dispatching requests, enabling cross-border communication, and facilitating the execution and physical surrender of subjects. They participate in transgovernmental networks both formal and informal, developing trust and fostering mutual understanding through direct contact, operational cooperation and diplomatic

problem solving. Without the policing infrastructure the EAW system simply would not function.

8.5 Formal and informal cooperation

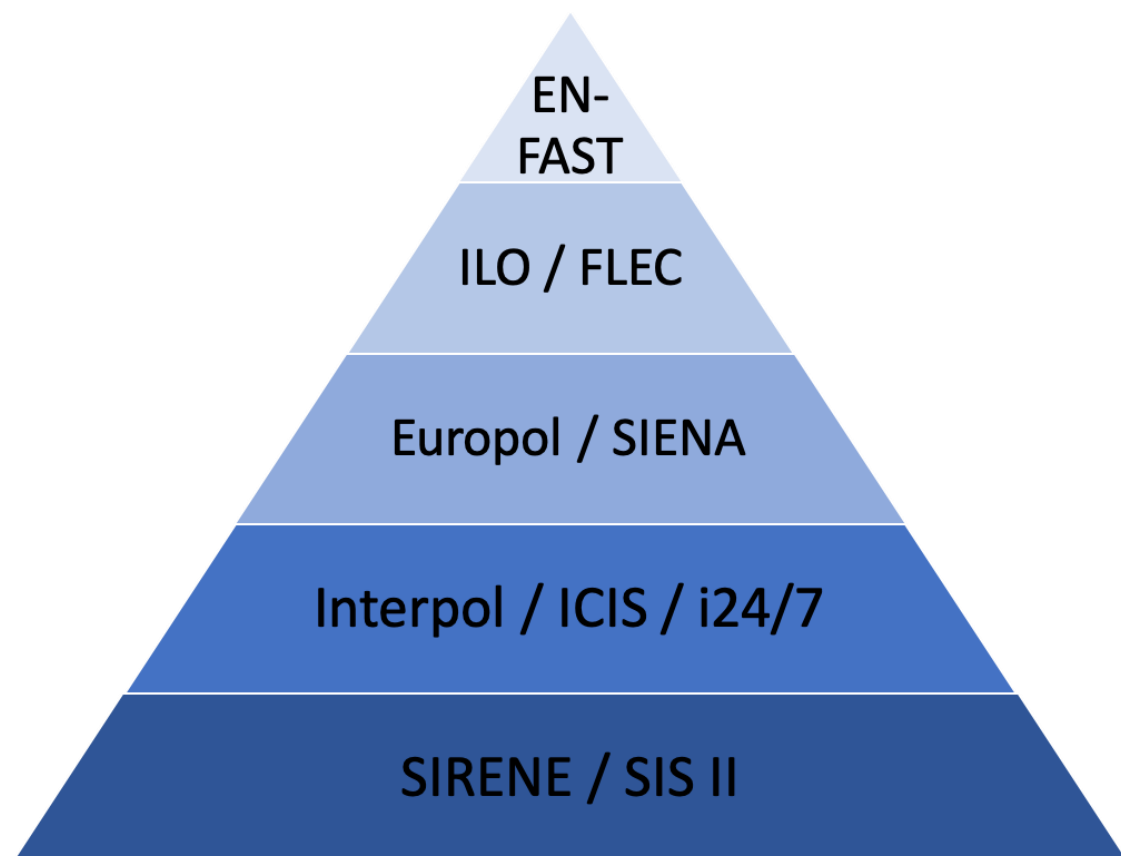
Closely linked to the co-articulation of the transnational policing infrastructure is the question of when, and under what circumstances, police cooperation is formal or informal? This question is important because studies of transnational police cooperation have noted that its low-visibility, dispersed and often highly informal nature make building effective systems of accountability and oversight extremely difficult (e.g. Anderson 1989; Bowling 2010; Bowling and Sheptycki 2012; McDaniel 2015). Studies have found that within the transnational policing field there is often a preference for direct, informal, person-to-person contact which bypasses national systems (e.g. Anderson et al. 1996; Swallow 1998:243; Walsh 2011).

Along with MLA, which allows police to share evidence across borders, the EAW represents the most formal kind of cross-border police cooperation, involving, as it does, physically transporting individuals across borders into the court process or the prison system at the very end of the criminal justice process. It is perhaps unsurprising then that the vast majority of communication and cooperation between police in this system is highly formalised and largely takes place through the official SIRENE channel. Nevertheless, regionally established informal networks such as EN-FAST, or institutions that create physical space for informal interaction such as Europol, do play a role. As do the ILO and FLEC networks, where bilaterally placed individuals build close working relationships with local law enforcement officers.

Throughout the process there are various options available to police seeking to communicate with their international counterparts, the main police channels are illustrated in the pyramid in figure 8.2. As the most formal channel SIRENE sits at the bottom and EN-FAST, being the least formal sits at the top. This officer describes the channels and their usage:

SIRENE and Interpol are the more formal and the more structured channels. Eurojust, ENFAST they are more informal and probably used less frequently, but when they are used, they are more for the high-profile or the problem complex cases. [...] The SIRENE and Interpol are the day-to-day [...] the majority of cases can be dealt with inside of SIRENE absolutely no problem.⁴⁶⁶

Figure 8.2 – Formal / Informal Channels for Police Communication in the EAW System



For local officers the primary route for queries and planning surrender operations is via SIRENE or Interpol. In urgent cases, for example where ID information is needed for a court appearance, local police teams who have extensive experience in EAW cases may make contact with FLEC officers in the embassy of the relevant state or may follow up a query through the Europol National Bureau. Using the informal routes is the exception to the rule and in the vast majority of cases communication goes through the formal channels.

⁴⁶⁶ Transcript 46 - SIRENE Bureau UK

One other exception is communication with the Extradition Unit in Ireland who have direct contact with local overseas officers when making surrender arrangements and with PSNI throughout cases. This is partly explained by the fact that Ireland is yet to join SIS II and also because the number of personnel dealing with extradition in Ireland is small and the volume fairly low, meaning that they are able to manage the volume of direct communication. Officers both in the UK and Ireland stressed that the final plans will always be confirmed via the NCA in the UK and via the central authority in Ireland, meaning that the end result of this direct contact is always formalised.

In the vast majority of cases local police officers only have direct contact with foreign counterparts at physical handover operations:

It's only at the point of removal [that] the two sets of officers speak to each other. Because there's no need really. Via SIRENE channels, we've all been told: It's this flight number. It's at that airport. It's on that day. It's at that time. Everybody to meet at the check-in desk two hours before the flight departs. Here are the phone numbers of the Kent officers. Here are the phone numbers of the Czech officers. They just call each other up on the morning. There's no other need to communicate.⁴⁶⁷

There are various options for communication open to the officers situated in national hubs or foreign embassies who deal with the EAW on a daily basis. SIS II and the SIRENE Network is the most formalised channel. Communication is structured around numbered alerts and designated forms for specific notifications, requests and actions.⁴⁶⁸ These forms often have pre-defined content and little space for free text. In most member states SIS II is the official channel for EAW transmission with a valid Article 26 alert constituting legal grounds for arrest and detention. This channel is also used to transmit ID information, intelligence, criminal record certificates,

⁴⁶⁷ Transcript 12 - Kent Police

⁴⁶⁸ See annexe 2.

requests for further information, updates on individual cases and to make surrender arrangements.

The Interpol ICIS database or i24/7 email system can also be used to transmit EAWs simply as message, or as more formal Blue or Red Notices. Whether these notices constitute an official basis for arrest or simply a notification of interest to be followed up via official channels depends on the law of the executing state. In Ireland, Interpol is considered a formal channel but is not the official route for EAWs which must be sent to the central authority to be executed. Police agencies can use i24/7 to exchange information and intelligence but this is rarely evidential.

Further up the scale of informality sit the semi-diplomatic channels of Europol and the ILO or FLEC networks. Officers in these roles can be contacted directly by officers posted in national policing hubs and sometimes by forces with whom they have established relationships. These officers, posted in European agencies or embassies, have an important diplomatic function, representing the law enforcement agencies of their member state and developing relationships with representatives of other states to grease the wheels of cooperation. Why and how these channels are used will depend on the relationships between specific states, agencies and personnel. The NCA rarely uses the Europol channel for EAW work but often utilises the ILO network for complex or urgent cases. EAWs with specific intelligence relating to Spain will always be sent through an ILO and via SIS II. The ILOs in Spain also play a role in Operation Captura.

The informal EN-FAST network sits at the top of the pyramid. Here, national contacts communicate directly by email, phone, text and WhatsApp. Within this network operational officers are able to communicate urgently with each other without the formal restraints and time delays of SIS II. This network is well used, but is generally reserved for the most serious cases, where urgent action or special resources may be needed. There is a diplomatic dimension to this work; national contacts are aware that they represent their nation state. They are concerned to provide a good service when called upon and not to abuse the trust of other states by using the system for

less serious cases or by asking for preliminary work and not following up with official requests.⁴⁶⁹

In all jurisdictions SIRENE Bureaux interviewees were clear that SIS II is the main channel of communication with other jurisdictions at every stage of the process and contact through other channels is almost always followed up formally. Although experienced international units in UK police forces occasionally go direct to officers in the FLEC network or send requests via Europol, they almost always update the SIRENE Bureau with the result of the contact.⁴⁷⁰ In Spain the ILO network is a well-used channel for communication with the UK,⁴⁷¹ but again all official results are confirmed through SIRENE.

One downside to having so many channels of communication available is the temptation to use multiple channels to initiate or progress queries. Several interviewees, especially those in semi-diplomatic roles, mentioned the “scatter-gun approach”⁴⁷² as being detrimental to relationships and complained that local or national officers taking this approach “made the UK look silly.”⁴⁷³ It results in duplication and “wasted effort”⁴⁷⁴ for UK officers and for international partners who do not appreciate being asked the same question repeatedly. Writing about the proliferation of channels for criminal justice cooperation in Europe, Guille (2010b:70) argued that the multiplication of agencies and agreements with overlapping remits has led to confusion and the duplication of work. She particularly notes that a lack of defined functions for each channel and clear guidance to officers utilising them, coupled with the frenetic speed of change is to blame for this problem. The answer, Guille suggests, is to streamline and rationalise existing structures rather than introduce new initiatives.

⁴⁶⁹ Transcript 42 - SIRENE Bureau UK

⁴⁷⁰ Transcript 5 - Police Scotland and Transcript 61 - MPS Extradition Unit

⁴⁷¹ Transcript 18 - Policía Nacional

⁴⁷² Transcripts 8 and 9 - Eurojust UK Desk

⁴⁷³ Transcript 8 - Europol UK Desk

⁴⁷⁴ Transcript 8 - Europol UK Desk

Despite the existence of informal channels and the supposed preference for informality of transnational police officers, the bulk of communication in the EAW system takes place via formal channels. In serious, urgent and complex cases informal channels may be utilised but these will almost always be followed up via a formal channel. From the perspective of some EN-FAST officers, although contact is direct and immediate, EN-FAST is a formal channel⁴⁷⁵ and contact points are as aware of their diplomatic responsibilities as their operational ones.

The data from this project runs counter to the conclusions of earlier work exploring the nature of contact between police officers in European cooperation. Writing in 1989 Anderson noted the difficulties faced by states in maintaining central control over cross-border cooperation through national hubs, especially in the UK, where policing is fragmented. He predicted that transnational cooperation would become more direct and localised (Anderson 1989:178). By 1995 the push at the macro-political level to formalise systems of European police cooperation was well underway, but the 'old boy network' of direct and personal contacts still dominated the field (Anderson et al. 1996:75–76). Initiatives including Europol and Schengen were being developed largely without police practitioner input (Guille 2010a) and police officers were still bypassing supranational established networks, preferring to “forge their own networks of formal or informal relationships with colleagues abroad” (Swallow 1998:243). In line with Anderson’s predictions Bowling, Reiner and Sheptycki (2019:203) note that transnational police “officers are in constant contact with their counterparts and colleagues overseas, and in many cases, there is no requirement to report this to senior command.”

This is quite the opposite of what I have found during this research. In the context of the EAW, which is of course the most formal end of transnational police cooperation, contact between national police forces across borders is highly formalised. The bulk of work on EAW cases take place via formal and centralised channels. Local officers involved in the process usually have no direct contact with overseas counterparts

⁴⁷⁵ Transcript 39 - Polish National Police

and when they do this is almost always followed up via the formal channel. Recourse to informal channels is the exception rather than the norm, even for officers whose day-to-day work is transnational. Exceptional recourse to informal routes is usually driven by seriousness or urgency, but there are also some regular informal channels in specific relationships, including the regular use of ILOs in the relationship with Spain and direct contact with the Polish Convoy Unit when arranging the military flight. Local officers may also be in direct contact with overseas counterparts when working on JITs which can result in EAWs being issued, but these arrangements are not central to the EAW system itself.

Even though the bulk of EAW cases are dealt with through formal channels for cooperation, informal networks do play a key role in the system. Aside from expediting work or committing additional resources to cases, informal networks create opportunities for direct contact and relationship building. Officers are able to develop trust in individual counterparts and though these relationships develop mutual understanding and support trust between states. Formal networks also provide opportunities for direct person-to-person contact at training courses, conferences and steering groups. Here officers are able to build mutual understandings of each other's national systems, raise issues, provide explanations and nurture mutual trust. Some of these transgovernmental networks (Lavenex 2007) are operational, some work on policy and strategic planning and some go as far as official rule making, drafting new regulations and allowing police professionals to participate in the transnational-state-system of governance above and below the state (Bowling and Sheptycki 2012; Slaughter 2004).

8.6 Explaining different relationships

In order to provide concrete examples of cross-border relationships between police agencies during the EAW process this research examined the relationships between the UK and Ireland, Poland and Spain. Each relationship has some unique features but also many similarities. Here I describe the unique features of each relationship and some tentative explanations for them and go on to discuss the similarities that

also characterise relationships between the UK and other EU states. The most important explanation for the uniqueness of each of the three relationships is the high EAW traffic which means that cooperation is frequent, justifying the special attention paid to these relationships particularly by the NCA.

The UK's relationship with Ireland is very close and cooperation and communication is often more direct than it is between other states. Local officers have direct contact with the Guards during the surrender planning process and the Guards and PSNI cooperate across the Irish border on an almost daily basis. This kind of direct contact is uncommon for police when working on EAW cases and there appear to be several reasons for it. The high level of traffic between the two countries is a result of the shared land border which fugitives can easily cross when evading law enforcement. People are also able to travel freely between mainland Britain and the island of Ireland and the common travel area predates membership of the EU. Migration between Ireland and the UK is common and both countries host large communities from the other jurisdiction.

The guards and PSNI have a long-standing and well-developed cooperative relationship (Walsh 2011) which includes agreements on data sharing outside of the EAW infrastructure. Their shared history in responding to terrorist threats across the border means this relationship is understandably unique. Ireland is also the only country included in this study which is not a member of SIS II. All formal EAW requests and communication must be channelled through the central authority, and police-to-police requests must go through Interpol channels. This means that direct communication can often be easier when planning surrenders under time pressure. When Ireland becomes a member of the SIRENE Network this practice may change, as communication through official channels becomes more streamlined. Finally, and perhaps most importantly, Ireland and the UK have a shared language and are both common law countries, meaning that criminal justice professionals have few practical or cultural barriers to overcome when communicating directly.

The same cannot be said of the relationship with Spain where there are major differences between the legal systems and no shared language. Again, the high volume of traffic can be attributed to migration patterns. Spain hosts the largest UK migrant population in the EU. This presents an opportunity for fugitives to conceal themselves in a British community with relative ease leading to the popular designation of Spain's south coast as the 'costa-del-crime'. The advent of the EAW and operation Captura has been extremely successful in tackling this problem and the time when the south of Spain was a safe haven for British criminals seems to be consigned to history. Operation Captura and the well-used ILO network, which links the NCA to local and national law enforcement in Spain, is a unique feature of the UK-Spain relationship and is a product of the high volume of EAW traffic.

Prosecutors and judges in the UK and Spain also have a unique relationship, which utilises the liaison magistrates posted in national embassies in both states. These legal experts help to resolve and expedite queries, oiling the wheels of a relationship which can be fractious because of the significant differences in the legal systems. The UK's common law adversarial system gives a markedly different role to judges than the *juez de instrucción*⁴⁷⁶ in the Spanish inquisitorial civil law system. Issues with the "charge and try" provisions in the EA 2003 and the significant requests for further information from the UK clash with the priority given to mutual recognition in the Spanish law and sit uneasily alongside Spanish judicial procedure. The liaison magistrates work closely with national criminal justice actors to resolve issues and increase mutual understanding.

The most unique feature of the relationship with Poland is the sheer volume of EAW requests from Poland that are executed in the UK. Poland is the only country to utilise a dedicated military flight to collect EAW subjects and currently the UK is the only regular pick-up point. This is partly a product of migration patterns, with large Polish populations living across Western Europe and the largest of those being in the UK, but it is also a product of the Polish criminal justice system.

⁴⁷⁶ Investigating judge

The alleged overuse of the EAW by Poland (Helsinki Foundation 2018) is partly due to the lack of a proportionality test during the issuing phase. This is a product of the legality principle in the Polish legal system which obliges police, prosecutors and judges to pursue enforcement via all available means. The issue has been recognised by the Polish legislature and judiciary and efforts to introduce a proportionality check are beginning to have an effect on the number of warrants issued. However, the legality principle and a large migrant population are not the only explanations for the high volume of warrants. A high proportion of Polish EAWs are conviction warrants (Ostropolski 2014) and anecdotally several UK police officers noted that many Polish EAW subjects told them they had permission from their parole officer to travel to the UK. It has been suggested that overcrowding in the Polish prison system means that those convicted of minor crimes are often on a waiting list to serve their sentence or given suspended sentences and parole. Migrants are eventually called to prison or lose contact with their parole officers and this results in their sentences being activated and EAWs being issued. These issues do not appear to be well understood outside of Poland, and Polish criminal justice professionals and legal commentators are keen to stress that the Polish use of the EAW is legitimate and within the legal limits set by the FWD (Ostropolski 2014).

Another feature of the UK-Poland relationship is the secondment of Polish police officers to local UK forces and the regular recourse to the Polish FLEC officers in the Polish embassy in London. These are not completely unique features as UK officers reported similar features in the relationship with Romania. The explanation for the use of these methods of cooperation is undoubtedly the volume of EAW traffic between Poland or Romania and the UK which is linked to patterns of migration and the significant use of EAWs by these countries.

Although each of the three relationships have unique features there are also many similarities which are typical of police cooperation in the EAW in general. The vast majority of cooperation takes place via formal channels while informal cooperation is driven by urgency, seriousness or complexity. Although surrender planning with

Ireland often involves direct communication this is almost always followed up via the formal channel. The NCA, as the national hub, is always kept abreast of developments and the processes that police officers follow in each state or local force are similar. The EAW and the rest of the criminal justice infrastructure that facilitates the movement of law enforcement power from one state to another has been largely successful in formalising and standardising police cooperation practices related to extradition. Previously diverse and informal relationships are thickened and formalised in the vast majority of cases.

8.7 Mutual trust in transnational policing

Mutual trust between nation states is required to give effect to the principle of mutual recognition. Distrust at a state and judicial level is one of the biggest obstacles to smooth and effective cooperation in the EAW regime (Carrera et al. 2013; Efrat 2019; Marin 2014; Mitsilegas 2015). As discussed in chapter 2 the FWD on the EAW more or less presumes that mutual trust between states exists, but this is far from evident in practice (Guild and Geyer 2008; Lavenex and Wagner 2007; Sievers 2008). States have included additional grounds for refusal of EAWs in domestic law and the UK and Ireland have adopted processes which include review of EAWs prior to their execution.

The issue of mutual trust in the EAW literature is closely linked to problems with disproportionate and improper use (Marin 2014; Ostropolski 2014; Xanthopoulou 2015), uneven rights protection across the EU (Alegre and Leaf 2004; Hodgson 2011a; Mitsilegas 2015; Xanthopoulou 2018) and perceived problems with legitimacy and accountability in the system (e.g. Marin 2014; Sievers and Schmidt 2015). Managing diverse legal systems and cultures with a unified extradition regime, utilising the principle of mutual recognition, requires states to trust that partners will not abuse the system and that they will give full effect to judicial decisions in the spirit of reciprocity. The literature related to the EAW has so far focused on the problems with trust at a macro-political (Lavenex and Wagner 2007; Sievers 2007, 2008) and a judicial level (Bureš 2010; Efrat 2019; Xanthopoulou 2018).

At the outset, this research sought to examine the issue of trust through a different lens; that is, from the perspective of the police who give effect to mutual recognition in practice. I suggested that mutual trust between policing actors might rest on different foundations than trust between actors at a state level. Drawing on literature that explored the idea of a shared transnational policing subculture (Bowling and Sheptycki 2012:78–100), I asked whether shared occupational goals and membership of a cross-border policing community meant that trust between policing actors was more stable than at a political or judicial level.

The limited literature that discusses trust in transnational policing confirms that the question of how trust is established, nurtured and maintained is largely unexplored, especially in empirical research (Block 2017; Hufnagel and McCartney 2017). Authors describe informal working relationships which are underpinned by trust and sometimes give rise to more formal relations where the need for trust is lessened (Hufnagel 2016). But this work does not clearly articulate the practical relationship between informal relations and the socio-political notion of trust and to some extent conflates the two.

Chapter 2 explored the idea of trust as both an *act* of reliance and a *feeling* of confidence and noted that these two aspects of trust are often treated as interchangeable in the literature. Here I understand trust as underpinning police *acting* cooperatively across borders under conditions of uncertainty, whilst *feeling* comfortable and confident in so doing. Mutual trust between police officers working transnationally is vital to the functioning of the EAW system. Sometimes officers commit resources before an official EAW is issued in a particular case, or they pursue cases on behalf of overseas counterparts which would receive little attention if they arose in the domestic context.

In interviews prosecutors and police officers operating at the micro-level did raise the issue of proportionality as a problem in the system. When asked to articulate the major drawbacks with the EAW disproportionate use of the system to extradite

people for minor or historic crimes was the most frequently mentioned issue. Local police officers particularly expressed frustration about the resources involved in physically surrendering subjects for minor crimes and suggested that sometimes subjects would return again to the UK within weeks. Such cases were seen as a pointless drain on police budgets. Some officers had sympathy with the “legality principle” which they understood led to EAWs being issued in minor cases by Poland and Romania in particular. But others felt that this kind of use undermined the system as a whole. SIRENE Officers were more understanding of the issue, attributing it to the system and legal culture of issuing states and only expressing regret that they were unable to deprioritise minor cases during the surrender planning phase as all cases had the same 10-day time limit.

Rights protection issues were barely mentioned by interviewees and prosecutors and liaison magistrates were far more likely than police officers to raise concerns relating to legal frameworks in general. When issues related to rights protection were discussed, interviewees were most concerned that the proportionality test imposed by section 21a of the EA 2003 and rights-based grounds of appeal in the UK courts undermined trust in the UK from the perspective of issuing states. This runs counter to the EAW literature, which focuses on trust from the perspective of executing states and does not explore the impact that distrust has on micro-level relationships.

Police officers discussed the certification process and the UK flagging of EAW requests for administrative reasons as setting the UK apart from other European states. This process sent the message that the UK did not trust counterparts sufficiently and was not prepared to act in the spirit of reciprocity required for mutual recognition to function smoothly. This was mentioned not only by officers in the UK, but also by officers in Spain and Poland. These officers also reported that aspects of the UK court process undermined trust in the UK. Extensive requests for further information from UK prosecutors and judges and long delays in some cases as appeals were heard, did not sit well with criminal justice actors in Spain in particular, where the law prioritises the principle of mutual recognition over substantive review of EAW requests.

Whilst micro-level criminal justice professionals working with the EAW are concerned that practice accords with a set of shared legal norms, they are more concerned that it functions in a predictable and efficient manner (Bowling and Sheptycki 2015c:10). Prosecutors and police want to know that their law enforcement requests will be fulfilled, and when they are not, they want to understand what has happened and why. Mutual trust between micro-level practitioners is more of a practical issue than a normative one and legal hurdles or additional processes put in place by the UK, which symbolise distrust at a macro-level, have an inverse effect on trust between actors at the micro-level. A message from the UK system that it distrusts its partners reduces the level of confidence that micro-level actors have in their requests being dealt with in a predictable way according to the principle of mutual recognition.

Failed handovers and the bailing of subjects ordered for surrender only for them to abscond was raised repeatedly by police officers as a problem which reduced confidence and trust, providing further evidence that mutual trust between police is largely a practical issue. Police forces in both issuing and executing states are obliged to hand over a subject within 10 days and have no option but to cooperate. However repeated failed handovers, and sometimes even the fact that a subject is on bail, reduces trust that this obligation will be fulfilled by the executing state. Meso-level transnational police officers in SIRENE bureaux or NCBs fulfil a diplomatic role in repairing trust, explaining what has gone wrong when handovers fail and increasing mutual understanding by explaining the domestic judicial system to partners.

Transnational officers in national hubs or semi-diplomatic posts are the officers most likely to cooperate under less formal arrangements, where counterparts might be asked to invest work in cases prior to official requests being issued. Requests for preliminary work are often channelled through the EN-FAST network and officers act on these requests not because they are obliged to do so, but because they trust that the other party will also fulfil their commitment. Where officers conduct preliminary checks, or even extensive surveillance in anticipation of EAWs being issued, they do so on the basis of trust. Officers indicated that consistency and reliability in a

particular relationship made them more likely to take the risk of investing resources in these circumstances. It was clear that personally knowing the officer making the request went a long way to supporting this trust.

Trust between officers in this type of network is built through direct informal contact and regular operational cooperation. Here informality and more importantly direct person-to-person or face-to-face contact is key to developing trust. A good and timely service and a clear commitment not to abuse the system is also important in maintaining this trust, as EN-FAST officers made clear in interviews. This trust is based on prior and continued knowledge and repeated operational contact which strengthens the ties that bind (Nicolaïdis 2007).

Officers whose role is largely focused on transnational work are often part of meso-level networks such as EN-FAST or SIRENE working groups. These officers explicitly see themselves as representatives of their state and understand their diplomatic role in developing mutual understanding and building trust. There is evidence of a developing *subculture of transnational policing* (the norms, beliefs, attitudes and routines of this specific policing specialism) where officers, linked to international counterparts on a daily basis, work together in pursuit of shared occupational goals (Bowling and Sheptycki 2012:84–85). This developing “transnational identity – based on the notion that a cop is a cop, and a criminal is a criminal, no matter what their respective national identities - that provides the oil and glue of contemporary international law enforcement” (Nadelmann 2010:468). In the SIRENE bureaux officers have developed their own informal ‘SIRENE English’ and have become experts in bridging the gaps between legal cultures, moulding legal requests from their own state to fulfil the requirements of another jurisdiction. These officers tended to be more understanding of practical problems with other member states’ practices and were generally more conscious of the reputational risks associated with their own operational failures.

The levels of trust felt by local officers who are not usually linked to foreign counterparts directly seemed to be more volatile, with a small number of bad

experiences tainting their view of a cooperative relationship with a particular country as a whole. Officers did understand themselves as being part of a global policing community linked by a shared occupational purpose (Andreas and Nadelmann 2006; Nadelmann 2010:468; Sheptycki 2007), but this shared identity had limited effect in bridging cultural differences (Aas and Gundhus 2015; Hills 2009). Many officers with little or no direct contact with international partners tended to be less understanding, expressing more strident views about problems they had with specific partners and seemingly less able to imagine structural or systemic reasons for what they perceived to be bad service. Trust was difficult to repair without the opportunity to discuss what had gone wrong or to understand the systemic constraints of particular partners. The old adage that “trust comes on foot, but leaves on horseback” clearly applies to transnational police cooperation in practice.

This research suggests that (dis-)trust at a macro-level does not reflect trust at a micro-level or vice-versa. Trust between policing actors seems to rest more on practical than normative foundations. Effective cooperation is also of central importance for prosecutors. Acts of distrust in executing states at a macro-political or judicial level – manifest as additional checks, procedures, questions, delays or grounds for refusal – have a negative impact on trust at the micro-level in issuing states. Transnational policing actors that participate in meso-level networks have a central diplomatic role in repairing relations and managing trust, they also participate in informal networks where trust is more important in achieving effective cooperation and opportunities to build this trust are more readily available. At this level there is evidence of a transnational policing subculture based on mutual understanding and shared occupational goals. At a local micro-level some of the issues that cause distrust at the macro-level do impact trust, but for practical rather than normative reasons. Here, although police officers see themselves as belonging to global policing community there is little evidence of any deep cultural connection.

This conclusion supports Benyon’s (1996:358) argument that policing networks established at a meso-level tend to be the most successful and that micro-level actors work best when supported by meso-level infrastructure. Indeed, it may be

that more involvement from meso-level networks in micro-level relationships is needed to build robust and lasting trust. The mismatch between macro-level development of transnational policing tools and the needs of micro-level actors identified by Guille (2010a) is relevant here. There also appears to be a mismatch in understandings of what supports trust between different levels of actors in the system. The suggestion is that acts of distrust by executing states at a macro-level negatively affect the trust placed in them at a micro-level. This is important because many of the solutions suggested in the EAW literature to the problems of proportionality, rights protection and diversity in legal cultures involve legislative programmes. Whilst top down legal improvements are no doubt necessary, at the level of practice this kind of change cannot increase mutual understanding and care should be taken not to negatively impact trust at the micro-level.

The most important mechanism for nurturing trust identified in this research is direct interpersonal contact, because it creates opportunities to increase mutual understanding. Whether this takes place in formal settings with opportunities for informal discussion or through largely informal networks doesn't seem to matter. What is vital is developing mutual understanding through detailed explanation of the systemic constraints in a specific jurisdiction or the opportunity to discuss what went wrong in a particular situation. This is also true for trust between different types of actor within a jurisdiction, as demonstrated by the improved relationship between the NCA and the Westminster Magistrates Court once judges had actually seen the Polish military flight in action.

Simply exposing criminal justice actors to counterparts from other states is one way to improve understanding throughout the system and seconding foreign officers to local police forces is one way of achieving this. Another might be to give local officers who have regular links to transnational work, but are not themselves transnational officers, opportunities to understand the legal systems and processes in other states through education programmes or at conferences, like the one run by the NCA for EAW SPOCs. It is also possible that strengthening links between meso-level transnational police officers and micro-level practitioners, including police and

prosecutors, could have a positive effect on cross-border trust at all levels. Meso-level actors have a wealth of country specific knowledge and regular opportunities to develop this knowledge. This could be passed on through regular contact with micro-level actors within their state, increasing mutual understanding and supporting mutual trust.

This research provides clear evidence of a mismatch in understandings of mutual trust between different levels and different types of actor. The existing literature seems to focus on trust at a macro-political level with little or no exploration of what this means on the ground. Work on trust in transnational policing is scarce but some of it does emphasise practical effectiveness as well as a need to confirm to agreed norms (Block 2017). Other work however seems to conflate trust with informality in a way that is not analytically helpful (e.g. Hufnagel 2017). Although informal and direct contact does help to build trust because it increases knowledge and mutual understanding, informal cooperation does not in and of itself require high levels of interpersonal trust and can be supported by trust in a relationship with institutions or a state as a whole. Viewing the EAW as a transnational policing tool and examining trust from the perspective of the police shines a light on aspects of trust that are not obvious from the perspective of legal professionals. Detailed empirical research is needed to examine what underpins trust throughout transnational criminal justice cooperation, at different levels and for different types of actor. The relationship between trust at each level is also of key importance as this research suggests that distrust in one area may impact negatively on trust in another.

8.8 Assessing the EAW as a policing tool

By way of a conclusion, this section considers the multiple implications of viewing the EAW as a policing tool. In particular, viewing the system in this way highlights the significant costs of disproportionate or improper use to individuals, whose liberty is at stake, and to states, who lend their law enforcement power to the issuing state at a great financial cost.

Viewing the EAW as a transnational policing tool tells us something important about the changing nature of state power. As globalisation hollows out the state, the power to police and enforce the law becomes one of the last bastions of sovereignty (Schomburg 2000:51). Member states have coveted criminal justice and law enforcement policy and their reluctance to pool or transfer sovereignty in this area is the main reason for the stunted development of EU criminal law (Kaunert 2005, 2007). Mutual recognition represents a balance between the pressing practical need to cooperate and a reluctance to surrender power (Kilmek 2014:15).

What is often missing from debates related to the EAW and mutual recognition is the realisation that what is being recognised is the power to police by monopolising the use of force (Lavenex 2007). Policing and law enforcement sit at the sharp end of state power, where the monopoly on the legitimate use of force directly affects individual liberty. Traditionally this power has been territorially bounded, unable to move beyond the boundaries of the state. The European Arrest Warrant (and the infrastructure that supports its operation) frees the power to police from its territorial chains and allows it to travel with relative ease into the territory of another EU member state, to use the domestic criminal justice infrastructure of that state, to locate, arrest and surrender its subject.

The EAW infrastructure contributes to the decentralising of state power. The focus of EU governance initiatives on 'transgovernmentalism' (Lavenex 2007) extends to the governance of *Police and Judicial Cooperation* where networks of disaggregated governance have been established. These networks, including the SIS working groups, the EJM and EN-FAST, are focused on operational and strategic cooperation and sometimes even self-regulation and rulemaking (Slaughter 2004). Even in this vital area of state sovereignty the pressures of globalisation are transforming an international-state-system into a transnational-state-system (Bowling and Sheptycki 2015a:61) through the creation and thickening of horizontal relationships though the vertical structure of the EU.

This study has detailed precisely the process through which law enforcement power has been granted freedom of movement across borders. It has focused on police processes and cooperative relationships but, as the discussion of physical surrender in chapter 7 demonstrated, the subjects of these processes are individuals whose liberty is curtailed by the application of police coercion. It must be remembered that “the EAW is a strong weapon, an instrument which eventually limits individual freedom without the counter balance of a protective dimension.” (Marin 2014:348)

This free movement of law enforcement power has faced significant criticism with scholars and NGOs raising concerns about proportionality (Helsinki Foundation 2018; Marin 2014; Xanthopoulou 2015), misuse (Fair Trials International 2010, 2012; Marin 2014) and a lack of effective rights protection (Alegre and Leaf 2004; Fair Trials International 2012; Marin 2014; Mitsilegas 2012). These criticisms were discussed in chapter 2 and must be revisited in light of the police role in the system and the realisation that at its heart the EAW is a transnational policing tool, aimed at the policing goal of law enforcement, its operation reliant on the power of the police, and its use to some extent influenced by the exercise of police discretion.

It is clear that, at least in the UK, police discretion plays a role in determining whether and when EAWs will be issued or executed. The governance of police discretion varies from state to state and the role of police discretion in issuing and executing EAWs is likely to vary along with it. In the UK the scope for police discretion is defined by the law, but the operation of that discretion is not dominated by it (Grimshaw and Jefferson 1987, pp15-22; Bowling and Marks 2017, p68). Other considerations including resource constraints and a range of broadly conceived risks play a role in explaining police practice. The absence of clear national guidance for officers issuing EAWs and a lack of knowledge amongst police officers of the transnational tools available to them mean that EAW use is unevenly distributed and unpredictable. The role of prosecutorial discretion, which is vested in local prosecutors, also plays a role in determining when an EAW will be requested. It is not clear precisely what role police, prosecutor and judicial discretion plays in regulating EAW use in other states. However, the issue of disproportionate use in countries

where police and prosecutors are bound by the legality principle suggests that understanding the scope and operation of this discretion across member states could shed light on the uneven use of the EAW within and between states. Exploring the discretionary decision-making processes may also produce a better understanding of the domestic processes that lead to the occurrence of misuse and abuse of the system. This is important because mutual recognition means that executing states have limited capacity to restrain the law enforcement reach of issuing states.

By removing significant barriers to execution and doing away with any substantive review of the case for extradition the EAW “shifts the burden of compliance with the EAW Framework Decision onto the issuing state, by converting the process of judicial scrutiny in the executing state into a bureaucratic, rather than a adjudicative procedure” (Warren and Palmer 2015:339). Viewing the role of judges during the issue of EAWs as primarily concerned with the authorisation of the use of force in pursuit of a policing goal raises the question of whether there is a sufficient adjudicative review at either end of the process? The protection of the rights of the subject is deferred to the substantive criminal trial, either prior to issue, or post-surrender. At this stage, however, extradition itself is not under review as the procedure is concerned only with criminal liability.

The absence of a proportionality test in the FWD at the issuing stage compounds this problem and some commentators suggest that the European Commission should revisit the FWD with a view to introducing a substantive proportionality check (Marin 2014:339). Attempts have been made in Poland to introduce considerations of proportionality at the issuing stage to some effect (Ostropolski 2014). But legal cultures are formed of “deeply rooted, historically conditioned attitudes about the nature of law” and its proper application (Warren and Palmer 2015:296). Introducing a proportionality principle into a small part of a system steeped in the principle of legality, therefore, faces significant hurdles. An alternative is for executing states to undertake a proportionality review (Xanthopoulou 2015:52). This is what has happened in the UK, but the review is limited to accusation warrants and sits at odds with the principle of mutual recognition, as it requires judges to make an assessment

of what is proportionate from the perspective of another nation state. As discussed above, this process also undermines mutual trust.

Some progress has been made in relation to rights protection, the Commission is introducing piecemeal reform of due process rights at the investigation stage (Blackstock et al. 2014; Thunberg Schunke 2013) and the CJEU has recently issued a judgement that puts some power to review rights arguments in the hands of the executing state (Xanthopoulou 2018). But explicitly acknowledging the role of the police in the system raises new questions about rights protection which are not clearly articulated in the existing literature that focuses largely on due process rights (Blackstock et al. 2014; Hodgson 2019; Mansell 2012; Thunberg Schunke 2013), pre-trial detention (Marin 2014; Mitsilegas 2015) and post-surrender prisons conditions (Christou and Weis 2010; Heard and Mansell 2011; Xanthopoulou 2018). The transnational police cooperation involved in locating and arresting EAW subjects is largely concerned with sharing intelligence across borders. Just as police discretion is regulated differently across member states, so too are the investigative and surveillance capabilities of police forces. Several interviewees mentioned obtaining intelligence from counterparts that UK police forces would not be able to access under domestic investigatory powers regulations. This raises a question related to the right to privacy of an EAW subject, their family or associates because it hints at the possibility that police are able to gain intelligence from counterparts operating under less restrictive regimes that effectively subvert the legal protections in their own state. This question is not addressed in studies of the EAW, but it is a question that the transnational policing literature raises (Bowling and Sheptycki 2015c). It is linked to the problem of legitimacy that so plagues the EAW (Sievers and Schmidt 2015) and transnational policing more generally (Bowling and Sheptycki 2015d). Should a subject's privacy rights be protected under the legal regime of the issuing state or the executing state? Or is it legitimate, on pragmatic grounds perhaps, or in pursuit of security and crime control, for police forces cooperating across borders to utilise any available intelligence regardless of the way in which it was obtained?

Far from resolving the issues of diversity in fundamental rights protection and proportionality, the EAW compounds the problems. Once it is viewed as a transnational policing tool, it becomes clear that there are additional rights concerns, adding weight to the doubts that mutual recognition provides a suitable level of impartial review of the case for extradition at the issuing or executing stage. By reducing extradition to a quasi-automatic procedure, criminal justice professionals are freed to act in the interests of law enforcement out of the political spotlight without making the substantive evidential case extradition. Although interviewees felt that disproportionate and improper use was falling these issues are yet to be fully resolved and the question of whether the EAW scheme provides sufficient accountability for issuing states remains (Marin 2014). There is a dearth of information on the results of domestic trials and sentences served by EAW subjects once they are surrendered. Some police officers reported EAW subjects returning to the UK within weeks of being surrendered and reports of improper use and post-surrender release to the executing state do exist (Fair Trials International 2010; Marin 2014). A systematic review of the fates of EAW subjects by the European Commission or other oversight body would provide much needed evidence of the scale of these problems and help to identify any systemic abuse for which individual states should be held accountable.

The question of accountability is even more vexed when the police role in the system is made explicit. Policing is largely invisible in the extant academic literature on the EAW and the police role is barely acknowledged in law; yet, as this thesis has shown, police are heavily involved in, and essential to, the operation of the EAW. Cross-border police activity typically takes place in low-visibility environments that rely on informal arrangements for cooperation. However, as discussed above, the bulk of cooperation in relation to executing EAWs bucks this trend, taking place via formal channels supported by formal and informal networks, which thicken police relations and create informal trust-based obligations.

The SIRENE Network creates a formal network of domestic policing bureaux that administer the domestic copies of SIS II. The use of SIS II is highly formalised in

accordance with the SIRENE manual and access is limited to the role of the law enforcement agent accessing it at any given time. National SIRENE bureaux are subject to 5 yearly peer-reviews led by the DG Home at the European Commission alongside members of other national bureaux. But these evaluations are largely concerned with the meso-level implementation of SIS II and technical compliance with the SIRENE regulations, rather than a review of the micro-level conduct of specific investigations. Officers in the national bureaux are accountable to each other when things go wrong and see themselves as having a diplomatic role in responding to problems which impact upon mutual trust, but informal peer-to-peer accountability does little to address transparency concerns.

At the other end of the scale, police are able to cooperate directly and more or less informally through the EN-FAST network. This person-to-person direct contact takes place largely outside of the formal channels but is followed up with formal requests when needed. Here officers are only accountable to each other. They are keen to provide a good service and not to abuse the system, which is important in maintaining mutual trust in a relationship. But given their shared membership of a law enforcement community bound by shared occupational goals it is doubtful whether this places significant restriction on their activities. Of course police officers are bound by their domestic legal frameworks when conducting work for EN-FAST contacts, but the potential for cross-border work to subvert national legal regimes is obvious and the over-reliance on domestic accountability mechanisms (Walker 2008:141) leaves significant aspects of cross-border cooperation under scrutinised.

The role that police discretion plays in the system also raise issues of accountability. As already discussed, the role of discretion of different criminal justice actors varies from state to state and this thesis only explores the discretionary decisions of police officers in the UK. But this does expose the scope for discretionary decision-making, whether undertaken by police, prosecutors or judges, to shape national practice especially at the issuing stage. The EAW applies a unified framework across legal systems with diverse arrangements for the operation of discretion across their criminal justice systems. The framework leaves significant scope for discretionary

decision-making and provides very little in the way of guidance for its operation. In the UK police discretion operates within the confines of the law, but there are many factors which influence police decisions and no codified guidance. Understanding this is important when considering the adequacy of accountability mechanisms that seek not only to subject police practice to scrutiny but also to increase the legitimacy of the scheme.

The most important facet of the argument that the EAW can be viewed as a transnational policing tool is the contention that what is being mutually recognised is the power to police through the use of intrusive and coercive force. This is clear at the executing stage where police locate and arrest a subject. It is even more so during the physical surrender of a subject across an international border. In the UK, police powers to execute EAWs are regulated by the EA 2003 and its code of practice. Officers must follow specific procedures and produce the subject to court in a timely manner, engaging the judicial process providing a forum for the subject to assert their rights and apply for bail. During the surrender phase police powers are less clearly regulated. They are governed by a range of domestic and international laws which provide a seamless power to detain a subject as soon as they leave the executing state. In many cases though police officers take physical custody of a subject at a port, airport or border before they enter a space where legally vested powers are available. Here police rely on the background threat of the use of force and on soft power techniques to secure compliance of the subject. This is far from ideal and a failure of the EU legal framework to regulate police powers when enforcing EAWs is both an accountability issue should something go wrong and a source of anxiety for police officers who are often unsure of their legal standing. Although no interviewees reported experiencing difficulties stemming from this ambiguity, many were concerned about the potential for problems. This could be easily resolved with EU legislation granting police specific powers to detain and restrain subjects during surrender operations together with legal clarity about the limits of those powers.

One route to addressing the accountability deficit in transnational policing generally is for supranational bodies like the EU to take the lead in increasing transparency and accountability for the police cooperation that is facilitated by their security initiatives. McDaniel's (2015) PhD thesis, which examines accountability in European police cooperation, reaches this conclusion, suggesting that the EU "oversee the establishment and enhancement of parliamentary committees, inspectorates and other oversight bodies". As suggested above further oversight from the EU of the outcome of EAW cases post-surrender could provide data for a thorough assessment of the scale of the proportionality and misuse problem. This is exactly the kind of scrutiny an oversight body could undertake. Engagement between an oversight body and national or European parliamentary committees would go some way to addressing the legitimacy problems identified.

Viewing the EAW from the perspective of the police role in the system adds weight to concerns that the free movement of law enforcement power is insufficiently accountable. Police are subject to their own domestic legal regimes, but these provide little oversight of cross-border activities. Police are also accountable to each other, those in transnational roles acknowledge their diplomatic position and are cognisant of the reputational risks involved in misusing or abusing cooperation mechanisms. They value the trust-based relationships they have with counterparts and the need to nurture mutual trust acts as an informal restraint. But these forces also pull in the other direction, police face reputational risks if they fail to cooperate or provide a good service and a refusal to execute a request or provide available information can negatively impact mutual trust. This research does not provide any detailed assessment of the weight of either of these considerations but reliance on informal police-to-police accountability does nothing to address the low-visibility of cross-border police activity or increase its legitimacy.

Whether or not the extension of the sovereign power to enforce the law beyond the boundaries of the nation state is legitimate is a normative question which this thesis does not fully address. In order for any policing activity to be legitimate it must be legal, transparent and accountable (Bowling et al. 2019:229). Notwithstanding some

cases of misuse, the vast majority of EAW use is within the legal limits of the FWD, even the widely criticised disproportionate use for minor and historical crimes meets the legal threshold set by the law. At the outset a question was raised over whether the EAW gives police the opportunity to jurisdiction shop (Bowling and Sheptycki 2012:19). This was not directly investigated during this research as there were few cases discussed with interviewees that flowed directly from cross-border investigations. But minimal data collected relating to JITs made it clear that the EAW could facilitate prosecution in the most appropriate forum. There is a Eurojust code which guides the decision on which jurisdiction should prosecute and the decision is taken by prosecutors rather than police, but it is evident that the possibility for jurisdiction shopping exists. Without more effective oversight of the role of police, and of prosecutors and judges at the investigation stage, it remains unknown whether this is an issue in practice.

There are obvious transparency issues given the lack of reliable data available at a European level and the different methods and types of data collected and published by member states (Carrera et al. 2013). The involvement of judges in the process is the only accountability mechanism built into the system and there are concerns that the quasi-automatic process means that this review is inadequate (Mitsilegas 2006:1281–82; Warren and Palmer 2015:339).

The academic literature on the EAW laments a general lack of effective protection for subjects (e.g. Marin 2014) and questions the democratic legitimacy of extending the reach of a state's domestic criminal law into the territory of other states (e.g. Sievers and Schmidt 2015). The social or democratic legitimacy of cross-border police activity appears to be even more hollow. The development of EU tools facilitating transnational law enforcement cooperation has not been accompanied by the establishment of accountability and oversight mechanisms at the supranational level (McDaniel 2015, 2018). There is an over-reliance on domestic mechanisms for accountability which provide very little oversight of cross-border activity and are ill suited to examining the practices of other states (Walker 2008:141).

There is also a “palpable absence of public interest in the EU cross-border policing project” (McDaniel 2018:202) which makes the development of accountability and governance mechanisms at the supranational level all the more important, especially given the impact that the EAW has on individual freedom. The question of whether the EAWs reconfiguration of the sovereign power to police can be legitimate in the absence of such mechanisms has been answered resoundingly in the negative by some scholars (Alegre and Leaf 2004).

The questions of accountability and legitimacy need to be revisited in detail in light of the police role in the EAW system. This is especially so because mutual recognition is expanding to other areas of criminal law cooperation such as criminal evidence exchange. These developments must be matched by legal and democratic accountability mechanisms and greater transparency at a supranational level.

8.9 Concluding thoughts: the EAW after Brexit

Much of the forgoing may, of course, have little relevance to the UK in the long run. In voting for the UK to leave the Union the British public appear to have rejected the legitimacy of the EU’s supranational power in the most general sense. However, understanding the role of the police is key to debates about how the EAW will be replaced. In 2016 interviewees, especially police, were confident that little would change in the security relationship between the UK and the EU. The idea that such vital cooperation mechanisms would be abandoned or jettisoned in favour of something less effective or efficient seemed unthinkable. Some were of the view that the UK would negotiate an EAW 2.0, although whether this could be achieved without oversight of EU legislative and judicial institutions was in much doubt. Prosecutors and others with legal qualifications were much less optimistic and voiced concerns related to the loss of the EAW and the infrastructure that supports its use.

The pessimistic view appears to have been borne out in the negotiations so far. The UK looks set to leave the EAW and lose access to SIS II in the near future. This raises a very real question about how many criminals the UK will continue to pursue abroad

and how many will be pursued into the UK. Under a more expensive and less efficient system there is no doubt that the UK will still seek to extradite murderers and rapists, but will mid-level offenders still be pursued? Or will these cases fall short of the severity assessment necessary to justify the expenditure? Furthermore, without access to SIS II, extradition requests or EAW 2.0 warrants, if such a thing ever came into existence, would have to be directed at specific countries, meaning that finding someone thought to be in Greece on a tram in Portugal becomes almost impossible.

Although the outlook for UK criminal justice cooperation with the EU looks bleak, acknowledging the EAW as a policing tool remains relevant throughout the Union as member states and European institutions work to address the problems that the EAW faces. Whether the UK replaces the EAW with another quasi-automatic system of surrender or reverts to extraditing subjects under the 1957 European Convention on Extradition the police role in initiating requests and surrendering subjects is likely to continue in a similar fashion.

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Annexes

Annexe 1: Fieldwork data tables - interviews and fieldnotes

Identification			Attributes for comparison					Interview information				Included in analysis
Transcript number	Interviewee number	Identification in thesis	Jurisdiction	Type of actor	Organisation type	Direct Extradition Experience	Regular International Exposure	Regional force area	Interview date	Interview format	Organisation	
1	1.1	Lancashire Constabulary	UK	Police	Local Police Force	Yes	No	North West	18/03/2016	Individual Formal Interview	Lancashire Constabulary	Yes
2	2.1	Lancashire Constabulary	UK	Police	Local Police Force	Yes	No	North West	18/03/2016	Group Formal Interview	Lancashire Constabulary	Yes
2	2.2	Lancashire Constabulary	UK	Police	Local Police Force	Yes	No	North West	18/03/2016	Group Formal Interview	Lancashire Constabulary	Yes
2	2.3	Lancashire Constabulary	UK	Police	Local Police Force	Yes	No	North West	18/03/2016	Group Formal Interview	Lancashire Constabulary	Yes
3	3.1	Prosecutor Crown Office Scotland	UK	Prosecution	Prosecutors Office	Yes	Yes	Scotland	24/08/2016	Individual Formal Interview	Crown Office Scotland	Yes
4	4.1	Police Scotland	UK	Police	Local Police Force	Yes	Yes	Scotland	26/08/2016	Group Formal Interview	Police Scotland	Yes
4	4.2	Police Scotland	UK	Police	Local Police Force	Yes	Yes	Scotland	26/08/2016	Group Formal Interview	Police Scotland	Yes
5	5.1	Police Scotland	UK	Police	Local Police Force	Yes	Yes	Scotland	26/08/2016	Individual Formal Interview	Police Scotland	Yes
6	6.1	-	-	Other	Independent actor	-	-	-	02/09/2016	Individual Formal Interview	Independent Translator	No
7	7.1	European Commission DG Home	EU	Other	European Commission	No	Yes	EU	08/09/2016	Group Formal Interview	European Commission	Yes
7	7.2	European Commission DG Home	EU	Other	European Commission	No	Yes	EU	08/09/2016	Group Formal Interview	European Commission	Yes
8	8.1	Europol UK Desk	EU	Police	Europol	No	Yes	EU	12/09/2016	Group Formal Interview	Europol	Not quoted
8	8.2	Europol UK Desk	EU	Police	Europol	Yes	Yes	EU	12/09/2016	Group Formal Interview	Europol	Not quoted
9	9.1	Eurojust	EU	Prosecution	Eurojust	No	Yes	EU	14/09/2016	Individual Formal Interview	Eurojust	Yes
10	10.1	European Judicial Network	EU	Other	European Commission	No	Yes	EU	15/09/2016	Group Formal Interview	European Judicial Network	Not quoted
10	10.2	European Judicial Network	EU	Other	European Commission	No	Yes	EU	15/09/2016	Group Formal Interview	European Judicial Network	Not quoted
11	11.1	Europol UK Desk	EU	Police	Europol	No	Yes	EU	16/09/2016	Individual Formal Interview	Europol	Not quoted
12	12.1	Kent Police	UK	Police	Local Police Force	Yes	Yes	South East	19/09/2016	Individual Formal Interview	Kent Police	Yes
13	13.1	West Yorkshire Police	UK	Police	Local Police Force	Yes	Yes	Yorkshire and the Humber	22/09/2016	Group Formal Interview	West Yorkshire Police	Yes
13	13.2	West Yorkshire Police	UK	Police	Local Police Force	Yes	Yes	Yorkshire and the Humber	22/09/2016	Group Formal Interview	West Yorkshire Police	Yes
13	13.3	West Yorkshire Police	UK	Police	Local Police Force	Yes	Yes	Yorkshire and the Humber	22/09/2016	Group Formal Interview	West Yorkshire Police	Yes
14	14.1	West Yorkshire Police	UK	Police	Local Police Force	Yes	Yes	Yorkshire and the Humber	22/09/2016	Individual Formal Interview	West Yorkshire Police	Yes
15	15.1	NCA Operational Team	UK	Police	National Police Force	Yes	No	National UK	27/09/2016	Individual Formal Interview	NCA	Yes
16	16.1	Liaison Magistrate	Spain	Judicial	Embassy	Yes	Yes	Spain	30/09/2016	Individual Formal Interview	Spanish Embassy	Yes
17	17.1	NCA Legal Team	UK	Prosecution	National Police Force	Yes	Yes	National UK	14/10/2016	Group Formal Interview	NCA	Yes
17	17.2	NCA Legal Team	UK	Prosecution	National Police Force	Yes	Yes	National UK	14/10/2016	Group Formal Interview	NCA	Yes
18	18.1	Policia Nacional	Spain	Police	National Police Force	Yes	Yes	Spain	18/10/2016	Individual Formal Interview	Policia Nacional	Yes
19	19.1	Liaison Magistrate	UK	Prosecution	Embassy	Yes	Yes	National UK	21/10/2016	Individual Formal Interview	UK Liaison Magistrate	Yes
20	20.1	Lincolnshire Police	UK	Police	Local Police Force	Yes	Yes	East Midlands	31/10/2016	Individual Formal Interview	Lincolnshire Police	Yes
21	21.1	Sussex Police	UK	Police	Local Police Force	Yes	Yes	South East	03/11/2016	Not taped formal interview	Sussex Police	Yes
21	21.2	Sussex Police	UK	Police	Local Police Force	Yes	Yes	South East	03/11/2016	Not taped formal interview	Sussex Police	Yes
22	22.1	Airline Security	-	Private	Airline	-	-	-	07/11/2016	Individual Formal Interview	-	Yes
23	23.1	Airline Security	-	Private	Airline	-	-	-	07/11/2016	Not taped formal interview	-	Not quoted
23	23.2	Airline Security	-	Private	Airline	-	-	-	01/11/2016	Not taped formal interview	-	Not quoted
24	24.1	SIRENE Bureau Spain	Spain	Police	SIRENE or Interpol Bureau	Yes	Yes	Spain	20/10/2016	Not taped formal interview	Policia Nacional	Not quoted
24	24.2	SIRENE Bureau Spain	Spain	Police	SIRENE or Interpol Bureau	Yes	Yes	Spain	20/10/2016	Not taped formal interview	Policia Nacional	Not quoted
25	25.1	SIRENE Bureau Spain	Spain	Police	SIRENE or Interpol Bureau	Yes	Yes	Spain	20/10/2016	Not taped formal interview	Policia Nacional	Not quoted
25	25.2	SIRENE Bureau Spain	Spain	Police	SIRENE or Interpol Bureau	Yes	Yes	Spain	20/10/2016	Not taped formal interview	Policia Nacional	Not quoted
26	26.1	Prosecutor Spain	Spain	Prosecution	Prosecutors Office	Yes	Yes	Spain	17/10/2016	Not taped formal interview	National Court	Not quoted
26	26.2	Prosecutor Spain	Spain	Prosecution	Prosecutors Office	Yes	Yes	Spain	17/10/2016	Not taped formal interview	National Court	Not quoted
26	26.3	Prosecutor Spain	Spain	Prosecution	Prosecutors Office	Yes	Yes	Spain	17/10/2016	Not taped formal interview	National Court	Not quoted
27	27.1	-	EU	Police	Europol	No	Yes	EU	16/09/2016	Not taped formal interview	Europol	No
28	28.1	Airline Security	-	Private	Airline	-	-	-	10/11/2016	Individual Formal Interview	-	Not quoted
29	29.1	Northumbria Police	UK	Police	Local Police Force	Yes	Yes	North East	15/11/2016	Individual Formal Interview	Northumbria Police	Yes
30	30.1	SIRENE Bureau Poland	Poland	Police	SIRENE or Interpol Bureau	Yes	Yes	Poland	05/12/2016	Not taped formal interview	Polish National Police	Yes
30	30.2	SIRENE Bureau Poland	Poland	Police	SIRENE or Interpol Bureau	Yes	Yes	Poland	05/12/2016	Not taped formal interview	Polish National Police	Yes
31	31.1	SIRENE Bureau Poland	Poland	Police	SIRENE or Interpol Bureau	Yes	Yes	Poland	05/12/2016	Not taped formal interview	Polish National Police	Yes
32	32.1	Judge Poland	Poland	Judicial	Court	Yes	Yes	Poland	06/12/2016	Not taped formal interview	Regional Court	Not quoted

Identification			Attributes for comparison					Interview information				
Transcript number	Interviewee number	Identification in thesis	Jurisdiction	Type of actor	Organisation type	Direct Extradition Experience	Regular International Exposure	Regional force area	Interview date	Interview format	Organisation	Included in analysis
33	33.1	SIRENE Bureau Poland	Poland	Police	SIRENE or Interpol Bureau	Yes	Yes	Poland	06/12/2016	Not taped formal interview	Polish National Police	Yes
34	34.1	Polish National Police	Poland	Police	National Police Force	Yes	Yes	Poland	07/12/2016	Not taped formal interview	Polish National Police	Not quoted
35	35.1	-	Poland	Judicial	Central Authority (non-police)	Yes	Yes	Poland	07/12/2016	Not taped formal interview	Ministry of Justice	No
36	36.1	Polish National Police	Poland	Police	National Police Force	No	No	Poland	07/12/2016	Not taped formal interview	Polish National Police	Yes
37	37.1	Polish National Police	Poland	Police	National Police Force	No	No	Poland	07/12/2016	Not taped formal interview	Polish National Police	Yes
38	38.1	Prosecutor Poland	Poland	Prosecution	Prosecutors Office	Yes	Yes	Poland	09/12/2016	Not taped formal interview	Circuit Prosecutors Office	Not quoted
38	38.2	Prosecutor Poland	Poland	Prosecution	Prosecutors Office	Yes	Yes	Poland	09/12/2016	Not taped formal interview	National Prosecutors Office	Not quoted
39	39.1	Polish National Police	Poland	Police	National Police Force	Yes	Yes	Poland	09/12/2016	Not taped formal interview	Polish National Police	Not quoted
40	40.1	Avon & Somerset Constabulary	UK	Police	Local Police Force	Yes	No	South West	19/12/2016	Individual Formal Interview	Avon & Somerset Constabulary	Yes
41	41.1	MPS Extradition Unit	UK	Police	Local Police Force	Yes	Yes	London MET	11/01/2017	Individual Formal Interview	Metropolitan Police	Yes
42	42.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	20/01/2017	Group Formal Interview	NCA	Yes
42	42.2	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	20/01/2017	Group Formal Interview	NCA	Yes
43	43.1	Prosecutor DPP Ireland	Ireland	Prosecution	Prosecutors Office	Yes	Yes	Ireland	20/01/2017	Individual Formal Interview	DPP Ireland	Not quoted
44	44.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	23/01/2017	Individual Formal Interview	NCA	Yes
45	45.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	23/01/2017	Individual Formal Interview	NCA	Yes
46	46.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	23/01/2017	Individual Formal Interview	NCA	Yes
47	47.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	24/01/2017	Individual Formal Interview	NCA	Yes
48	48.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	24/01/2017	Individual Formal Interview	NCA	Yes
49	49.1	SIRENE Bureau UK	UK	Police	SIRENE or Interpol Bureau	Yes	Yes	National UK	24/01/2017	Individual Formal Interview	NCA	Yes
50	50.1	An Garda Síochána	Ireland	Police	National Police Force	Yes	Yes	Ireland	07/02/2017	Group Formal Interview	Garda	Yes
50	50.2	An Garda Síochána	Ireland	Police	National Police Force	Yes	Yes	Ireland	07/02/2017	Group Formal Interview	Garda	Yes
51	51.1	Interpol Ireland	Ireland	Police	SIRENE or Interpol Bureau	Yes	Yes	Ireland	08/02/2017	Group Formal Interview	Garda	Yes
51	51.2	Interpol Ireland	Ireland	Police	SIRENE or Interpol Bureau	Yes	Yes	Ireland	08/02/2017	Group Formal Interview	Garda	Yes
51	51.3	Interpol Ireland	Ireland	Police	SIRENE or Interpol Bureau	Yes	Yes	Ireland	08/02/2017	Group Formal Interview	Garda	Yes
52	52.1	Central Authority Ireland	Ireland	Other	Central Authority (non-police)	Yes	Yes	Ireland	10/02/2017	Group Formal Interview	Department of Justice	Yes
52	52.2	Central Authority Ireland	Ireland	Other	Central Authority (non-police)	Yes	Yes	Ireland	10/02/2017	Group Formal Interview	Department of Justice	Yes
52	52.3	Central Authority Ireland	Ireland	Other	Central Authority (non-police)	Yes	Yes	Ireland	10/02/2017	Group Formal Interview	Department of Justice	Yes
52	52.4	Central Authority Ireland	Ireland	Other	Central Authority (non-police)	Yes	Yes	Ireland	10/02/2017	Group Formal Interview	Department of Justice	Yes
53	53.1	Prosecutor CSONI	UK	Prosecution	Prosecutors Office	Yes	Yes	Northern Ireland	13/02/2017	Individual Formal Interview	Crown Solicitors NI	Yes
54	54.1	Prosecutor PPSNI	UK	Prosecution	Prosecutors Office	Yes	Yes	Northern Ireland	13/02/2017	Group Formal Interview	PPSNI	Yes
54	54.2	Prosecutor PPSNI	UK	Prosecution	Prosecutors Office	Yes	Yes	Northern Ireland	13/02/2017	Group Formal Interview	PPSNI	Yes
55	55.1	PSNI	UK	Police	Local Police Force	Yes	Yes	Northern Ireland	14/02/2017	Group Formal Interview	PSNI	Yes
55	55.2	PSNI	UK	Police	Local Police Force	Yes	Yes	Northern Ireland	14/02/2017	Group Formal Interview	PSNI	Yes
56	56.1	PSNI	UK	Police	Local Police Force	Yes	Yes	Northern Ireland	14/02/2017	Group Formal Interview	PSNI	Yes
56	56.2	PSNI	UK	Police	Local Police Force	Yes	Yes	Northern Ireland	14/02/2017	Group Formal Interview	PSNI	Yes
57	57.1	Prosecutor CPS	UK	Prosecution	Prosecutors Office	Yes	Yes	National UK	23/02/2017	Individual Formal Interview	CPS	Yes
58	58.1	Prosecutor CPS	UK	Prosecution	Prosecutors Office	Yes	Yes	National UK	23/02/2017	Individual Formal Interview	CPS	Yes
59	59.1	MPS SOAP	UK	Police	Local Police Force	Yes	Yes	London MET	09/03/2017	Individual Formal Interview	Metropolitan Police	Yes
60	60.1	Polish National Police	Poland	Police	National Police Force	Yes	Yes	Poland	10/03/2017	Individual Formal Interview	Polish National Police	Yes
61	61.1	MPS Extradition Unit	UK	Police	Local Police Force	Yes	Yes	London MET	14/03/2017	Group Formal Interview	Metropolitan Police	Yes
61	61.2	MPS Extradition Unit	UK	Police	Local Police Force	Yes	Yes	London MET	14/03/2017	Group Formal Interview	Metropolitan Police	Yes
62	62.1	MPS Kidnap Unit	UK	Police	Local Police Force	Yes	Yes	London MET	20/03/2017	Group Formal Interview	Metropolitan Police	Yes
62	62.2	MPS Kidnap Unit	UK	Police	Local Police Force	Yes	Yes	London MET	20/03/2017	Group Formal Interview	Metropolitan Police	Yes
63	63.1	MPS SOAP	UK	Police	Local Police Force	No	No	London MET	13/06/2017	Not taped formal interview	Metropolitan Police	Not quoted

Field note number	Title	Date conducted	File classificaiton	Organisation type	Jurisdiction code
1	Notes from infromal SIRENE Bureau visit	11/12/2015	Informal meeting note	SIRENE or Interpol Bureau	UK
2	Notes from informal prosecutor meeting	12/01/2016	Informal meeting note	Prosecutors Office	UK
3	Notes from informal SIRENE Bureau meeting	02/02/2016	Informal meeting note	SIRENE or Interpol Bureau	UK
4	Observations with local police force	21/09/2016	Field note	Local Police Force	UK
5	Polish flight observations October 2016	26/10/2016	Field note	SIRENE or Interpol Bureau	UK
6	Field note linked to Transcript 20	31/10/2016	Field note	Local Police Force	UK
7	Polish flight observations January 2017	12/01/2017	Field note	SIRENE or Interpol Bureau	UK
8	NCA observations day 1 and 2	16/01/2017	Field note	SIRENE or Interpol Bureau	UK
9	NCA observation day 3	17/01/2017	Field note	SIRENE or Interpol Bureau	UK
10	NCA observation day 4	18/01/2017	Field note	SIRENE or Interpol Bureau	UK
11	Heathrow Extradition Observation	09/03/2017	Field note	Local Police Force	UK

Annexe 2: Table of relevant SIRENE alerts and forms

Alert	Purpose
Article 26 Alert	This alert category covers persons for whom a European Arrest Warrant or Extradition Request (Associated Countries) has been issued
Article 34 Alert	The purpose of this alert category is to find out the place of residence or domicile of persons sought to assist with criminal judicial procedures (for example witnesses).
Article 36 Alert	The purpose of this alert is to obtain information on persons or related objects for the purposes of prosecuting criminal offences and for the prevention of threats to public or national security.
Form	Purpose
A	Supplementary information to be supplied with an Article 26 alert
E	Used to indicate incompatible double alert
F	To request a flag on an alert
G	Hot on an alert
H	Unable to carry out the action requested with the alert
I	Original object of alert is altered
J	Data that is legally or factually incorrect
K	Exercising the right to access or rectify data (Subject Access Request)
L	Additional information related to individuals
M	Miscellaneous information - used to communicate anything not covered by another form
P	Further information request following a vehicle recovery
Q	Misused identity

THE EUROPEAN ARREST WARRANT AS A TRANSNATIONAL POLICING TOOL

KEY Questions and Guidance for Semi-Structured Interviews

Note for the interviewer:

- You must obtain consent from the interviewee, either via a signed consent form or recorded on the interview tape.
- You must offer the interviewee a copy of the research proposal and the information sheet.
- *This schedule is intended to provide a guide to interviews and need not be followed rigidly. The style of interview should be conversational. You should follow up information provided by the interviewee with prompts to collect more information about the examples that they describe. Not all of the questions will be relevant to all interviewees, and, vice versa, there will be questions not set out here that seem appropriate to ask some interviewees.*
- *The embedded case study design allows flexibility to explore both the ‘general case’ of police practice as well as ‘specific cases’ of police co-operation based on the examples provided by the interviews.*
- *You should be flexible and as unstructured as necessary to generate as rich data on specific examples of cooperation. Ideally, interviews should be tape recorded, though sometimes they will need to be informal and sometimes conducted ‘off the record’.*

Introduction for the interviewee

The working title of this research is “*The European Arrest Warrant as a Transnational Policing Tool*”. The project primarily aims to explore and describe the police role in the operation of the European Arrest Warrant System.

I am particularly interested in police cooperation, both within the UK and across borders. I am interested in how officers communicate and cooperation with each other, when they utilise formal channels or methods and when they use informal methods.

I am also interested in understanding the context in which police practice has developed; this includes things like cooperation between non-policing bodies and the police, the legal framework for the EAW, and policies or attitudes whether European, national or local which effect local policing practice.

Questions

1. Please could you introduce yourself and explain your day-to-day role? In particular what is your role in dealing with EAWs within your organisation?
2. What is your organisation's or team's role in the EAW system? Roughly how many EAWs does your organisation process?
3. How long has the UK been a member of SIS? How long has the SIRENE Bureau been operating?
4. Does your organisation have an explicit policy regarding EAWs?
 - a. Could you tell me about it?
 - b. Can you say something about why not?
 - c. Is there a particular recruitment policy? A certain kind of officer suited to international liaison/extradition work?

Process questions

5. How do you (officers) come into contact with incoming EAWs?
6. What does the procedure for Part 1 EAWs involve from the perspective of your organisation?
7. How do you decide to certify a warrant?
 - a. In what circumstances will you refuse to certify a warrant?
8. What other UK law enforcement agencies do you cooperate with when dealing with incoming warrants?
 - a. Could you tell me about your experience of working with them?
9. How do you (officers) come into contact with outgoing EAWs?
10. How do you or your organisation decide to request an EAW? In what circumstances will an EAW be requested? Are there classic cases?
11. What is the procedure for requesting EAWs? Which other UK law enforcement agencies are involved in this process?
12. How do you locate suspects who have fled the country?
13. What other UK agencies are involved in this process?

Questions on cross-border cooperation – Particularly interested in cooperation with Spain, Ireland and Poland

14. Do you ever find yourself in contact with police agencies in other countries in relation to incoming EAWs?
 - a. Which agencies?

- b. From which countries?
 - c. Could you tell me about your experience of working with them?
- 15. Is this communication or cooperation formal or informal? e.g. through SIRENE, JIT's etc. Or direct officer to officer?
 - a. How do you decide which channels you will use?
- 16. Do you ever find yourself in contact with police agencies in other countries in relation to outgoing EAWs? When investigating cases or locating suspects? Can you tell me about your experiences of this?
- 17. What channels of communication or cooperation do you use during this process?
 - a. How do you decide which channels you will use?
- 18. Are some partners better than others? Are there channels of communication you prefer to use? Examples as to why?
- 19. Is there a certain type of officer you come into contact with during the EAW process? How do you build networks? Is this formal or informal?

Big impact questions

- 20. Has the recent introduction of SIS II in the UK had an impact on the way you deal with EAWs related to the UK? On the volume? On the way you come into contact with cases? Better or worse from your point of view?
- 21. What do you see as the benefits of the EAW?
- 22. Are there major drawbacks? Where is it not working?

Final questions

- 23. Is there anything you feel I ought to have asked you which we have not discussed?
- 24. Is there anyone else you think I should speak to as part of this project? Would you be prepared to put me in touch?

Interview protocol UK police officers: version 2 – 21/08/16

Questions

- 1. What is your day-to-day role? In particular what is your role in dealing with EAWs within your organisation?
- 2. What is your organisation's or team's role in the EAW system? Roughly how many EAWs does your organisation process?
- 3. Does your organisation have an explicit policy regarding EAWs?
 - a. Could you tell me about it?
 - b. Can you say something about why not?

- c. Is there a particular recruitment policy? A certain kind of officer suited to international liaison/extradition work?

Process questions

4. How do you (officers) come into contact with incoming (Part 1) EAWs?
5. What does the procedure for Part 1 EAWs involve from the perspective of your organisation? How much reference do you make to the Extradition Act 2003 during this process?
6. What other UK agencies do you cooperate with during the Part 1 process?
 - a. Could you tell me about your experience of working with them?
7. How do you (officers) come into contact with Part 3 (outgoing) EAWs?
8. How do you or your organisation decide to request an EAW? In what circumstances will an EAW be requested? Are there classic cases?
9. What is the procedure for requesting Part 3 EAWs? How much reference do you make to the Extradition Act 2003?
10. How do you locate suspects who have fled the country?
11. What other UK agencies are involved in this process?

Questions on cross-border cooperation – Particularly interested in Spain, Poland, Ireland

12. Do you ever find yourself in contact with police agencies in other countries in relation to Part 1 EAWs?
 - a. Which agencies?
 - b. From which countries?
 - c. Could you tell me about your experience of working with them?
13. Is this communication or cooperation formal or informal? e.g. through SIRENE, JIT's etc. Or direct officer to officer?
 - a. How do you decide which channels you will use?
14. Do you ever find yourself in contact with police agencies in other countries in relation to Part 3 EAWs? When investigating cases or locating suspects? Can you tell me about your experiences of this?
15. What channels of communication or cooperation do you use during this process?
 - a. How do you decide which channels you will use?
16. Are some partners better than others? Are there channels of communication you prefer to use? Examples as to why?

17. Is there a certain type of officer you come into contact with during the EAW process? How do you build networks? Is this formal or informal?

Big impact questions

18. Has the introduction of SIS II had an impact on the way you deal with EAWs? On the volume? On the way you come into contact with cases? Better or worse from your point of view?
19. Brexit clearly puts the EAW on unsure footing in the future. What is your view about this? Do you think things will change drastically in the future?
20. What do you see as the benefits of the EAW?
21. Are there major drawbacks? Where is it not working?

Final questions

22. Is there anything you feel I ought to have asked you which we have not discussed?
23. Is there anyone else you think I should speak to as part of this project? Would you be prepared to put me in touch?

Questions

1. What is your day-to-day role? In particular what is your role in dealing with EAWs within your organisation?
2. What is your organisation's or team's role in the EAW system? Roughly how many EAWs does your organisation process?
3. Does your organisation have an explicit policy regarding EAWs?
 - a. Could you tell me about it?
 - b. Can you say something about why not?

Process questions

4. How does your office come into contact with incoming (Part 1) EAWs?
5. What does the procedure for Part 1 EAWs involve from the perspective of your organisation? How much reference do you make to the Extradition Act 2003 during this process?
6. How much cooperation do you have with UK police agencies during this process?
 - a. Could you tell me about your experience of working with them?
7. How does your office come into contact with Part 3 (outgoing) EAWs?
8. How do you or your organisation decide to request an EAW? In what circumstances will an EAW be requested? Are there classis cases? How much are the police involved?
9. What is the procedure for requesting Part 3 EAWs? How much reference do you make to the Extradition Act 2003?
10. How much contact do you have with UK police agencies during this process?
 - a. Which agencies?
 - b. Could you tell me about your experience of working with them?

Questions on cross-border cooperation – Particularly interested in Spain, Poland, Ireland

11. Do you tend to cooperate with police, prosecutors or judges in other EU countries?
 - a. Spain
 - b. Poland
 - c. Ireland
12. What channels of communication or cooperation do you use during this process?
 - a. How do you decide which channels you will use?

13. Are some partners better than others? Are there channels of communication you prefer to use? Examples as to why?

Big impact questions

14. Has the introduction of SIS II had an impact on the way you deal with EAWs? On the volume? On the way you come into contact with cases? Better or worse from your point of view?
15. Brexit clearly puts the EAW on unsure footing in the future. What is your view about this? Do you think things will change drastically in the future?
16. What do you see as the benefits of the EAW?
17. Are there major drawbacks? Where is it not working?

Final questions

18. Is there anything you feel I ought to have asked you which we have not discussed?
19. Is there anyone else you think I should speak to as part of this project? Would you be prepared to put me in touch?

INFORMATION SHEET FOR PARTICIPANTS

REC Reference Number: LRS-15/16-2152



YOU WILL BE GIVEN A COPY OF THIS INFORMATION SHEET

The European Arrest Warrant as a Transnational Policing Tool

Invitation

I would like to invite you to participate in this research project which forms part of my PhD research. You should only participate if you want to; choosing not to take part will not disadvantage you in anyway. Before you decide whether you want to take part, it is important for you to understand why the research is being done and what your participation will involve. Please take time to read the following information carefully and discuss it with others if you wish. Ask me if there is anything that is not clear or if you would like more information.

What is the purpose of the study?

The aim of this study is to gain a better understanding of the role of policing actors in the European Arrest Warrant (EAW) system. I am particularly interested in cooperation between policing agencies, both within the UK and across borders, the forms of communications used, whether formal or informal channels are used, and why police will choose particular channels in particular circumstances.

Why have I been invited to take part?

I am inviting former or current police officers and prosecutors with experience of the EAW to take part in this research.

Do I have to take part?

Participation is entirely voluntary. You do not have to take part. You should read this information sheet and if you have any questions you should ask the researcher.

What will happen to me if I take part?

If you decide to take part you will be given this information sheet to keep and will be asked to sign a consent form. I will then discuss the interview procedure with you and arrange to interview you in a private place (for confidentiality reasons) on the premises where you work (or at a suitable venue in a local public site if you prefer).

The interview will take approximately 90 minutes and be based on the interview topic guide, but it is designed to be flexible so as to meet your needs. The interview will be recorded, subject to your permission. All recordings of data on audio-equipment will be deleted after transcription. Even if you have decided to take part, you are still free to stop your participation at any time during the interview and to have research data/information relating to you withdrawn without giving any reason up to 30th June 2017.

What are the possible benefits and risks of taking part?

It is hoped that the information gained from the study will inform a better understanding of the role that policing plays in the EAW system, this information may be used in future to inform policy development and best practice. There is the potential for participants to benefit from having an opportunity to contribute to that process. Any findings from this research can be shared with participants on request, either on or before publication. As an individual there is very little to gain from participating in this study except an opportunity to discuss your experiences and opinions and to assist with the research.

An obvious disadvantage is the time that you will give up to take part in the study. Interviews are expected to take between 1 hour and 90 minutes and I am not able to compensate you for this time. It is of course greatly appreciated.

There are potential risks to participants surrounding anonymity. Participants can choose to be partially identified in the study or to be kept anonymous. The form of words used to refer to participants will be discussed and agreed with them at the beginning of interviews or focus groups. However there may be cases where participants are identifiable by certain individuals within their organisation, if you have any concerns about this please discuss it with me at the outset of the interview.

Will my taking part be kept confidential?

What is said in the interview is regarded as strictly confidential and will be held securely until the research is finished. All data that is collected, including recordings and transcripts of interviews, will be kept confidential and stored in accordance with the requirements of the Data Protection Act 1998 in password-locked computer files and locked cabinets within King's College London. Only the researcher and the PhD supervisor will have access to this data and all personal information will be deleted when data is published at the end of the project. Your participation in the research will not be discussed with anyone else without your express permission.

All participants will be anonymous in published findings and identified only by the form of words agreed at the start of the interview. There will be some cases, if for example you are the only person who holds your position within your organisation, where an individual may be identifiable by others in their organisation. If you have concerns about this then please discuss it with me at this time.

How is the project being funded?

This PhD project is being funded by the Economic and Social Research Council and The Dickson Poon School of Law at King's College London. The study has been approved by the King's College London Research Ethics Committee.

What will happen to the results of the study?

The results of the study will form the basis for my final PhD thesis I also plan to disseminate them through academic publication and conferences within the EU.

Who should I contact for further information?

If you have any questions or require more information about this study, please contact me using the following contact details:

Estelle Marks
The Dickson Poon School of Law
King's College London
Strand
London
EC2R 2LS

estelle.marks@kcl.ac.uk

Telephone: ---

What if I have further questions, or if something goes wrong?

If this study has harmed you in any way or if you wish to make a complaint about the conduct of the study you can contact King's College London using the details below for further advice and information:

Ben Bowling
Deputy Dean
The Dickson Poon School of Law
King's College London
Strand
London
EC2R 2LS

ben.bowling@kcl.ac.uk

Telephone: 020 7848 2479

Thank you for reading this information sheet and for considering taking part in this research.

CONSENT FORM FOR PARTICIPANTS IN RESEARCH STUDIES

Please complete this form after you have read the Information Sheet and/or listened to an explanation about the research.



Title of Study: The European Arrest Warrant as a Transnational Policing Tool

King's College Research Ethics Committee Ref: LRS-15/16-2152

Thank you for considering taking part in this research. The person organising the research must explain the project to you before you agree to take part. If you have any questions arising from the Information Sheet or explanation already given to you, please ask the researcher before you decide whether to join in. You will be given a copy of this Consent Form to keep and refer to at any time.

I confirm that I understand that by ticking/initialling each box I am consenting to this element of the study. I understand that it will be assumed that unticked/initialled boxes mean that I DO NOT consent to that part of the study. I understand that by not giving consent for any one element I may be deemed ineligible for the study.

Please tick or initial

☐

Please tick or initial

1. ***I confirm that I have read and understood the information sheet dated 27 January 2016 (version 2) for the above study. I have had the opportunity to consider the information and asked questions which have been answered satisfactorily.**
2. ***I understand that my participation is voluntary and that I am free to withdraw at any time without giving any reason. Furthermore, I understand that I will be able to withdraw my data up to 30 April 2017.**
3. ***I consent to the processing of my personal information for the purposes explained to me. I understand that such information will be handled in accordance with the terms of the UK Data Protection Act 1998.**
4. ***I understand that my information may be subject to review by responsible individuals from the College for monitoring and audit purposes.**

☐☐☐☐

5. Anonymity is optional for this research. Please select from the following 3 options:

a. I agree to be partially identified

☐

i. Agreed Form of words : _____

b. I wish to remain anonymous

☐

i. Agreed Form of words : _____

6. I agree to be contacted in the future by King's College London researchers who would like to invite me to participate in follow up studies to this project, or in future studies of a similar nature.

☐

7. I understand that the information I have submitted will be published as a report and I wish to receive a copy of it.

☐

8. I consent to my interview being audio recorded.

☐

9. I agree to maintain the confidentiality of focus group discussions.

☐

10. I understand that confidentiality cannot be guaranteed during focus groups.

☐

Name of Participant

Date

Signature

Name of Researcher

Date

Signature

Annexe 5: Nvivo coding frame

1 - Issuing EAWs
Additional offences and specialty
CPS
Discretion Issuing
Judicial
Jurisdiction shopping
Legal and other Requirements to issue
Locating suspects abroad
NCA Advice and Knowledge
Proactive issuing
Resources Issuing
Risk Issuing
Trace locate
2 - Receiving and certifying warrants
Certification
Proportionality test
Cross-border communication at receipt and certification
CSO Northern Ireland
Discretion certifying
Law certification
Risk receipt and certification
Scotland prosecutor
3 - Execution of EAW
Additional warrants
Arrest
Christmas
Delivering to Court
Deportations alongside execution
Discretion Execution
Domestic arrest notification

Domestic offences
Executing for outside agencies
International arrest notification
Law Execution
Locating suspects domestically
Chance encounters
Intelligence checks
Intelligence sharing
Media appeal
Surveillance
NCA Tasking to force
Operational planning execution
Post Arrest process
Resources execution
Risk execution
Subjects about to travel
4 - Court process post-execution
Appeals
Asylum
Bail
Discharges
Police contributions to court
Police on court decisions
Progress Updates
Prosecutors on court set up
Prosecutors on police contributions to court
RFFI
Time limits and Extensions
5 - Surrender of fugitives
Additional evidence
Airlines

Airports
Border Force
Extensions of time
Failed handovers
Heathrow Police
Intel interview
Land-Sea extradition
Law Surrender
Operational planning surrender
Police powers
Polish flight
Prisons
Private
Resources surrender
Risk and surrender
Travel docs
Via Multiple Jurisdictions
Brexit
Case to read
Databases
ACRO
I247
IDENT1
Interpol
LEA intelligence databases
PNC
PND
SIENA
SIS II
Impact
EAW Benefits

EAW Drawbacks
Good stories
Great Quotes
Immigration
Is the EAW a policing tool
Mutual Trust
Bail
Certification
Culture
Direct contact
Discharged cases procedural error
Discretion
Failed handovers
Law - Mutual trust
Misuse
Proportionality
Rights
Updates and Info
Networks and Operations
Absolute
Captura
Conferences
Diplomatic
EJN
ENFAST
Eurojust
Europol
FLECs
ILOs
Interpol
JITs

Liaison Magistrates
Secondments
SIRENE-SIS II
Trivium
Police views of subjects
PROCESS BY ORGANISATION OR REGION
CPS Process
CPS Part 1 Process
CPS Part 3 Process
Ireland Process
Adopting SIRENE
Ireland Police
Ireland Prosecutors or DOJ
NCA Process
NCA Ops
NCA Part 1 Process
NCA Part 3 Process
Northern Ireland Process
NI Police
NI Prosecutors and CS
Poland Process
Poland Police
Poland Prosecutors or Judicial
Scotland specific process
Police Scotland
Prosecutor Scotland
Spain Process
Spain Liaison Magistrates Process
Spain Police
Spain Prosecutors
UK Local forces

Training and Recruitment
UK Force Part 1 process
UK Force Part 3 process
UK Force set up
UK Geographical - Multiple force issues
Volume
Transnational Communication
Arrest notification
Complex cases
Discharged EAWs
EAW Transmission
Foreign officers at airports
Formal or Informal communication
ID info
Mutual Legal Assistance
Pre-Warrant investigations
Progress Updates
RFFI
Searching for subjects
Trace locate 36.2
Surrender planning
Risk info
Urgent cases
UK-France Relations
UK-Germany Relations
UK-Ireland Relations
UK-Netherlands Relations
UK-Poland Relations
UK-Spain Relations
UK-Sweden Relations

Annexe 6: Council framework decision on the European arrest warrant (2002/584/JHA)

18.7.2002

EN

Official Journal of the European Communities

L 190/1

(Acts adopted pursuant to Title VI of the Treaty on European Union)

COUNCIL FRAMEWORK DECISION

of 13 June 2002

on the European arrest warrant and the surrender procedures between Member States

(2002/584/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 31(a) and (b) and Article 34(2)(b) thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Whereas:

(1) According to the Conclusions of the Tampere European Council of 15 and 16 October 1999, and in particular point 35 thereof, the formal extradition procedure should be abolished among the Member States in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

(2) The programme of measures to implement the principle of mutual recognition of criminal decisions envisaged in point 37 of the Tampere European Council Conclusions and adopted by the Council on 30 November 2000 ⁽³⁾, addresses the matter of mutual enforcement of arrest warrants.

(3) All or some Member States are parties to a number of conventions in the field of extradition, including the European Convention on extradition of 13 December 1957 and the European Convention on the suppression of terrorism of 27 January 1977. The Nordic States have extradition laws with identical wording.

(4) In addition, the following three Conventions dealing in whole or in part with extradition have been agreed upon among Member States and form part of the Union *acquis*: the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at their common borders ⁽⁴⁾ (regarding relations between the Member States which are parties to that Convention), the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union ⁽⁵⁾ and the Convention of 27 September 1996 relating to extradition between the Member States of the European Union ⁽⁶⁾.

(5) The objective set for the Union to become an area of freedom, security and justice leads to abolishing extradition between Member States and replacing it by a system of surrender between judicial authorities. Further, the introduction of a new simplified system of surrender of sentenced or suspected persons for the purposes of execution or prosecution of criminal sentences makes it possible to remove the complexity and potential for delay inherent in the present extradition procedures. Traditional cooperation relations which have prevailed up till now between Member States should be replaced by a system of free movement of judicial decisions in criminal matters, covering both pre-sentence and final decisions, within an area of freedom, security and justice.

(6) The European arrest warrant provided for in this Framework Decision is the first concrete measure in the field of criminal law implementing the principle of mutual recognition which the European Council referred to as the 'cornerstone' of judicial cooperation.

(7) Since the aim of replacing the system of multilateral extradition built upon the European Convention on Extradition of 13 December 1957 cannot be sufficiently achieved by the Member States acting unilaterally and

⁽¹⁾ OJ C 332 E, 27.11.2001, p. 305.

⁽²⁾ Opinion delivered on 9 January 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 12 E, 15.1.2001, p. 10.

⁽⁴⁾ OJ L 239, 22.9.2000, p. 19.

⁽⁵⁾ OJ C 78, 30.3.1995, p. 2.

⁽⁶⁾ OJ C 313, 13.10.1996, p. 12.

can therefore, by reason of its scale and effects, be better achieved at Union level, the Council may adopt measures in accordance with the principle of subsidiarity as referred to in Article 2 of the Treaty on European Union and Article 5 of the Treaty establishing the European Community. In accordance with the principle of proportionality, as set out in the latter Article, this Framework Decision does not go beyond what is necessary in order to achieve that objective.

- (8) Decisions on the execution of the European arrest warrant must be subject to sufficient controls, which means that a judicial authority of the Member State where the requested person has been arrested will have to take the decision on his or her surrender.

- (9) The role of central authorities in the execution of a European arrest warrant must be limited to practical and administrative assistance.

- (10) The mechanism of the European arrest warrant is based on a high level of confidence between Member States. Its implementation may be suspended only in the event of a serious and persistent breach by one of the Member States of the principles set out in Article 6(1) of the Treaty on European Union, determined by the Council pursuant to Article 7(1) of the said Treaty with the consequences set out in Article 7(2) thereof.

- (11) In relations between Member States, the European arrest warrant should replace all the previous instruments concerning extradition, including the provisions of Title III of the Convention implementing the Schengen Agreement which concern extradition.

- (12) This Framework Decision respects fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and reflected in the Charter of Fundamental Rights of the European Union ⁽¹⁾, in particular Chapter VI thereof. Nothing in this Framework Decision may be interpreted as prohibiting refusal to surrender a person for whom a European arrest warrant has been issued when there are reasons to believe, on the basis of objective elements, that the said arrest warrant has been issued for the purpose of prosecuting or punishing a person on the grounds of his or her sex, race, religion, ethnic origin, nationality, language, political opinions or sexual orientation, or that that person's position may be prejudiced for any of these reasons.

This Framework Decision does not prevent a Member State from applying its constitutional rules relating to

due process, freedom of association, freedom of the press and freedom of expression in other media.

- (13) No person should be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.

- (14) Since all Member States have ratified the Council of Europe Convention of 28 January 1981 for the protection of individuals with regard to automatic processing of personal data, the personal data processed in the context of the implementation of this Framework Decision should be protected in accordance with the principles of the said Convention,

HAS ADOPTED THIS FRAMEWORK DECISION:

CHAPTER 1

GENERAL PRINCIPLES

Article 1

Definition of the European arrest warrant and obligation to execute it

1. The European arrest warrant is a judicial decision issued by a Member State with a view to the arrest and surrender by another Member State of a requested person, for the purposes of conducting a criminal prosecution or executing a custodial sentence or detention order.

2. Member States shall execute any European arrest warrant on the basis of the principle of mutual recognition and in accordance with the provisions of this Framework Decision.

3. This Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles as enshrined in Article 6 of the Treaty on European Union.

Article 2

Scope of the European arrest warrant

1. A European arrest warrant may be issued for acts punishable by the law of the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 12 months or, where a sentence has been passed or a detention order has been made, for sentences of at least four months.

⁽¹⁾ OJ C 364, 18.12.2000, p. 1.

2. The following offences, if they are punishable in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least three years and as they are defined by the law of the issuing Member State, shall, under the terms of this Framework Decision and without verification of the double criminality of the act, give rise to surrender pursuant to a European arrest warrant:

- participation in a criminal organisation,
- terrorism,
- trafficking in human beings,
- sexual exploitation of children and child pornography,
- illicit trafficking in narcotic drugs and psychotropic substances,
- illicit trafficking in weapons, munitions and explosives,
- corruption,
- fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention of 26 July 1995 on the protection of the European Communities' financial interests,
- laundering of the proceeds of crime,
- counterfeiting currency, including of the euro,
- computer-related crime,
- environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties,
- facilitation of unauthorised entry and residence,
- murder, grievous bodily injury,
- illicit trade in human organs and tissue,
- kidnapping, illegal restraint and hostage-taking,
- racism and xenophobia,
- organised or armed robbery,
- illicit trafficking in cultural goods, including antiques and works of art,
- swindling,
- racketeering and extortion,
- counterfeiting and piracy of products,

- forgery of administrative documents and trafficking therein,
- forgery of means of payment,
- illicit trafficking in hormonal substances and other growth promoters,
- illicit trafficking in nuclear or radioactive materials,
- trafficking in stolen vehicles,
- rape,
- arson,
- crimes within the jurisdiction of the International Criminal Court,
- unlawful seizure of aircraft/ships,
- sabotage.

3. The Council may decide at any time, acting unanimously after consultation of the European Parliament under the conditions laid down in Article 39(1) of the Treaty on European Union (TEU), to add other categories of offence to the list contained in paragraph 2. The Council shall examine, in the light of the report submitted by the Commission pursuant to Article 34(3), whether the list should be extended or amended.

4. For offences other than those covered by paragraph 2, surrender may be subject to the condition that the acts for which the European arrest warrant has been issued constitute an offence under the law of the executing Member State, whatever the constituent elements or however it is described.

Article 3

Grounds for mandatory non-execution of the European arrest warrant

The judicial authority of the Member State of execution (hereinafter 'executing judicial authority') shall refuse to execute the European arrest warrant in the following cases:

1. if the offence on which the arrest warrant is based is covered by amnesty in the executing Member State, where that State had jurisdiction to prosecute the offence under its own criminal law;
2. if the executing judicial authority is informed that the requested person has been finally judged by a Member State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing Member State;

3. if the person who is the subject of the European arrest warrant may not, owing to his age, be held criminally responsible for the acts on which the arrest warrant is based under the law of the executing State.

Article 4

Grounds for optional non-execution of the European arrest warrant

The executing judicial authority may refuse to execute the European arrest warrant:

1. if, in one of the cases referred to in Article 2(4), the act on which the European arrest warrant is based does not constitute an offence under the law of the executing Member State; however, in relation to taxes or duties, customs and exchange, execution of the European arrest warrant shall not be refused on the ground that the law of the executing Member State does not impose the same kind of tax or duty or does not contain the same type of rules as regards taxes, duties and customs and exchange regulations as the law of the issuing Member State;
2. where the person who is the subject of the European arrest warrant is being prosecuted in the executing Member State for the same act as that on which the European arrest warrant is based;
3. where the judicial authorities of the executing Member State have decided either not to prosecute for the offence on which the European arrest warrant is based or to halt proceedings, or where a final judgment has been passed upon the requested person in a Member State, in respect of the same acts, which prevents further proceedings;
4. where the criminal prosecution or punishment of the requested person is statute-barred according to the law of the executing Member State and the acts fall within the jurisdiction of that Member State under its own criminal law;
5. if the executing judicial authority is informed that the requested person has been finally judged by a third State in respect of the same acts provided that, where there has been sentence, the sentence has been served or is currently being served or may no longer be executed under the law of the sentencing country;
6. if the European arrest warrant has been issued for the purposes of execution of a custodial sentence or detention order, where the requested person is staying in, or is a national or a resident of the executing Member State and that State undertakes to execute the sentence or detention order in accordance with its domestic law;
7. where the European arrest warrant relates to offences which:
 - (a) are regarded by the law of the executing Member State as having been committed in whole or in part in the territory of the executing Member State or in a place treated as such; or
 - (b) have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory.

Article 5

Guarantees to be given by the issuing Member State in particular cases

The execution of the European arrest warrant by the executing judicial authority may, by the law of the executing Member State, be subject to the following conditions:

1. where the European arrest warrant has been issued for the purposes of executing a sentence or a detention order imposed by a decision rendered *in absentia* and if the person concerned has not been summoned in person or otherwise informed of the date and place of the hearing which led to the decision rendered *in absentia*, surrender may be subject to the condition that the issuing judicial authority gives an assurance deemed adequate to guarantee the person who is the subject of the European arrest warrant that he or she will have an opportunity to apply for a retrial of the case in the issuing Member State and to be present at the judgment;
2. if the offence on the basis of which the European arrest warrant has been issued is punishable by custodial life sentence or life-time detention order, the execution of the said arrest warrant may be subject to the condition that the issuing Member State has provisions in its legal system for a review of the penalty or measure imposed, on request or at the latest after 20 years, or for the application of measures of clemency to which the person is entitled to apply for under the law or practice of the issuing Member State, aiming at a non-execution of such penalty or measure;
3. where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the executing Member State, surrender may be subject to the condition that the person, after being heard, is returned to the executing Member State in order to serve there the custodial sentence or detention order passed against him in the issuing Member State.

Article 6

Determination of the competent judicial authorities

1. The issuing judicial authority shall be the judicial authority of the issuing Member State which is competent to issue a European arrest warrant by virtue of the law of that State.

2. The executing judicial authority shall be the judicial authority of the executing Member State which is competent to execute the European arrest warrant by virtue of the law of that State.

3. Each Member State shall inform the General Secretariat of the Council of the competent judicial authority under its law.

Article 7

Recourse to the central authority

1. Each Member State may designate a central authority or, when its legal system so provides, more than one central authority to assist the competent judicial authorities.

2. A Member State may, if it is necessary as a result of the organisation of its internal judicial system, make its central authority(ies) responsible for the administrative transmission and reception of European arrest warrants as well as for all other official correspondence relating thereto.

Member State wishing to make use of the possibilities referred to in this Article shall communicate to the General Secretariat of the Council information relating to the designated central authority or central authorities. These indications shall be binding upon all the authorities of the issuing Member State.

Article 8

Content and form of the European arrest warrant

1. The European arrest warrant shall contain the following information set out in accordance with the form contained in the Annex:

- (a) the identity and nationality of the requested person;
- (b) the name, address, telephone and fax numbers and e-mail address of the issuing judicial authority;
- (c) evidence of an enforceable judgment, an arrest warrant or any other enforceable judicial decision having the same effect, coming within the scope of Articles 1 and 2;
- (d) the nature and legal classification of the offence, particularly in respect of Article 2;
- (e) a description of the circumstances in which the offence was committed, including the time, place and degree of participation in the offence by the requested person;
- (f) the penalty imposed, if there is a final judgment, or the prescribed scale of penalties for the offence under the law of the issuing Member State;
- (g) if possible, other consequences of the offence.

2. The European arrest warrant must be translated into the official language or one of the official languages of the executing Member State. Any Member State may, when this Framework Decision is adopted or at a later date, state in a declaration deposited with the General Secretariat of the Council that it will accept a translation in one or more other official languages of the Institutions of the European Communities.

CHAPTER 2

SURRENDER PROCEDURE

Article 9

Transmission of a European arrest warrant

1. When the location of the requested person is known, the issuing judicial authority may transmit the European arrest warrant directly to the executing judicial authority.

2. The issuing judicial authority may, in any event, decide to issue an alert for the requested person in the Schengen Information System (SIS).

3. Such an alert shall be effected in accordance with the provisions of Article 95 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of controls at common borders. An alert in the Schengen Information System shall be equivalent to a European arrest warrant accompanied by the information set out in Article 8(1).

For a transitional period, until the SIS is capable of transmitting all the information described in Article 8, the alert shall be equivalent to a European arrest warrant pending the receipt of the original in due and proper form by the executing judicial authority.

Article 10

Detailed procedures for transmitting a European arrest warrant

1. If the issuing judicial authority does not know the competent executing judicial authority, it shall make the requisite enquiries, including through the contact points of the European Judicial Network ⁽¹⁾, in order to obtain that information from the executing Member State.

2. If the issuing judicial authority so wishes, transmission may be effected via the secure telecommunications system of the European Judicial Network.

⁽¹⁾ Council Joint Action 98/428/JHA of 29 June 1998 on the creation of a European Judicial Network (OJ L 191, 7.7.1998, p. 4).

3. If it is not possible to call on the services of the SIS, the issuing judicial authority may call on Interpol to transmit a European arrest warrant.

4. The issuing judicial authority may forward the European arrest warrant by any secure means capable of producing written records under conditions allowing the executing Member State to establish its authenticity.

5. All difficulties concerning the transmission or the authenticity of any document needed for the execution of the European arrest warrant shall be dealt with by direct contacts between the judicial authorities involved, or, where appropriate, with the involvement of the central authorities of the Member States.

6. If the authority which receives a European arrest warrant is not competent to act upon it, it shall automatically forward the European arrest warrant to the competent authority in its Member State and shall inform the issuing judicial authority accordingly.

Article 11

Rights of a requested person

1. When a requested person is arrested, the executing competent judicial authority shall, in accordance with its national law, inform that person of the European arrest warrant and of its contents, and also of the possibility of consenting to surrender to the issuing judicial authority.

2. A requested person who is arrested for the purpose of the execution of a European arrest warrant shall have a right to be assisted by a legal counsel and by an interpreter in accordance with the national law of the executing Member State.

Article 12

Keeping the person in detention

When a person is arrested on the basis of a European arrest warrant, the executing judicial authority shall take a decision on whether the requested person should remain in detention, in accordance with the law of the executing Member State. The person may be released provisionally at any time in conformity with the domestic law of the executing Member State, provided that the competent authority of the said Member State takes all the measures it deems necessary to prevent the person absconding.

Article 13

Consent to surrender

1. If the arrested person indicates that he or she consents to surrender, that consent and, if appropriate, express

renunciation of entitlement to the 'speciality rule', referred to in Article 27(2), shall be given before the executing judicial authority, in accordance with the domestic law of the executing Member State.

2. Each Member State shall adopt the measures necessary to ensure that consent and, where appropriate, renunciation, as referred to in paragraph 1, are established in such a way as to show that the person concerned has expressed them voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel.

3. The consent and, where appropriate, renunciation, as referred to in paragraph 1, shall be formally recorded in accordance with the procedure laid down by the domestic law of the executing Member State.

4. In principle, consent may not be revoked. Each Member State may provide that consent and, if appropriate, renunciation may be revoked, in accordance with the rules applicable under its domestic law. In this case, the period between the date of consent and that of its revocation shall not be taken into consideration in establishing the time limits laid down in Article 17. A Member State which wishes to have recourse to this possibility shall inform the General Secretariat of the Council accordingly when this Framework Decision is adopted and shall specify the procedures whereby revocation of consent shall be possible and any amendment to them.

Article 14

Hearing of the requested person

Where the arrested person does not consent to his or her surrender as referred to in Article 13, he or she shall be entitled to be heard by the executing judicial authority, in accordance with the law of the executing Member State.

Article 15

Surrender decision

1. The executing judicial authority shall decide, within the time-limits and under the conditions defined in this Framework Decision, whether the person is to be surrendered.

2. If the executing judicial authority finds the information communicated by the issuing Member State to be insufficient to allow it to decide on surrender, it shall request that the necessary supplementary information, in particular with respect to Articles 3 to 5 and Article 8, be furnished as a matter of urgency and may fix a time limit for the receipt thereof, taking into account the need to observe the time limits set in Article 17.

3. The issuing judicial authority may at any time forward any additional useful information to the executing judicial authority.

paragraphs 2 or 3, the executing judicial authority shall immediately inform the issuing judicial authority thereof, giving the reasons for the delay. In such case, the time limits may be extended by a further 30 days.

Article 16

Decision in the event of multiple requests

1. If two or more Member States have issued European arrest warrants for the same person, the decision on which of the European arrest warrants shall be executed shall be taken by the executing judicial authority with due consideration of all the circumstances and especially the relative seriousness and place of the offences, the respective dates of the European arrest warrants and whether the warrant has been issued for the purposes of prosecution or for execution of a custodial sentence or detention order.

2. The executing judicial authority may seek the advice of Eurojust⁽¹⁾ when making the choice referred to in paragraph 1.

3. In the event of a conflict between a European arrest warrant and a request for extradition presented by a third country, the decision on whether the European arrest warrant or the extradition request takes precedence shall be taken by the competent authority of the executing Member State with due consideration of all the circumstances, in particular those referred to in paragraph 1 and those mentioned in the applicable convention.

4. This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.

5. As long as the executing judicial authority has not taken a final decision on the European arrest warrant, it shall ensure that the material conditions necessary for effective surrender of the person remain fulfilled.

6. Reasons must be given for any refusal to execute a European arrest warrant.

7. Where in exceptional circumstances a Member State cannot observe the time limits provided for in this Article, it shall inform Eurojust, giving the reasons for the delay. In addition, a Member State which has experienced repeated delays on the part of another Member State in the execution of European arrest warrants shall inform the Council with a view to evaluating the implementation of this Framework Decision at Member State level.

Article 18

Situation pending the decision

1. Where the European arrest warrant has been issued for the purpose of conducting a criminal prosecution, the executing judicial authority must:

(a) either agree that the requested person should be heard according to Article 19;

(b) or agree to the temporary transfer of the requested person.

2. The conditions and the duration of the temporary transfer shall be determined by mutual agreement between the issuing and executing judicial authorities.

3. In the case of temporary transfer, the person must be able to return to the executing Member State to attend hearings concerning him or her as part of the surrender procedure.

Article 19

Hearing the person pending the decision

1. The requested person shall be heard by a judicial authority, assisted by another person designated in accordance with the law of the Member State of the requesting court.

Article 17

Time limits and procedures for the decision to execute the European arrest warrant

1. A European arrest warrant shall be dealt with and executed as a matter of urgency.

2. In cases where the requested person consents to his surrender, the final decision on the execution of the European arrest warrant should be taken within a period of 10 days after consent has been given.

3. In other cases, the final decision on the execution of the European arrest warrant should be taken within a period of 60 days after the arrest of the requested person.

4. Where in specific cases the European arrest warrant cannot be executed within the time limits laid down in

⁽¹⁾ Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (OJ L 63, 6.3.2002, p. 1).

2. The requested person shall be heard in accordance with the law of the executing Member State and with the conditions determined by mutual agreement between the issuing and executing judicial authorities.

3. The competent executing judicial authority may assign another judicial authority of its Member State to take part in the hearing of the requested person in order to ensure the proper application of this Article and of the conditions laid down.

Article 20

Privileges and immunities

1. Where the requested person enjoys a privilege or immunity regarding jurisdiction or execution in the executing Member State, the time limits referred to in Article 17 shall not start running unless, and counting from the day when, the executing judicial authority is informed of the fact that the privilege or immunity has been waived.

The executing Member State shall ensure that the material conditions necessary for effective surrender are fulfilled when the person no longer enjoys such privilege or immunity.

2. Where power to waive the privilege or immunity lies with an authority of the executing Member State, the executing judicial authority shall request it to exercise that power forthwith. Where power to waive the privilege or immunity lies with an authority of another State or international organisation, it shall be for the issuing judicial authority to request it to exercise that power.

Article 21

Competing international obligations

This Framework Decision shall not prejudice the obligations of the executing Member State where the requested person has been extradited to that Member State from a third State and where that person is protected by provisions of the arrangement under which he or she was extradited concerning speciality. The executing Member State shall take all necessary measures for requesting forthwith the consent of the State from which the requested person was extradited so that he or she can be surrendered to the Member State which issued the European arrest warrant. The time limits referred to in Article 17 shall not start running until the day on which these speciality rules cease to apply. Pending the decision of the State from which the requested person was extradited, the executing Member State will ensure that the material conditions necessary for effective surrender remain fulfilled.

Article 22

Notification of the decision

The executing judicial authority shall notify the issuing judicial authority immediately of the decision on the action to be taken on the European arrest warrant.

Article 23

Time limits for surrender of the person

1. The person requested shall be surrendered as soon as possible on a date agreed between the authorities concerned.

2. He or she shall be surrendered no later than 10 days after the final decision on the execution of the European arrest warrant.

3. If the surrender of the requested person within the period laid down in paragraph 2 is prevented by circumstances beyond the control of any of the Member States, the executing and issuing judicial authorities shall immediately contact each other and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

4. The surrender may exceptionally be temporarily postponed for serious humanitarian reasons, for example if there are substantial grounds for believing that it would manifestly endanger the requested person's life or health. The execution of the European arrest warrant shall take place as soon as these grounds have ceased to exist. The executing judicial authority shall immediately inform the issuing judicial authority and agree on a new surrender date. In that event, the surrender shall take place within 10 days of the new date thus agreed.

5. Upon expiry of the time limits referred to in paragraphs 2 to 4, if the person is still being held in custody he shall be released.

Article 24

Postponed or conditional surrender

1. The executing judicial authority may, after deciding to execute the European arrest warrant, postpone the surrender of the requested person so that he or she may be prosecuted in the executing Member State or, if he or she has already been sentenced, so that he or she may serve, in its territory, a sentence passed for an act other than that referred to in the European arrest warrant.

2. Instead of postponing the surrender, the executing judicial authority may temporarily surrender the requested

person to the issuing Member State under conditions to be determined by mutual agreement between the executing and the issuing judicial authorities. The agreement shall be made in writing and the conditions shall be binding on all the authorities in the issuing Member State.

Article 25

Transit

1. Each Member State shall, except when it avails itself of the possibility of refusal when the transit of a national or a resident is requested for the purpose of the execution of a custodial sentence or detention order, permit the transit through its territory of a requested person who is being surrendered provided that it has been given information on:

- (a) the identity and nationality of the person subject to the European arrest warrant;
- (b) the existence of a European arrest warrant;
- (c) the nature and legal classification of the offence;
- (d) the description of the circumstances of the offence, including the date and place.

Where a person who is the subject of a European arrest warrant for the purposes of prosecution is a national or resident of the Member State of transit, transit may be subject to the condition that the person, after being heard, is returned to the transit Member State to serve the custodial sentence or detention order passed against him in the issuing Member State.

2. Each Member State shall designate an authority responsible for receiving transit requests and the necessary documents, as well as any other official correspondence relating to transit requests. Member States shall communicate this designation to the General Secretariat of the Council.

3. The transit request and the information set out in paragraph 1 may be addressed to the authority designated pursuant to paragraph 2 by any means capable of producing a written record. The Member State of transit shall notify its decision by the same procedure.

4. This Framework Decision does not apply in the case of transport by air without a scheduled stopover. However, if an unscheduled landing occurs, the issuing Member State shall provide the authority designated pursuant to paragraph 2 with the information provided for in paragraph 1.

5. Where a transit concerns a person who is to be extradited from a third State to a Member State this Article will apply *mutatis mutandis*. In particular the expression 'European arrest warrant' shall be deemed to be replaced by 'extradition request'.

CHAPTER 3

EFFECTS OF THE SURRENDER

Article 26

Deduction of the period of detention served in the executing Member State

1. The issuing Member State shall deduct all periods of detention arising from the execution of a European arrest warrant from the total period of detention to be served in the issuing Member State as a result of a custodial sentence or detention order being passed.

2. To that end, all information concerning the duration of the detention of the requested person on the basis of the European arrest warrant shall be transmitted by the executing judicial authority or the central authority designated under Article 7 to the issuing judicial authority at the time of the surrender.

Article 27

Possible prosecution for other offences

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States that have given the same notification, consent is presumed to have been given for the prosecution, sentencing or detention with a view to the carrying out of a custodial sentence or detention order for an offence committed prior to his or her surrender, other than that for which he or she was surrendered, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. Except in the cases referred to in paragraphs 1 and 3, a person surrendered may not be prosecuted, sentenced or otherwise deprived of his or her liberty for an offence committed prior to his or her surrender other than that for which he or she was surrendered.

3. Paragraph 2 does not apply in the following cases:

- (a) when the person having had an opportunity to leave the territory of the Member State to which he or she has been surrendered has not done so within 45 days of his or her final discharge, or has returned to that territory after leaving it;
- (b) the offence is not punishable by a custodial sentence or detention order;

- (c) the criminal proceedings do not give rise to the application of a measure restricting personal liberty;
- (d) when the person could be liable to a penalty or a measure not involving the deprivation of liberty, in particular a financial penalty or a measure in lieu thereof, even if the penalty or measure may give rise to a restriction of his or her personal liberty;
- (e) when the person consented to be surrendered, where appropriate at the same time as he or she renounced the speciality rule, in accordance with Article 13;
- (f) when the person, after his/her surrender, has expressly renounced entitlement to the speciality rule with regard to specific offences preceding his/her surrender. Renunciation shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's domestic law. The renunciation shall be drawn up in such a way as to make clear that the person has given it voluntarily and in full awareness of the consequences. To that end, the person shall have the right to legal counsel;
- (g) where the executing judicial authority which surrendered the person gives its consent in accordance with paragraph 4.

4. A request for consent shall be submitted to the executing judicial authority, accompanied by the information mentioned in Article 8(1) and a translation as referred to in Article 8(2). Consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision. Consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4. The decision shall be taken no later than 30 days after receipt of the request.

For the situations mentioned in Article 5 the issuing Member State must give the guarantees provided for therein.

Article 28

Surrender or subsequent extradition

1. Each Member State may notify the General Secretariat of the Council that, in its relations with other Member States which have given the same notification, the consent for the surrender of a person to a Member State other than the executing Member State pursuant to a European arrest warrant issued for an offence committed prior to his or her surrender is presumed to have been given, unless in a particular case the executing judicial authority states otherwise in its decision on surrender.

2. In any case, a person who has been surrendered to the issuing Member State pursuant to a European arrest warrant

may, without the consent of the executing Member State, be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant issued for any offence committed prior to his or her surrender in the following cases:

- (a) where the requested person, having had an opportunity to leave the territory of the Member State to which he or she has been surrendered, has not done so within 45 days of his final discharge, or has returned to that territory after leaving it;
- (b) where the requested person consents to be surrendered to a Member State other than the executing Member State pursuant to a European arrest warrant. Consent shall be given before the competent judicial authorities of the issuing Member State and shall be recorded in accordance with that State's national law. It shall be drawn up in such a way as to make clear that the person concerned has given it voluntarily and in full awareness of the consequences. To that end, the requested person shall have the right to legal counsel;
- (c) where the requested person is not subject to the speciality rule, in accordance with Article 27(3)(a), (e), (f) and (g).

3. The executing judicial authority consents to the surrender to another Member State according to the following rules:

- (a) the request for consent shall be submitted in accordance with Article 9, accompanied by the information mentioned in Article 8(1) and a translation as stated in Article 8(2);
- (b) consent shall be given when the offence for which it is requested is itself subject to surrender in accordance with the provisions of this Framework Decision;
- (c) the decision shall be taken no later than 30 days after receipt of the request;
- (d) consent shall be refused on the grounds referred to in Article 3 and otherwise may be refused only on the grounds referred to in Article 4.

For the situations referred to in Article 5, the issuing Member State must give the guarantees provided for therein.

4. Notwithstanding paragraph 1, a person who has been surrendered pursuant to a European arrest warrant shall not be extradited to a third State without the consent of the competent authority of the Member State which surrendered the person. Such consent shall be given in accordance with the Conventions by which that Member State is bound, as well as with its domestic law.

Article 29

Handing over of property

1. At the request of the issuing judicial authority or on its own initiative, the executing judicial authority shall, in accordance with its national law, seize and hand over property which:

- (a) may be required as evidence, or
- (b) has been acquired by the requested person as a result of the offence.

2. The property referred to in paragraph 1 shall be handed over even if the European arrest warrant cannot be carried out owing to the death or escape of the requested person.

3. If the property referred to in paragraph 1 is liable to seizure or confiscation in the territory of the executing Member State, the latter may, if the property is needed in connection with pending criminal proceedings, temporarily retain it or hand it over to the issuing Member State, on condition that it is returned.

4. Any rights which the executing Member State or third parties may have acquired in the property referred to in paragraph 1 shall be preserved. Where such rights exist, the issuing Member State shall return the property without charge to the executing Member State as soon as the criminal proceedings have been terminated.

Article 30

Expenses

1. Expenses incurred in the territory of the executing Member State for the execution of a European arrest warrant shall be borne by that Member State.

2. All other expenses shall be borne by the issuing Member State.

CHAPTER 4

GENERAL AND FINAL PROVISIONS

Article 31

Relation to other legal instruments

1. Without prejudice to their application in relations between Member States and third States, this Framework Decision shall, from 1 January 2004, replace the corresponding provisions of the following conventions applicable in the field of extradition in relations between the Member States:

- (a) the European Convention on Extradition of 13 December 1957, its additional protocol of 15 October 1975, its

second additional protocol of 17 March 1978, and the European Convention on the suppression of terrorism of 27 January 1977 as far as extradition is concerned;

- (b) the Agreement between the 12 Member States of the European Communities on the simplification and modernisation of methods of transmitting extradition requests of 26 May 1989;
- (c) the Convention of 10 March 1995 on simplified extradition procedure between the Member States of the European Union;
- (d) the Convention of 27 September 1996 relating to extradition between the Member States of the European Union;
- (e) Title III, Chapter 4 of the Convention of 19 June 1990 implementing the Schengen Agreement of 14 June 1985 on the gradual abolition of checks at common borders.

2. Member States may continue to apply bilateral or multilateral agreements or arrangements in force when this Framework Decision is adopted in so far as such agreements or arrangements allow the objectives of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants.

Member States may conclude bilateral or multilateral agreements or arrangements after this Framework Decision has come into force in so far as such agreements or arrangements allow the prescriptions of this Framework Decision to be extended or enlarged and help to simplify or facilitate further the procedures for surrender of persons who are the subject of European arrest warrants, in particular by fixing time limits shorter than those fixed in Article 17, by extending the list of offences laid down in Article 2(2), by further limiting the grounds for refusal set out in Articles 3 and 4, or by lowering the threshold provided for in Article 2(1) or (2).

The agreements and arrangements referred to in the second subparagraph may in no case affect relations with Member States which are not parties to them.

Member States shall, within three months from the entry into force of this Framework Decision, notify the Council and the Commission of the existing agreements and arrangements referred to in the first subparagraph which they wish to continue applying.

Member States shall also notify the Council and the Commission of any new agreement or arrangement as referred to in the second subparagraph, within three months of signing it.

3. Where the conventions or agreements referred to in paragraph 1 apply to the territories of Member States or to territories for whose external relations a Member State is responsible to which this Framework Decision does not apply, these instruments shall continue to govern the relations existing between those territories and the other Members States.

Article 32

Transitional provision

1. Extradition requests received before 1 January 2004 will continue to be governed by existing instruments relating to extradition. Requests received after that date will be governed by the rules adopted by Member States pursuant to this Framework Decision. However, any Member State may, at the time of the adoption of this Framework Decision by the Council, make a statement indicating that as executing Member State it will continue to deal with requests relating to acts committed before a date which it specifies in accordance with the extradition system applicable before 1 January 2004. The date in question may not be later than 7 August 2002. The said statement will be published in the *Official Journal of the European Communities*. It may be withdrawn at any time.

Article 33

Provisions concerning Austria and Gibraltar

1. As long as Austria has not modified Article 12(1) of the 'Auslieferungs- und Rechtshilfegesetz' and, at the latest, until 31 December 2008, it may allow its executing judicial authorities to refuse the enforcement of a European arrest warrant if the requested person is an Austrian citizen and if the act for which the European arrest warrant has been issued is not punishable under Austrian law.

2. This Framework Decision shall apply to Gibraltar.

Article 34

Implementation

1. Member States shall take the necessary measures to comply with the provisions of this Framework Decision by 31 December 2003.

2. Member States shall transmit to the General Secretariat of the Council and to the Commission the text of the provisions transposing into their national law the obligations imposed on them under this Framework Decision. When doing so, each Member State may indicate that it will apply immediately this Framework Decision in its relations with those Member States which have given the same notification.

The General Secretariat of the Council shall communicate to the Member States and to the Commission the information received pursuant to Article 7(2), Article 8(2), Article 13(4) and Article 25(2). It shall also have the information published in the *Official Journal of the European Communities*.

3. On the basis of the information communicated by the General Secretariat of the Council, the Commission shall, by 31 December 2004 at the latest, submit a report to the European Parliament and to the Council on the operation of this Framework Decision, accompanied, where necessary, by legislative proposals.

4. The Council shall in the second half of 2003 conduct a review, in particular of the practical application, of the provisions of this Framework Decision by the Member States as well as the functioning of the Schengen Information System.

Article 35

Entry into force

This Framework Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Done at Luxembourg, 13 June 2002.

For the Council

The President

M. RAJOY BREY

Annexe 7: Extradition Act 2003 – URL links

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7. SCHEDULES

1. [SCHEDULE 1](#)

[Re-extradition: modifications](#)

1. [Part 1 Category 1 territories](#)
 1. [1.In section 11\(1\), omit paragraphs \(c\), \(g\) and \(h\).](#)
 2. [2.Omit sections 14, 18 and 19.](#)
 3. [3.In section 21\(3\)and section 21A\(5\), for “must” substitute “ may...](#)
 4. [4.In section 31\(2\), for paragraphs \(a\) and \(b\) substitute “...](#)
 5. [5.In section 39\(2\)\(a\), for “a certificate is issued under section...](#)
 6. [6.In section 44\(2\)\(a\), for “following his arrest under this Part”...](#)
 7. [7.In section 45\(1\), for the words from “arrested” to “issued”...](#)
2. [Part 2 Category 2 territories](#)
 1. [8.In section 78, omit subsections \(2\), \(3\), \(5\) and \(8\)....](#)
 2. [9.In section 78, for subsection \(4\) substitute—](#)
 3. [10.In section 78\(6\), for “any of the questions” substitute “...](#)
 4. [11.In section 78\(7\), for “those questions” substitute “ that question...](#)
 5. [12.In section 79\(1\), omit paragraph \(c\).](#)
 6. [13.Omit section 82.](#)
 7. [14.In section 87\(3\), for the words from “must send the...](#)

8. [15. In section 87, after subsection \(3\) insert—](#)
9. [16. In section 103\(1\)— \(a\) for the words from “sends a...](#)
10. [17. In section 103\(2\), for the words from “the person” to...](#)
11. [18. In section 103, omit subsections \(3\), \(5\), \(6\), \(7\) and...](#)
12. [19. In section 103\(9\), for the words from “the Secretary of...](#)
13. [20. In section 104, omit subsections \(1\)\(b\), \(6\) and \(7\).](#)
14. [21. In section 106, omit subsections \(1\)\(b\), \(7\) and \(8\).](#)
15. [22. In section 117\(1\)\(a\), for “the Secretary of State” substitute “...](#)
16. [23. In section 117\(1\)\(b\), for the words from “permitted period” to...](#)
17. [24. In section 117, after subsection \(1\) insert—](#)
18. [25. In section 117\(2\), for “the Secretary of State” substitute “...](#)
19. [26. In section 119\(1\)\(a\), for “the Secretary of State” substitute “...](#)
20. [27. In section 119, in subsections \(2\) to \(6\) and in...](#)
21. [28. In section 120, after subsection \(1\) insert—](#)
22. [29. In section 121\(2\)\(a\), for “a certificate is issued under section...](#)
23. [30. In section 127\(1\), for the words from “arrested” to “requested”...](#)
24. [31. In section 127\(3\), before paragraph \(a\) insert—](#)
25. [32. In section 127, omit subsections \(4\) and \(5\).](#)
26. [33. In section 128, after subsection \(1\) insert—](#)
27. [34. In section 128\(4\), for the words from “send the case”...](#)
28. [35. In section 128, after subsection \(5\) insert—](#)
29. [36. After section 128 insert— Extradition to category 2 territory following...](#)

2. [SCHEDULE 2](#)

[European framework list](#)

1. [1. Participation in a criminal organisation.](#)
2. [2. Terrorism.](#)
3. [3. Trafficking in human beings.](#)
4. [4. Sexual exploitation of children and child pornography.](#)
5. [5. Illicit trafficking in narcotic drugs and psychotropic substances.](#)
6. [6. Illicit trafficking in weapons, munitions and explosives.](#)
7. [7. Corruption.](#)
8. [8. Fraud, including that affecting the financial interests of the European...](#)
9. [9. Laundering of the proceeds of crime.](#)
10. [10. Counterfeiting currency, including of the euro.](#)
11. [11. Computer-related crime.](#)
12. [12. Environmental crime, including illicit trafficking in endangered animal species and...](#)
13. [13. Facilitation of unauthorised entry and residence.](#)
14. [14. Murder, grievous bodily injury.](#)
15. [15. Illicit trade in human organs and tissue.](#)
16. [16. Kidnapping, illegal restraint and hostage-taking.](#)
17. [17. Racism and xenophobia.](#)
18. [18. Organised or armed robbery.](#)
19. [19. Illicit trafficking in cultural goods, including antiques and works of...](#)
20. [20. Swindling.](#)
21. [21. Racketeering and extortion.](#)
22. [22. Counterfeiting and piracy of products.](#)
23. [23. Forgery of administrative documents and trafficking therein.](#)
24. [24. Forgery of means of payment.](#)
25. [25. Illicit trafficking in hormonal substances and other growth promoters.](#)
26. [26. Illicit trafficking in nuclear or radioactive materials.](#)
27. [27. Trafficking in stolen vehicles.](#)
28. [28. Rape.](#)

29. [29.Arson.](#)
30. [30.Crimes within the jurisdiction of the International Criminal Court.](#)
31. [31.Unlawful seizure of aircraft/ships.](#)
32. [32.Sabotage.](#)
3. [SCHEDULE 3](#)
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 1. [2.In Schedule 3 to the Parliamentary Commissioner Act 1967 \(c....](#)
 3. *Criminal Justice Act 1967 (c. 80)*
 1. [3.Section 34 of the Criminal Justice Act 1967 \(c. 80\)...](#)
 4. *Suppression of Terrorism Act 1978 (c. 26)*
 1. [4.Sections 1 \(offences not to be regarded as of a...](#)
 2. [5.For section 5 of the Suppression of Terrorism Act 1978...](#)
 5. *Criminal Justice (International Co-operation) Act 1990 (c. 5)*
 1. [6.Section 22\(1\) of the Criminal Justice \(International Co-operation\) Act 1990...](#)
 6. *Computer Misuse Act 1990 (c. 18)*
 1. [7.Section 15 of the Computer Misuse Act 1990 \(c. 18\)...](#)
 7. *Aviation and Maritime Security Act 1990 (c. 31)*
 1. [8.Section 49 of the Aviation and Maritime Security Act 1990...](#)
 8. *Criminal Justice Act 1991 (c. 53)*
 1. [9.In section 47 of the Criminal Justice Act 1991 \(c....](#)
 9. *United Nations Personnel Act 1997 (c. 13)*
 1. [10.Section 6\(1\) of the United Nations Personnel Act 1997 \(c....](#)
 10. *Terrorism Act 2000 (c. 11)*
 1. [11.Section 64\(5\) of the Terrorism Act 2000 \(c. 11\) \(offences...](#)
 11. *International Criminal Court Act 2001 (c. 17)*
 1. [12.Section 71 of the International Criminal Court Act 2001 \(c....](#)
 2. [13.\(1\) Part 2 of Schedule 2 to the International Criminal...](#)
 12. *Enterprise Act 2002 (c. 40)*
 1. [14.Section 191 of the Enterprise Act 2002 \(c. 40\) \(offences...](#)
4. [SCHEDULE 4](#)

[Repeals](#)