



# BREXIT IMPACT ON CRIMINAL LAW

*Lawyer Monthly also takes a look at the criminal justice system and how the recent Brexit decision might affect criminal law throughout the EU. On this topic we speak to Aleksandra Kowalik, a self-employed law practitioner specialised in several segments of the criminal legal field.*

So, it has happened, the majority of entitled to vote in EU referendum voted to leave. Naturally, at this stage when the leave proceedings haven't still been issued therefore one cannot declare unambiguously what exactly the prospective legal results of Brexit will be but one can take an attempt to prescribe the eventual impact on the cooperation in the criminal matters.

To retain the appropriate construction of this short informative leaflet, the main and most relevant regulations and institutions must be introduced.

## Eurojust

Set up in 2002 by the Council Decision 2002/187/JHA of 28 February 2002 agreed in Tampere to create an area of freedom, security and justice within the EU, subsequently amended in 2003 (Council Decision 2003/659/JHA of 18 June 2003, amending

Decision 2002/187/JHA) and 2008 (Council Decision 2009/426/JHA of 16 December 2008)- The European Union's Judicial Cooperation Unit is an EU agency entrusted with reinforcing the fight against serious crime through closer judicial cooperation within the EU.

Its seat is in Hague. It is composed of a college of 28 national members, who are experienced judges, prosecutors, or police officers of equivalent competence from each EU country.

The clue of EUROJUST is to expand and increase effectiveness of the domestic criminal investigation authorities in relation to the organised cross border criminal groups and to provide the EU members with the most efficiency methods for bringing the criminals to the face of justice.

EUROJUST deals with ca 2000 proceedings per year. At the same time

about 200 coordinative meetings are being held yearly. Their main purpose is to simplify the cooperation amongs the judicial authorities and inquiry bodies of the EU Members States.

To expose the role of EUROJUST I couldn't have not to mention about its' the last success. Eight Member States took an action against international VAT fraud.

On 25th June 2016 a coordination centre at Eurojust supported an international action day against a criminal network involved in international VAT fraud and money laundering defrauding EU citizens of approximately EUR 57 million in tax revenues via companies selling electronic items, hardware and software.

This coordination centre was set up by the German and French National Desks with Cyprus, Italy, Latvia, Luxembourg, Poland and the UK. Europol deployed a

mobile office at the coordination centre and a forensic analyst to Germany to facilitate real-time information exchange and cross-match analysis of the data collected.

The results of the action were as follows- 7 people has been arrested, 27 seizure orders have been issued, 57 searchres have been carried, 12 suspected have been interviewed and the goods worth over EUROS 4,5 millions have been seized.

As already mentioned above, The United Kingdom was one of the cooperating Members State which means that participating in this kind of action also for The UK residents prospective prevention upon synchronised EUROJUST system would have never been accessible.

We cannot pass over in silence the Operation BlackShades which was a great and impressive success of

cooperation within the EUROJUST members.

That cybercrime case involved 16 countries: the Netherlands, Belgium, France, Germany, the UK, Finland, Austria, Estonia, Denmark, Italy, Croatia, the USA, Canada, Chile, Switzerland and Moldova.

The operation resulted in 359 house searches, 97 arrests, the seizure of the BlackShades website domain, as well as 1 100 data storage devices, drugs, firearms and cash.

The UK's National Crime Agency informed that 15 arrests took place in England and two men were held in Scotland.

"Eurojust's operational priorities for 2014-2017, adopted by the College in January 2014, list drug trafficking, illegal immigration, trafficking in human beings, fraud, in particular Missing Trader Intra-Community (MTIC) fraud, corruption, cybercrime (including child sexual abuse images), criminal offences affecting the EU's financial interests (so-called PIF offences) (the 'PIF Directive' is still under discussion in Brussels), organised property crimes committed by Mobile Organised Crime Groups, and terrorism" (vide: EUROJUST News issue 11, page 2)

- as per above mentioned, the EUROJUST's targets and assumptions are ambitious and extremely essential for the common public safety therefore the question that we should ourselves is whether The UK and the rest of EU Members States are ready enough to disarray that functioning network of the best specialists and professionals.

In a great shortcut, EUROJUST stays in close cooperation also with Europol, European Anti-Fraud Office (on 24 September 2008, Eurojust and OLAF signed a Practical Agreement on Arrangements of Cooperation to fight against fraud, corruption or any other criminal activity affecting the European Union's financial interests) and Genocide Network established by the Council of the European Union (Council Decisions 2002/494/JHA and 2003/335/JHA).

Additionally, one of the main fields which EUROJUST focuses on are the proceedings related to the European Arrest Warrant.

The Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the surrender procedures between Member States has been issued; finally the proceedings should have been faster and less complicated than extradition one.

In case of Brexit not only taking an advantage from participating in the Council Framework Decision should have been negotiated but also Extradition Act 2003 will have to be updated or amended properly. Simultaneously imagine that The UK will be deprived of possibility to attend the EAW scheme due to free movement limitations, it will simply mean a necessity for returning to the previous rules namely much longer and much expensive procedures. It also means the limitations in usage of the EU data base information about wanted criminals.

## European Judicial Network in criminal matters (EJN)

The purpose of the European Judicial Network (EJN) in criminal matters is to facilitate judicial cooperation, in particular in the fight against cross-border crime. It originated in a Joint Action adopted by the Council on 29 June 1998, which was replaced by a Council Decision of 16 December 2008.

The judicial network has been established to enable the contact amongs EU countries' judicial and other competent authorities via contact points which provide the legal and practical information necessary for the authorities or other appropriate bodies concerned to prepare an effective request for judicial cooperation.

## Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

The Council Act concerns the general aspects of mutual assistance, for instance taking any evidence namely interview from the suspected persons or witnesses, or very specific one such as via videoconference and interception of and obtaining evidence by means of search and seizure.

Therefore any EU Member State can have in terms of Council Act, the jurisdiction to carry out the evidence.

One has to bear in mind that carrying out the part of investigation in the other EU jurisdiction is extremely helpful in case of any obstacles (therat of losing the evidence, the urgency of proceedings etc.) in carrying out the evidence namely the hearing/ interview in the basic jurisdiction.

"By mutual agreement, the competent authorities of two or more Member States may set up a joint investigation team for a specific purpose and a limited period, which may be extended by mutual consent, to carry out criminal investigations in one or more of the Member States setting up the team" (vide: article 13 of the Convention-annex to the Council Act)- in my modest opinion this is one of the most important regulation of the the Convention as the crime is not only the next door neighbour in relation to whom domestic investigation and procedures are completely adequate and sufficient.

The current crime also wears the white collar and white gloves and does not border the borders. The desire of "income" and power simply does not define the borders that is why the mutual assistance and cooperation in the inter alia criminal matters is a clue for providing the EU citizens with the security at the highest stage.

In conclusion I do not hesitate to declare that in case of Brexit and failure of the negotiations EU will lose its opportunity to cooperate with the highest class specialists and The UK will stay very limited in their possibilities in carrying out the effective fight with the international criminal "invaders" who can become more arrogant in committing a crime and we have to remember "fear is the mother of the morality" - (Friedrich Nietzsche). Whom the criminals will be afraid of in case of the lack of the fear. **LM**

## About Aleksandra Kowalik



Aleksandra was called to the Polish Bar in 2009. Before, she had been a statutory judicial trainee for three years at the District Court of Torun, which prepared her for the judicial profession. Aleksandra runs her own individual practice which covers criminal law, civil law- namely commercial disputes, taxation including all the criminal aspects, international law and immigration law. She is also a member of European Criminal Bar Association in London, Solicitors Regulation Authority (Registered European Lawyer), and Academy of European Law in Trier.

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