

Lies, damn lies, and statistics: what do the extradition numbers really tell us?

The Brexit Transition Period, which expired at 23:00 GMT on 31 December 2020, marked the end of the UK's participation in all EU criminal cooperation which it had opted in to since 2001. On Christmas Eve, the proverbial 11th hour, the UK and EU concluded a draft [EU-UK Trade and Cooperation Agreement \("TCA"\), which was provisionally applied in the EU and, to the extent necessary, implemented in domestic law through the European Union \(Future Relationship\) Act 2020](#). This heralded a new phase of cooperation between the Parties and included a suite of criminal cooperation measures (Part III) which encompassed a replacement to the European Arrest Warrant ("EAW"), the TCA Arrest warrant ("AW"), in Title VII.

At the same time, the UK lost access to the [SIS II system](#), a security and immigration database in which police and judicial alerts are shared between EU Member States and Norway, Iceland, Switzerland and Lichtenstein. Articles 26-31 establish a legal basis for alerts for EAWs (Article 26) and other extradition requests (Article 26). EAWs are 'uploaded' onto SIS II, together with a *pro forma* (known as Form A) which summarises the information and can be translated in real-time into all EU languages.

In April 2015, SIS II came 'online' in the UK, meaning that alerts were received in 'real time'. In practice, if (say) the police detained a person in a routine traffic stop in England, when officers entered the person's details on the Police National Computer (PNC), if (s)he was wanted on an EAW, then a SIS II alert would be generated and an arrest could take place immediately. The National Crime Agency ("NCA") did not routinely certify an EAW until a person had been detained on an Article 26 alert, and then officers certified the EAW based on the information contained within the Form A. At the initial hearing before Westminster Magistrates' Court, the judge would fix a date (usually one or two weeks) for the issuing Member State to serve a copy of the EAW in English.

The House of Lords' European Union Committee [heard](#) how UK law enforcement agencies accessed SIS II some 603 million times in 2019. Access to that system was, inevitably, not part of TCA, as EU law does not permit third states access to SIS II, even those benefitting from a data adequacy decision like the UK. Without SIS II, extradition alerts must now be circulated via Interpol or, if the requesting state knows that the requested person is in the UK, sent directly to the National Crime Bureau in Warrington.

Under Article 632 TCA, all EAWs issued prior to 31 December 2020 are automatically considered AWs. Previously, they were certified as 'European arrest warrants'. They are now referred to as 'Part 1 warrants'. In a policy decision, the Home Office decided that all EAWs issued after the end of the transition period should not be certified under Part 1 EA 2003 and, instead, instructed the NCA to seek that the issuing (Member) State reissue the EAW under the TCA. Given that Part 1 neither mentions EAWs or AWs, the Home Office's rationale is unclear.

All of this raises the question: how effectively would the new surrender mechanism operate?

Anecdotally, there were no arrests for the better part of the first ten days of 2021. However, it was not long before first appearances began to trickle into Westminster Magistrates' Court; perhaps all was not as bad as feared.

The drop was compounded by the fact that much of the world had ground to a halt in spring 2020 as restrictions on travel, both domestic and international, were imposed

Where are we now?

With most travel restrictions eased, and with plenty of time for the new arrangements to have become bedded in, the question arises: what does the extradition landscape look like?

An recent oral [question](#) from Lord Coaker at the Lords Justice and Home Affairs Committee raised exactly this issue. What, he asked, had the impact on leaving the EAW scheme had?

In answer, Baroness Williams of Trafford set out the position:

The noble Lord will of course know that 2021, last year, was far from business as usual, given the context of the pandemic, which impacted both the courts and international travel on both sides. As anticipated, the calendar year figures for 2021, which are now out, show a reduction in volumes in relation to arrests in the UK on incoming extradition warrants from the EU, surrenders from the UK to the EU, and outgoing requests made by the UK. However, if noble Lords look at the financial year figures, which run for an extra three months until March of this year, it reveals an improving picture: the total number of arrests on incoming warrants from the EU was directly comparable to the previous financial year, and surrenders on incoming warrants were, in fact, up by 30%.

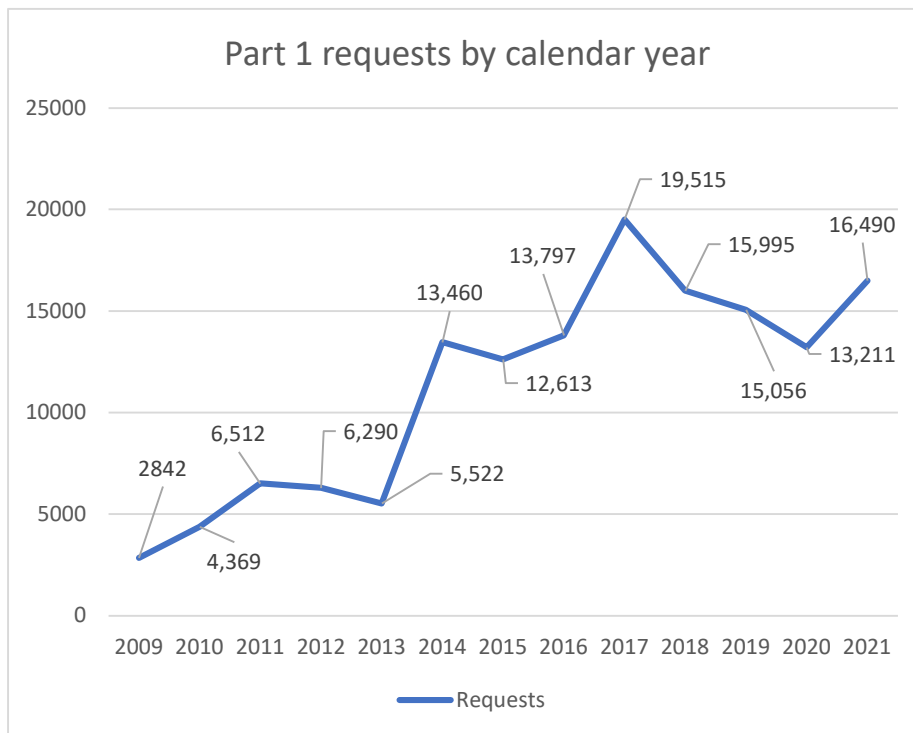
Facts are stubborn things, but statistics are pliable

The NCA publishes statistics on the numbers of requests, arrests and surrenders, to and from EU Member States. They have now [published](#) their 2020-21 statistics, together with the 2021-22 financial year statistics. But what do the statistics really tell us? Is the position as Baroness Williams suggests?

Certainly, it can be said that there has not been a sudden and terminal decline in the number requests to, arrests in, or surrenders from the UK following Brexit. Nor does it seem that pointing to either Brexit (at least, the shifting legal mechanisms) or Covid provides a simple answer to the changing numbers. The landscape is more complex.

The figures say nothing of the potential impact of wider factors. For example, there has been a significant decline in EU migration since the Brexit referendum in 2016 (see [here](#), for example), notwithstanding the fact that ‘free movement’ continued unabated until the end of 2020. It is not unreasonable to suggest that Brexit *could* result in reductions in the numbers of requests, arrests, and surrenders.

Requests



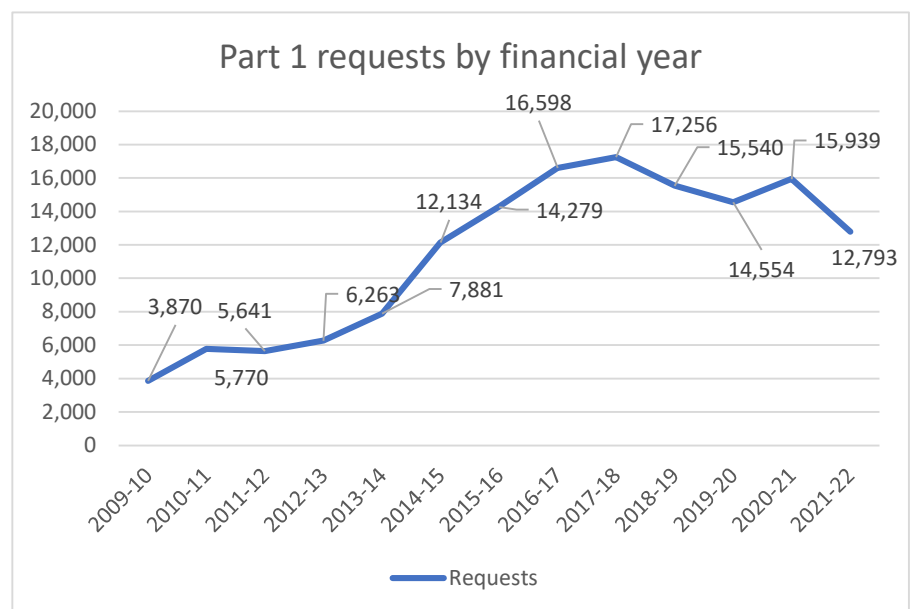
In 2020, the last full year when the UK participated in both the EAW and SIS II, there were 13,211 requests, which was already somewhat down from the peak in 2017 and was the lowest since 2016.

In 2021, the first full year post-Brexit, the number of requests was shown a significant *increase*, rising to nearly 16,500 – the *highest* since 2017.

It is unclear whether the volume represents states ‘re-issuing’ pre-Brexit EAWs which had either not been certified or which had not resulted in arrest, so that they can be certified by the NCA as TCA warrants. Either way, it demonstrates that Member States are at least willing to direct TCA warrants to the UK.

The position is markedly different when looking at the financial year data, which gives an insight into the first part of 2022. That shows a comparative drop for 2021-22; and records the lowest number of incoming warrants since 2014-15.

Unfortunately, it is not possible to compare the position to EAW figures to see whether the issue is more limited circulation via Interpol, as the latest [dataset](#) is less complete and only runs as far as 2019.



Arrests and surrenders

Arrests in 2021 were down nearly 30% from 2020 and 2019. It is impossible to say whether that is the restriction on movement caused by Covid, the loss of SIS II, or a combination of both.

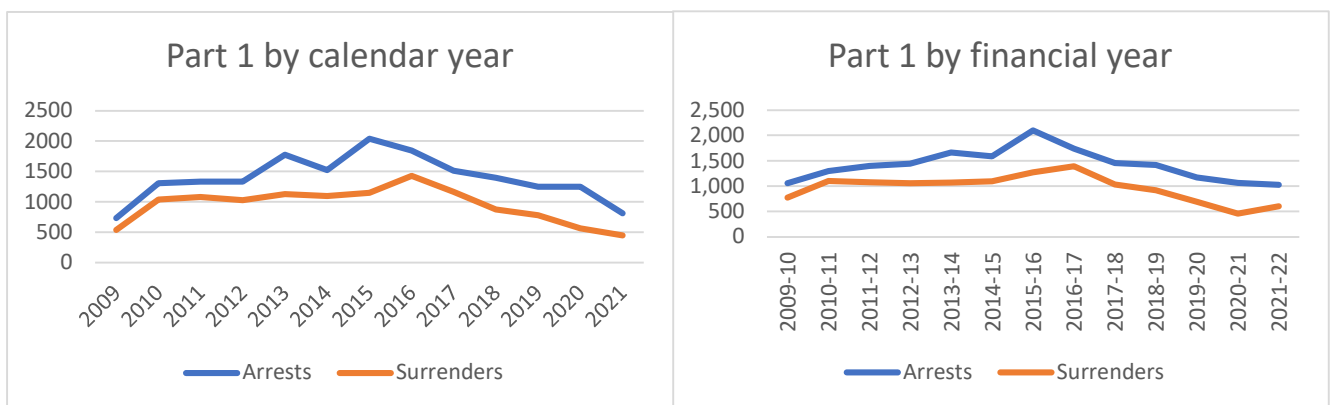
As Baroness Williams highlighted, the number of arrests in the financial year 2021-22 more closely resembles 2019-20 and 2020-21, suggesting that the numbers of arrests are on the increase.

Surrenders dropped to just 450 in 2021; the lowest since 2009. That is perhaps unsurprising, and it would be easy to point the figure at Covid. Nevertheless, as described below, surrender to Poland and Hungary was largely hold during 2020/21. The slight increase in surrenders for the 2021/22 financial year data suggests that, given travel restrictions eased greatly some time ago, the dismissal of the Polish rule of law challenges supports the suggestion that domestic cases has a significant impact.

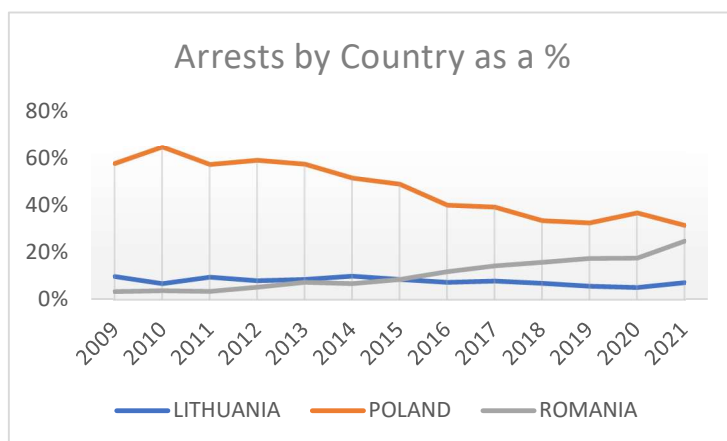
Certainly, there is no obvious rationale to suggest that leaving the EAW itself had any meaningful impact on removal; the TCA has largely replicated its predecessor, and little has changed in respect of export extradition.

The wider landscape

Looking through a wider lens, there are some broader patterns at play. The number of arrests and surrenders have shown a general downward trend since 2016. As set out earlier, whether this is corollary of reduced migration following Brexit is impossible to say. Alternatively, perhaps access to SIS II meant that the NCA relied on passive detection (traffic stops etc) as opposed to *actively* seeking requested persons.



Looking at the three countries which account for the greatest proportion of arrests and surrenders (Lithuania, Romania and Poland), there are some trends which also emerge. It is perhaps noteworthy that Romanian and Polish nationals (in that order) account for the greatest number of applications under the EU Settlement Scheme.



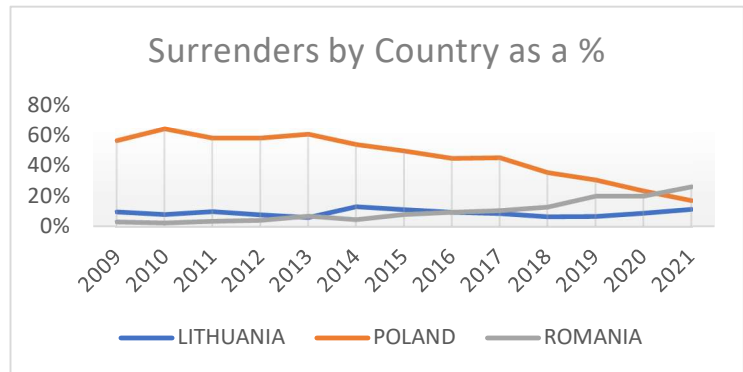
One potentially significant matter is the impact of domestic extradition litigation. There are routinely 'leading cases' before the High Court, where issues are raised which impact extradition of many or all individuals to a particular country. Where permission to appeal is granted on a systemic issue, the result is often to create a backlog of cases at the permission stage.

In recent years, a notable example of this has been Poland. Poland produces

the greatest proportion of extradition requests to the UK; averaging around 13% in recent years. Surrenders to Poland have accounted for just under 50% of the total recorded from 2009-2021.

Extraditions to Poland have shown a general decline for several years. However, that has become more marked recently; whilst 30% of all extraditees were sent to Poland in 2019, that number dropped to 23% in 2020 and just 17% in 2021.

On 5 June 2020, Fordham J granted permission to appeal in what became *Wozniak v Poland* [2021] EWHC 2557 (Admin). The substantive hearing took place on 18 May 2021, but the decision was not promulgated until 23 September 2021 and an application for certification to the Supreme Court was not determined until 1 December 2021. The experience of practitioners was that extradition hearings at first instance in Polish cases continued largely unchecked, but on appeal permission decisions were stayed pending resolution of the leading cases.



At the same time challenges to Polish prison conditions following the grant of permission in *Litwinczuk v Poland* [2021] EWHC 2735 (Admin) added another basis to halt extradition until the dismissal of that decision on 13 October 2021.

The damming of the flow of extradition to Poland is clearly reflected in the statistics.

At the same time, the proportion of arrests from Polish warrants has been steadily declining for some years, whilst there has been an increase in arrests and surrenders from Romanian warrants. All this suggests a changing landscape that than the overarching figures would indicate, and that patterns beyond Covid or leaving the EU.

Things are clearly not as straightforward as Baroness Williams' reply in the House of Lords would suggest. It is yet to be seen whether the UK continues to receive the same volume of surrender requests as it did under the EAW.

Perhaps a more fundamental question is whether as many extradition requests are being directed to the UK by Member States, as are being uploaded to the SIS II system that results in the free circulation of alerts between internally.

If there are fewer, then why? It may be a direct result of the change in immigration rules as a result of leaving the bloc, or it may be that the additional work and resources for Member States to circulate requests via Interpol is simply not worth the effort in every case.

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