Call for Evidence - Balance of Competence review on Police and Criminal Justice

The Police Service is writing in response to the call for evidence on the Governments review of the balance of competences between the United Kingdom and the European Union.

1. Has the development of EU police and criminal justice competence over the years led to improved cross-border co-operation?

Yes. After the Tampere Declaration the UK passed the Extradition Act 2003 which has sped up the process of extradition both from the UK to member states and also into the UK from member states.
The European Arrest Warrant has also made a significant improvement in cross border cooperation between states as criminals can be returned to the circulating country.

Over the last decade the cooperation achieved through the EU has improved from being inconsistent and reliant on personal relationships to being a far more organised and effective system. The level of cooperation between member states has increased as the various treaties have been signed and processes through Europol and Eurojust have been formalised.

The current system, while not perfect, continues to evolve and facilitates the meeting of member state prosecutors and law enforcement to discuss partnership working with the provision of translation services and the opportunity to formalise cooperation in a legally recognised format, reducing the need for letters of request. The reports and submissions have this year improved following consultation to improve the process and reduce unnecessary bureaucracy.

An example of the positive impact that the EU has had on cross border cooperation around a particular crime type is money laundering. The directives established for money laundering have created the situation where the law across Europe is the same or extremely similar, making cooperation between member states relatively straight forward. The money laundering directives have resulted in strong EU legislation in member states giving an extremely powerful message that the EU will not tolerate money laundering, prosecuting offenders across all member states and deals with the matter of “dual criminality”, which was a condition of the Lisbon treaty leading to agreed specified offences.

Another effective example is Europol’s co-ordination role is Project Sandpiper, the UK led European Commission funded project aimed at reducing the impact of Romanian Organised Crime against the payments (banking) industries within the UK, with Romania being instrumental in securing strong collaboration between UK and Romanian law enforcement. This has resulted in the project successfully delivering its aim of disrupting organised crime in this area. Results to date include 40 arrests, 5 convictions and estimated savings to the payments industry totalling £20.4m. Europol has also facilitated the dissemination of over 215 intelligence

reports between the member states under this project, through its Secure Information Exchange Network Application (SIENA).

2. What are the advantages and disadvantages arising from the UK's ability to opt in to new or amended EU policing and criminal justice legislation and opt-out individually of new policing and criminal justice measures in relation to Schengen?

The ability to opt in to a new or amended EU policing and criminal justice system appears to be a sensible measure, as currently the harmonisation of legislation across the EU is not complete and the legal systems throughout the member states remain diverse. There have been many examples of Organised Crime Groups operating over international borders in an attempt to frustrate law enforcement. Use of International Letters of Request (ILOR), Schengen powers, Joint Investigation Teams (JIT) and multi-lateral working have mitigated against this threat. The legislation has also been key in securing financial assets that would otherwise be moved overseas.

Opting in to new EU policy provides advantages to law enforcement activity for all member states for serious and organised crime. An example of where the ability to opt in demonstrates that the UK can cooperate well was the consideration being given to the formation of a new European Prosecutor's Office (EPPO) across the EU to deal only with fraud against the EU Commission. While this may provide some resolution to the issue that some member states have no prosecutor equipped to deal with the criminality, they could clearly benefit from the formation of the EPPO, this does not take into consideration that the UK already has strong fraud legislation and that between the police and CPS the UK has the ability to investigate and prosecute if appropriate. A further advantage of opting into such measures under Schengen is that it will provide further scope for real time data through the Schengen Information System, not only to help tackle serious and orgainsed crime but also in the assistance of providing reduced risk to the public as a whole. The ability to opt in is therefore of value and as the example demonstrates does not lessen the ability of the UK to cooperate and engage with EU Member states.

A disadvantage to opting in may be the ability of law enforcement within EU states to efficiently manage intelligence supplied from other states and consideration may be needed to agree minimum standards of intelligence handling.

3. Are there any areas where the EU is looking to expand its competence (either by legislating or by other means) beyond the treaty?

Law enforcement could potentially benefit from the harmonisation of legislation across the EU areas where it would assist in cooperation for the investigation of fraud and cyber enabled crimes and suggestions of further expansion appear to be within the spirit of improving the performance of criminal justice.

There appears to be the option for each state to consider matters, leaving native legislation as the primary source of law for each. There appears scope, however, for EU states to take advantage of the competence and request improvements, such as

EU states to adopt better practices and legislation which are more suited to tackle serious and organised crime. For example ILOR legislation requires that recipients have the equivalent legislation as the requesting country in order to conduct the necessary legal proceedings.

The Proceeds of Crime Act, in relation to international asset recovery, attracts the same issues. Law enforcement in the UK could potentially be able to provide a driving force behind such change. This could also decrease the bureaucracy of information sharing, by improving the processes involved. For example, the ability to liaise directly and to obtain intelligence from other member state law enforcement agencies, rather than the current multiple handling of documents to gain intelligence/information.

In some EU member states crimes related to fraud are not considered to be a priority and legislation such as the Fraud Act 2006 does not exist. This suggests international cooperation for a joint investigation would rely upon the forming of partnerships using money laundering with fraud being the predicate offence.

In Spain for example, fraud is dealt with by a lower court with reduced penalties and partnership working would seek to evidence links to organised crime to trigger referral of a case to the higher Spanish Supreme Court.

4. Has the development of EU police and criminal justice competence helped or impeded the effectiveness of law enforcement?

The development of the EU Police and Criminal justice competence has had a significant and positive impact on the effectiveness of UK law enforcement; however, the EU competence has not been recognised and highlighted as the source of the improvement.

Over the past five years the City of London Police (CoLP) for example, have worked closely with Spain investigating investment fraud, initially dealing with individual cases obtaining evidence through Letters of Requests. This was successful but time consuming and not a dynamic process, therefore the decision was taken to maximise partnership working opportunities fully utilising EU legislation.

In 2012 CoLP targeted a small group of highly successful criminal enablers operating in Spain and formed an international joint investigation team with the Spanish National police and the National Crime Agency (while a shadow Command). The agreement to form a joint investigation team was formalised by Eurojust at The Hague and was the first such agreement with Spain. At the time the operation moved to executive action a further member state (Romania) had joined the investigation team together with a priority one nation (Serbia). The result was 121 arrests in 5 counties and seizure of substantial criminal funds; this may not have been possible without the framework for cooperation provided by the EU.

The development of Europol has also helped the effectiveness of UK law enforcement through its activities which include gathering, analysing and disseminating intelligence and coordinating cross border operations and crime projects.

A clear benefit to law enforcement has been the provisions of the European Arrest Warrants (EAWs), making it much easier for UK law enforcement to bring to justice suspects who may have fled to other parts of Europe. This system replaced the extradition system between EU countries, which was notoriously slow, cumbersome and often inconsistent and confusing in how the process worked between different member states.

Whilst still not as rapid a process as we might like, EAWs are nevertheless a much more streamlined process, negating the need to obtain Court Orders before someone can be repatriated between countries. COLP have exercised EAWs on a regular basis for suspects in economic crime investigations, as well as other serious crime matters.

One area where policing may need to beware of EU competence is the upcoming European Investigation Orders. These orders give the EU powers to set timescales for investigations to be carried out by one member state on behalf of another. This may well have an impact on the (many) LOR requests receive for carrying out financial enquiries with the UK banking industry on behalf of member states. It is the experience of CoLP that even at present, there is sometimes difficulty in managing these enquiries alongside other priority investigations, with timescales sometimes slipping due to this. If the EU were to impose timescales upon us to carry out enquiries on behalf of member states for what are sometimes very low level, low value investigations, this may significantly impact on resources.

The UK adopted these provisions in March 2014, but has not yet implemented them so there should be an opportunity for policing to try and find out more about their implications and how we should prepare for them.

In relation specifically to Internet Provider (IP) crime, a clear way in which we have been helped by EU competence is through the "*In Our Sites*" programme that was set up by Europol. This is effectively an information exchange for European law enforcement agencies and the US Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) to come together and exchange details of copyright infringing websites that pertain to each respective jurisdiction. Each respective jurisdiction can then gain assistance from their counterparts in taking down/seizing websites that are domiciled in one country, but are causing harm in another. This activity is done in a coordinated way through Europol, so that maximum impact can be achieved against the perpetrators who may recognise they have no safe jurisdiction in which to hide and with the public across the EU area advised through coordinated press releases and other campaigns.

This programme is a proven success, with hundreds of web domains being seized in this way. Europol co-ordinate quarterly meetings for delegates to meet at The Hague, for which travel costs are paid. Website details and other intelligence is exchanged between the delegates, followed up by coordinated disruption activities in the respective countries taking part.

On behalf of the UK, officers from both National Fraud Intelligence Bureau (NFIB) and the Police Intellectual Property Crime Unit (PIPCU) have attended these

meetings and exchanged website data. This programme has attracted worldwide attention, with many other nations keen to join either this programme directly, or form their own, similar one in their part of the world.

Another potential benefit, specific to IP crime is the positive approaches we have received from the EU Observatory on Infringements of IP Rights, via the Office for Harmonization in the Internal Market. This EU Observatory has been set up (based in Alicante) to help co-ordinate and improve the EU wide response to IP crime, and where possible share best practice across the EU.

PIPCU has been invited to attend their next conference in November 2014 to present on their website disruption initiatives run in partnership with the creative and advertising industries. The travel and accommodations costs will be borne by the EU Observatory. The idea is for PIPCU to share with EU partners a “best practice” experience in setting up these initiatives, with a view to them being replicated in other countries across Europe. The same body has also offered PIPCU the opportunity to bid for funds they have available in support of our public education programmes. They state they have significant funds available for such programmes and claimed to be keen for PIPCU to benefit from them. PIPCU will be exploring this opportunity in support of their “Give me a chance” education campaign later this summer.

5. Has the development of EU police and criminal justice competence benefitted or caused problems for the British criminal justice system?

Overall the development of the EU police and criminal justice competence has benefitted the UK, with examples given in this document demonstrating what can be achieved through the Europol and Eurojust framework. The process is continuing to evolve and as we learn more about how EU member states work and how we can in turn work together, the process can be refined and improved. One issue raised is that of speed and how long documents take to be processed causing delays for investigations, a common issue raised with ILORs where one example given of a 15 month delay from the request being made to it being received by the appropriate police force.

An observation made from working in partnership with Spanish National Police shows that protocols can be very different. For example, in the UK the decision to search a premises is the responsibility of the investigation team who would then either seek authority from the court for a warrant or seek to utilise powers under the Police and Criminal Evidence Act. The search strategy and parameters for the search are then set by the senior police officer with exhibits dealt with to strict protocols i.e. they are listed for continuity and placed in numbered bags with non tamper seals. In Spain the process is quite different with an officer of the court being in charge of the search and exhibits not being subject to the same process as in the UK. During a search for an investigation carried out in Spain, this resulted in a much wider search than would have undertaken in the UK, with exhibits seized differently, which has implications for the investigation with regards to disclosure of the material to be scheduled for court, as practices are so varied.

11-16. The effect of European Standards on Crime Prevention/Security issues.

The UK police service is the only service in Europe to have a unique relationship/partnership with standards owners, test and certification facilities and the security industry.

The service is actively involved in the standards making process for many products that form the basis of building security e.g. doors, windows, locks, fencing, grilles, etc.

We have established a relationship with our partners whereby criminal modus operandi are communicated to the standards bodies to enable standards to deliver products that are resistant to the most prolific and emerging criminal methods of attack. As a result domestic security in the UK has fallen considerably, especially when standards are used collectively e.g. within the UK police initiative 'Secured by Design'. Numerous independent academic studies have shown that Secured by Design can reduce the likelihood of burglary by up to 75%.

The UK police service has been critical of the European standards process specifically as it relates to the security of doors and windows i.e. products that can offer criminal resistance to the vast majority of homes and businesses.

As a result the standard produced by the EU for doors/windows, EN 1627, **undermines previous gains made within the UK to protect UK citizens** from certain forms of criminal attack. In some particular areas of the UK if EN 1627 products were installed within new homes they would not afford protection against 45% of criminal attacks as the standard does not take account of specific criminal methods of attack (these criminal attack methods are not just applicable to the UK but are also applicable to other EU countries too). Not only does the standard fail to specifically recognise EU wide criminal methods of entry it fails to ensure that there is consistency in testing of products by test houses across the EU.

Numerous tests on EU products claiming to meet high levels of resistance, have failed to meet even the most basic level of testing when tested in the UK, the UK police service has had to produce (with its test house partners) a specific interpretive document to ensure some level of continuity of testing.

(http://www.securedbydesign.com/professionals/pdfs/SBD_THSG_1627_March_2013.pdf).

This document is currently being used as a basis to improve the next revision of the EU standard; however this process is very slow and exposes EU citizens to criminal methods of entry in the interim period.

EU standards and standards making/updating processes must be more applicable to the market that they serve and must become significantly more dynamic if they are to swiftly address emerging criminal methods of attack before they become prolific.

17. What are the advantages and disadvantages to the UK of EU action in the field of minimum standards in criminal law and procedure? You may wish to refer to specific examples

The advantage of setting minimum standards across the EU is that we can rely on the information and treatment of detainees from other member states. If the standards are maintained then the reliance on previous convictions and the quality of those convictions becomes business as usual (see above answers to questions 1, 4 and 5).

The disadvantages are that these standards must be well worked out in advance before they are accepted as the fine analysis of the directive can lead to inefficiencies or confusion.
An example is the Criminal Justice Road Map looking at Interpreters and Translations for persons being investigated for a criminal offence. The directive led to a change of the Police and Criminal Evidence Act Code of Practice C in October 2012, which caused expense and work that most practitioners thought unnecessary, and acted as a potential detriment to the detainee.

The Directive was outlined in 2010, and was drafted to require that 'essential documents' were given to detainees in custody or being interviewed. However, there was no reference made to telephone interpreting, which in the UK is the standard practice when booking someone into custody. This is likely because this provision is not available in mainland Europe yet. This oversight led the EU to create a bureaucratic solution and the Metropolitan Police translated several statements relating to detention into 50+ languages, and these are printed out for each detainee. We still have to get live telephone translation for the rest of the booking in process to explain the circumstances of the detention and risk assess the detainee, at which point they can ask and have answered any questions that they may have. This process exceeds the requirements of the directive.

The implementation seemed to be rushed and it was clear that the directive had been agreed without reference to the persons who would actually have to implement the changes. Involvement of practitioners at the time of the wording of the directive could have either advised on amendments, made different provisions, or made recommendations to opt out.

18. To what extent is EU action in this area effective in raising standards or enhancing cooperation? And to what extent is it necessary? And to what extent is the EU the most appropriate level for action in the field of minimum standards in criminal law and procedure?

In the above example EU Action has not raised standards, just increased bureaucracy and confused a process for little benefit to the intended recipient. In the case of Interpretation and translation, UK working practices are ahead of the rest of the EU (in the matter of telephone translation for example). If this had been taken into account this may well have improved the provisions and recognised best practice in this area. Minimum standards across Europe in Policing and Criminal

Justice are an integral part of ensuring that basic rights of the individual are preserved, so it is logical to arrange this at the EU level.

19. Could the EU use its existing competence in this area in a different way which would deliver more in the UK national interest?

The EU directive concerning Interpretation and translation has at its heart a noble purpose and a desire to set an acceptable minimum standard. It would serve UK interests to ensure that practitioners are consulted or involved when the directive is being written so that it is suitable, or that any opt out may be recommended. It was clear that little thought had been given to the implications on persons in police detention as the Code of Practice governing detention was rewritten immediately before the go live date, giving little time for effective implementation.

20. What future challenges do you see in the field of minimum standards in criminal law and procedure and what impact might this have on the national interest?

The 'Roadmap' for Policing and Criminal Justice has several other 'chapters' that are being introduced over the next few years. Each one of the changes may have a similar effect to the changes on translation which have not achieved their desired result and created an additional bureaucracy for little positive effect. It is vital that advice on rewording of the codes of practice are considered by the College of Policing in consultation with the Home Office as there needs to be a practical interpretation of the requirements.
The impact is that the detention or interviewing of suspects will become even more bureaucratic and expensive, stretching resources ever further.

21. Are there any other general points in relation to this area that you wish to make which are not captured above?

The Criminal Justice Roadmap is an effective method of standardising procedures across the EU for general benefit. However the piecemeal approach is creating training and resources issues as each new directive requires a change to the Code of Practice and the rights of a detainee, which requires additional printing and training costs for staff. If these directives have already been agreed and an implementation dates are set, can we ensure that all the changes are incorporated at the first date so that we can update in one hit?

Finally to reiterate the earlier point, it would be worthwhile for future directives to ensure that experienced practitioners are engaged and consulted with at the creation stage to identify and resolve issues prior to national and international roll out.