

Guest Editorial 3/2016



Maria Berger

EDITORIAL

AUTHOR

Maria Berger

CITE THIS ARTICLE

Berger, M. (2016). Guest Editorial 3/2016. Eucrim - The European Criminal Law Associations' Forum. <https://doi.org/10.30709/eucrim-2016-015>

Published in eucrim 2016, Vol. 11(3)
p 121

<https://eucrim.eu>

ISSN:



Dear Readers,

Cooperation on the part of national courts and executive authorities in the criminal law field is constitutive for the functioning of the area of freedom, security and justice (AFSJ). Focusing on a more or less voluntary cooperation on the part of the national authorities might initially have been an indication of the Member States' reluctance to also give up sovereignty in the field of criminal law and criminal justice. Today, however, it is clear that the AFSJ cannot be realized without such cooperation. It is therefore of programmatic significance when "cooperation" is expressly referred to in the relevant titles of primary EU law attributing competences to the EU for criminal law and criminal justice (cf. Arts. 82 and 87 TFEU) – a fact that distinguishes them from most other provisions on competences of the EU Treaty. It follows that secondary EU law must aim to strengthen, substantiate, and support cooperation, also by means of the EU's central institutions, such as Europol, Eurojust, and OLAF. Furthermore, law enforcement and judicial cooperation is – in the same manner as the harmonization of law – a prerequisite for the functioning of the principle of mutual recognition of criminal law judgments and judicial decisions – a principle that the CJEU considers of fundamental importance in EU law (Opinion 2/13, mn. 191).

A further legal basis of primary EU law concerning the duty to cooperate can be found in the general principle of sincere cooperation, as enshrined in Art. 4 para. 3 TEU. This principle also directly obliges the courts and authorities of the EU Member States to cooperate with other Member States as well as with the EU institutions. The current wording of the principle of sincere cooperation clarifies that, in turn, the EU and its institutions also have the duty to provide cooperation vis-à-vis the authorities of the Member States (as already ruled by the CJEU in 1990 in the case C-2/88, "*Zwartveld*").

Ensuring respect for fundamental rights and freedoms may, at any rate, also encourage national authorities to make extensive use of the instruments of cooperation as laid down in secondary Union law. In this context, the European Court of Justice called on the judicial authority executing a European Arrest Warrant to request all supplementary information on anticipated prison conditions from the issuing authority on the basis of Art. 15 para. 2 of the Framework Decision on the European Arrest Warrant. The issuing authority is obliged to provide this information to the executing judicial authority. This information is deemed necessary in order to ensure respect for Art. 4 of the Charter of Fundamental Rights (CJEU, Cases C-404/15 und C-659/15 (*Aranyosi und Căldăraru*), mn. 94 et seq.).

The requirements of primary EU law must be respected both in the interpretation of secondary EU law by the national courts and the CJEU as well as in the interpretation of conformity with Union law as regards national law implementing secondary EU law. The noticeable increase in criminal law cases referred to the CJEU will enable the Court to clarify more precisely the various obligations that derive from the principle of cooperation. It is more important, however, that law enforcement and judicial authorities increase their willingness to cooperate across borders in daily practice.

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The project is co-financed by the [Union Anti-Fraud Programme \(UAFP\)](#), managed by the [European Anti-Fraud Office \(OLAF\)](#).



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