

Guest Editorial eucrim 1/2017



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Editorial

EDITORIAL

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Dear Reader,

As a practising lawyer specialised in the field of criminal law and criminal procedure who is also involved in international cases – and as an enthusiastic European – I feel that we need a new and strong commitment to “our” Europe in these anxious times. We need to strengthen the EU as a guarantor for peace, our common values, human and fundamental rights, and the rule of law in our common area of freedom, security and justice.

Since the Amsterdam Treaty and the Tampere Council in 1999, the legal principle of mutual recognition of judicial decisions has been continually established, ultimately fixed in the Lisbon Treaty in Art. 67, 82 TFEU. Mutual recognition as a generally recognised legal principle in the field of criminal matters requires mutual trust. This was clearly expressed in 2009 by the Stockholm Programme and the “first” Roadmap on procedural safeguards. Nobody in Europe can disavow or ignore the political success story in this field since the adoption of the “first” Roadmap. The mission to achieve mutual trust has not been completed, because partial distrust still obviously exists between EU Member States and from the EU citizens’ view. Therefore, we must carefully observe the implementation process of all the Directives that were adopted in conjunction with the Roadmap and the additional Directive (EU) 2016/343 on the presumption of innocence and the right to be present at the trial. I would like to express my expectation that ECBA and CCBE will be part of the compliance process directed by the Commission regarding the implementation of EU legislation at the national level.

However, there is still much work to be done. Effective legislative measures at the EU level are lacking in important areas, such as pre-trial detention or conflicts of jurisdiction, an area that certainly relates to issues of *ne bis in idem*, where we can still identify many practical problems despite a precise legal framework and jurisprudence. Important components of criminal proceedings in the EU Member States, in particular the entire trial phase or legal remedy (appeal) guarantees, including the right to be heard, are also not sufficiently protected by concrete minimum standards. Witnesses’ rights (e.g., access to a lawyer, the right to silence, legal privileges, confiscatory bans) and other evidentiary issues (e.g., the admissibility or exclusion of evidence, the right of the defence to gather or to ask for evidence, recording of police interviews) need certain minimum rules alike. All these issues are essential in order to establish the required mutual trust in the EU.

The longstanding discussion on a Regulation for the establishment of a European Public Prosecutor’s Office (EPPO) – ongoing since 2013 – and the many different interim drafts have further demonstrated that new, additional measures are necessary in the field of procedural safeguards at the EU level (see also the contribution by *François Faletti* in this eucrim issue). To give one example: although the current draft EPPO Regulation establishes rules on compensation (cf. Art. 69), it does not cover compensation for damages after unlawful deprivation of liberty or other unlawful coercive measures, or for legal fees in cases of acquittal etc., or after miscarriage of justice (cf. Art. 14 par 6 ICCPR). The European legislator should close this gap.

Action should continue to be taken at the EU level in order to strengthen the rights of suspected or accused persons in criminal proceedings. This initiative will ultimately lead to the strengthening of the legal principle of mutual recognition and its underlying part: mutual trust. The ECBA suggests the initiative “Agenda 2020: A new Roadmap on minimum standards of certain procedural safeguards,” which would include legislation on Directives or Regulations (cf. Art 82 TFEU) on the following:

- Measure A: Pre-Trial-Detention, including the European Arrest Warrant

- Measure B: Certain Procedural Rights in Trials
- Measure C: Witnesses' Rights and Confiscatory Bans
- Measure D: Admissibility and Exclusion of Evidence and other Evidentiary Issues
- Measure E: Conflicts of Jurisdiction and *ne bis in idem*
- Measure F: Remedies and Appeal
- Measure G: Compensation

Let us promote this idea of an Agenda 2020 on procedural safeguards and a new Roadmap together!

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