

## Guest Editorial eucrim 2/2019

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### Editorial

### EDITORIAL

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## Dear Readers,

Developing criminal law and judicial cooperation in criminal matters has been a key component of Union policies for the last 20 years. The Union's common area of freedom, security and justice (AFSJ) provides citizens and companies with both security and rights, in particular by ensuring an ever-increasing coordination between judicial authorities, the progressive mutual recognition of judgments and judicial decisions in criminal matters, and the necessary approximation of criminal laws.

Soon, Union institutions must take stock of what has been achieved and what remains to be done. Our future priorities must follow the wake of our achievements but also deliver innovations capable of addressing new challenges. Indeed, much progress has been achieved since the 1999 Tampere Programme: there is a robust Union *acquis* on cooperation between judicial authorities, covering the recognition and execution of a range of judgements and decisions, e.g., arrest warrants, investigation and supervision orders, prison sentences and financial penalties. This progress is facilitated by the progressive harmonisation of certain aspects of national substantive criminal and procedural laws, including minimum standards to protect the rights of suspects and victims, and it is enforced through the forward-looking case law of the CJEU. The Union's efforts to establish a common area of justice (AFSJ) are thus visible, both in the progress of judicial cooperation and in the protection of the rights of persons involved in justice-related issues. Going forward, however, some challenges remain in making this existing *acquis* work efficiently throughout the Union, at the heart of which is ensuring effective implementation of the adopted legal instruments in all Member States.

As the world becomes more fractured and unsettled, the Union's core task remains to protect and further Europe's achievements, including its open democratic societies and liberal economies, while keeping terrorism and cross-border organised crime effectively under control. Judging by the relevant indicators, it seems that the terrorist threat in the Union will remain high and new attempts to carry out attacks likely. While the number of fatalities has decreased since 2015 (from 151 to 62 in 2017), the number of jihadist-inspired attacks (33) in 2017 more than doubled, with the number of arrests in relation to jihadist terrorist activities reaching high levels (705 in 2017). Similarly, organised crime remains a challenge for the authorities: Europol's current Serious and Organised Crime Threat Assessment (SOCTA 2017) records more than 5000 organised crime groups (OCGs) operating on an international level and currently under investigation in the EU. Overall, this number highlights the substantial scope and potential impact of serious and organised crime on the EU. More than one third of these groups active in the EU are involved in the production, trafficking, or distribution of illicit drugs. Other major criminal activities for organised crime groups in the EU include organised property crime, migrant smuggling, trafficking in human beings, and excise fraud. 45% of the groups mentioned in the SOCTA 2017 are involved in more than one criminal activity. It is estimated that the economic loss due to organised crime and corruption remains high in the Union, between €218 and €282 billion annually. In addition, organised crime and corruption have significant social and political costs, such as infiltration of the legal economy through the investment of laundered criminal proceeds.

Faced with the evolution of crime, globalisation, and technological innovations, there is a clear need to adapt the Union's *acquis* to the actual needs of practitioners and citizens and thus enable appropriate responses to new developments, including those linked to digitalisation and the use of Artificial Intelligence (AI). A primary challenge is the establishment of a solid EU criminal law framework capable of coherently tackling serious and/or cross-border crime ("euro-crimes") and other areas of crime in which the approximation of offences or sanctions is essential for the enforcement of EU law ("accessory crimes") in full respect of Member States' legal traditions. It is important to strike the right balance between EU action and respect for Member States' legal traditions, in particular in the area of sanctions. This particular issue of eucrim is dedicated to

helping the reader understand how or in what specific areas of sanctions, whether criminal or administrative, financial, or otherwise, the Union can achieve better results.

Another high priority in the area of justice is to strengthen mutual trust based on democracy, the rule of law, and fundamental rights, to increase fairness and sustainability in society, and to ensure the smooth functioning of the single market. It is now clear that further efforts are required to consolidate the system of mutual recognition of judgments and judicial decisions in criminal matters, including by ensuring minimum harmonisation of criminal procedural rules. One major issue here is to address the growing lack of mutual trust due to problems in the functioning of criminal justice systems or poor prison conditions in some Member States and the ensuing refusals of European Arrest Warrants. As the Union's institutional landscape for judicial cooperation gains maturity through the reform of Eurojust and the necessary integration of various judicial networks, it will also grow in complexity owing to their future interaction with the European Public Prosecutor's Office (EPPO) and its direct criminal enforcement. The Union will need to ensure coherence of action and adequate funding for all actors in this chain, including *vis-à-vis* the Union's law enforcement and administrative agencies.

Besides finalising pending legislative files, such as those on e-evidence, and ensuring the implementation of the *acquis*, reflection should also begin on possible initiatives that could help the Union complete its criminal justice arsenal. Issues worth exploring in the medium or long term could include:

- The transfer of criminal proceedings, perhaps in the broader context of rules on conflicts of jurisdiction and the principle of *ne bis in idem*;
- Cross-border use and admissibility of certain types of evidence;
- Protecting vulnerable suspects and accused persons;
- Updating Union law on corruption and environmental crime;
- Extending the material competence of the EPPO;
- Developing minimum standards on pre-trial detention and on compensation for unlawful detention;
- Continuing work on victims' rights, including access to justice and compensation;
- Enhancing convergence and cooperation between Eurojust, the European Judicial Network (EJN), and the EPPO;
- Issuing or revising handbooks on mutual recognition instruments to help practitioners implement CJEU case law;
- Use of Artificial Intelligence (AI) in criminal proceedings;
- Enhancing the digitalisation and interoperability of criminal justice authorities and EU bodies.

Of course, before becoming Union law any initiative in these areas of evolution will be subject to political validation and practitioners' scrutiny: for both the Commission will need to demonstrate their added value and compliance with principles such as subsidiarity and proportionality. We may be looking for feedback from you as well, dear Readers, on many of them.

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Editorially reviewed articles published in English, French, or German, are complemented by timely news and analysis of legal and policy developments across Europe.

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