What Hinders EU Cooperation? Where Should the EU Take Action – Scientific Study Gives Answers

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Report

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On 30 August 2018, the European Parliament Think Tank published a scientific study entitled: "Criminal procedural laws across the European Union– A comparative analysis of selected main differences and the impact they have over the development of EU legislation." Recent debates were sparked by the question of whether further approximation of the laws of criminal procedure should be undertaken at the EU level. In this context, the study aims at identifying areas in which differences between national criminal procedural laws exist and how these differences hinder cross-border cooperation, mutual recognition, and mutual trust. Ultimately, the study makes a number of recommendations –by both legislative and non-legislative actions –for EU policy makers in response to the identified challenges.

In terms of methodology, the study used a comparative criminal law approach. It representatively selected nine EU Member States to assess the differences that can lead to problems in application of the mutual recognition instruments: Finland, France, Germany, Hungary, Italy, Ireland, the Netherlands, Romania, and Spain. Research was based on a combination of desk and empirical research. National rapporteurs contributed analyses of current national case law and conducted semi-structured interviews with legal practitioners involved in cross-border cooperation in criminal matters.

The research paper identified the following nine domains of friction among the national procedural criminal laws:

- Investigative measures;
- Admissibility of evidence;
- Transnational procedures and equality of arms: the case of cross-border investigations;
- Pre-trial detention regimes and alternatives to detention;
- Procedures to assess detention conditions and surrender following the *Aranyosi and Caldararu* judgment;
- Compensation schemes for unjustified detention;
- The right to be present at a trial and conditions for *in absentia*surrender;
- Compensation systems for victims;
- Protection measures for victims.

The study also found several "types of hindrances" to cross-border cooperation in criminal matters, such as lengthy and complex negotiations over EU instruments as well as delays, ill-execution, and underuse of assistance requests. The authors further assessed how Member States and EU actors cope with the identi-

fied differences. They identified a number of imbalances and inconsistencies that are the "red lines" in the debate on how to properly reconcile the conflicting interests of effective EU cooperation and the protection of fundamental rights. The authors include two types of recommendations: practical measures and legislative action. As regards practical measures, the following is, *inter alia*, recommended:

- Increased training activities and awareness-raising, particularly as regards those instruments with little visibility, e.g. the European Supervision Order or the European Protection Order;
- Development of guidelines and handbooks on both cooperation and approximation instruments;
- Development of uniform templates to address requests for additional information, e.g., in the context of the *Arranyosi and Caldararu*case law;
- Inititation of an enhanced "trans-judicial dialogue," including the vertical dimension between the CJEU and national courts;
- Financial EU support where sufficient resources are lacking, e.g. in the domains of detention conditions, compensation for unjustified detention in cross-border cases, and compensation for victims of crime.

Recommendations for legislative measures are divided into those that should be realised in the short-term and those that should/could be realised in the mid- and long-terms. Possible *short-term solutions*are the following:

- Development of minimum EU standards in the realm of detention conditions and exclusionary rules of evidence obtained illegally or improperly;
- Initiative for a harmonised judicial review mechanism that accompanies exclusionary rules of evidence; the same could be done for overuse of pre-trial detention;
- Revision of the EU rules on compensation of victims and adoption of a new EU instrument on the compensation for unjustified detention in cross-border proceedings.

In the *mid-term*, the study recommends the following legislative measures:

- Adoption of procedural safeguards for the defence, designed specifically for transnational investigations;
- Facilitation of access to the case file by the defence counsel at early stages of the criminal procedure, expansion of legal aid mechanisms, and strengthening of existing provisions on legal remedies.

In the *long-term*, the EU should envisage the approximation of investigative measures, standards of admissibility of evidence (as opposed to exclusionary rules), and protection measures available to victims.

The study was commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the LIBE Committee. It was carried out by the ECLAN network. The general report, including the comparative analysis, was written by *Elodie Sellier* and *Prof. Anne Weyembergh*, both Unviversité Libre de Bruxelles. Authors of the country reports include: *Thomas Wahl, Alexander Oppers* (Germany); *Gerard Conway* (Ireland); Marta Muñoz de Morales Romero (Spain); *Perrine Simon* (France); *Silvia Allegrezza* (Italy); *Petra Bard* (Hungary); *Aart de Vries, Joske Graat, Tony Marguery* (the Netherlands); *Daniel Nitu* (Romania); and *Samuli Miettinen, Petri Freundlich* (Finland).

The study and the annexed country reports can be retrieved from the website of the European Parliament Think Tank.

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