

The European Public Prosecutor's Office (EPPO) and conflicts of jurisdiction in the EU

Conference 'International Cooperation in Criminal Matters: Connecting the EU and South America' |

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Research background on the issue

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project 2001/GRP/025 - 'Finding the best place for prosecution'

- viewed as essential by DG JLS
 - for Eurojust work in coordinating prosecutions
 - in deepening the thinking about forum choice EP
- input for November 2003 Eurojust seminar 'Deciding where to prosecute'
- served as inspiration for Eurojust guidelines for deciding which jurisdiction should prosecute, as embedded in the annex of the Eurojust 2003 annual report, promoting a matrix-based comparison and weighting of factors
- guidelines which the Council has highlighted again as a source of inspiration in the context of application of the November 2009 FD on conflicts of jurisdiction

further projects for EC relating to witness protection, preparation of ECRIS, EULOCS, etc

future of judicial cooperation study for EC (EU master plan)

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Approach

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formerly: CoE issue

- Convention 15 May 1972
 - Article 8: criteria allowing transfer of prosecution
 - Articles 30-34: inter-state consultation mechanism

rediscovered by EU (principal unresolved issue EU criminal policy)

- common issue Eurojust/EPPO
- only poor results so far
 - failed enhancement of ne bis in idem
 - MR of decisions to prosecute?
 - relevant legal instruments
 - November 2009 FD on conflicts of jurisdiction (poor)
 - Draft directive on transfer of proceedings (failed)
 - Proposed regulation EPPO (pending)
 - Proposed regulation further enhanced Eurojust (pending)

IRCP: proposals relating to jurisdiction to prescribe & enforce + beyond

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Jurisdiction to prescribe

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Article 82(2)(b) TFEU

- prevent and settle conflicts of jurisdiction

to date: counterproductive efforts EU

- regional universal jurisdiction in several instruments
- Corpus Juris: European ‘territoriality’ not only for EPPO, but also for national courts (EPPO deciding)

whereas (asap)

- MS should limit scope extraterritorial jurisdiction
- concept territoriality may not be interpreted too extensively (particularly counterproductive to provide EU territoriality)
 - rejection of extensive interpretation of territoriality and especially of applying of the ‘effect’ theory

Jurisdiction to enforce

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criteria for choosing the forum? - not: hierarchical list

‘proper’ administration of justice & reasonable enforcement of jurisdiction

- no enforcement jurisdiction if ‘unreasonable’ (US example)
- limitative list of potentially reasonable jurisdiction criteria
 - locus delicti (supra: not interpreted too extensively)
 - criteria 1972 CoE Convention & MR Programme
 - ordinary residence or nationality suspected person
 - where person is (planned to) undergo(ing) sanction
 - territory of concurrent proceedings against same suspect
 - location most important items of evidence
 - territory likely to improve prospects social rehabilitation
 - guarantee of presence suspect at court proceedings
 - territory allowing enforcement possible sentence
 - victim-related criteria
 - ordinary residence, nationality, origin victim, territory of damage

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'Proper' administration of justice

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future legal instrumentarium

- interpretation 'territoriality' not too extended
- ne bis in idem effect to
 - irrevocable settlements preventing further prosecution
- MR of
 - decisions other MS to prosecute
 - with possibility Eurojust conflict 'resolution' or 'mediation'
 - top-down for mandated EU-worthy cases (EULOCS-based)
 - bottom-up (as currently) in further cases
 - not necessarily single MS (international case management)
- principle of 'proper' administration of justice
 - no unreasonable enforcement of jurisdiction
 - limitative list of potentially reasonable criteria
 - manifestly unreasonable if not in list

Judicial review

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pre-trial stage

- ‘praetorian’ development of pre-judicial jurisprudence (in establishing negative criteria) by Eurojust
- = prosecution guidelines (open to the public?)
- possibility Eurojust to raise preliminary questions to ECJ on interpretation (‘unreasonable’)
 - sufficient basis in new EU legal instrumentarium to allow for interpretation
 - development jurisprudence ECJ on jurisdiction issues
 - non-binding but authoritative

trial stage: same possibility before national courts, including relating to Eurojust conflict ‘resolution’

post-trial stage

- ECHR (Article 6)?
- ECJ (MS level)
- ICJ The Hague (state-level): Lotus, Yerodia, ...

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EPPO | Material competence: PIF

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relative importance only - beware of over-prioritization

do feature among EU priority crimes

not always complex – not always involving more MS

if not: preferably dealt with domestically

if complex or involving more MS: EU-worthy, for which a ‘normal’ involvement (further reinforced) Eurojust will be sufficient

- decisive powers coordination investigations & prosecutions
- right of initiative investigations and prosecutions
- resolution conflicts of jurisdiction
- formal acts of judicial procedure remaining national
 - further extension national powers college members?
- sufficient to counter traditional inertia MS

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EPPO | Functioning

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functioning

- according to Article 86
 - investigating, prosecuting and bringing to judgment
 - exercise functions of prosecutor in competent courts
- unnecessary if truly strong Eurojust in EU-worthy cases
- discussion college-based or pyramidal decision-making
 - merely ideological, now decided in negotiations in favour of a college-based structure
- problematic relationship with OLAF
- more important challenges (infra)

Further challenges & proposals

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further extension national powers college members

immunity from prosecution

- res judicata effect, following positive opinion Eurojust

Eurojust access to ECRIS

- ne bis in idem etc

benchmarking through EULOCS

- EU Level Offence Classification System
- fully compatible with Eurojust mandated crimes and CMS
- demarcation supranational mandate powers Eurojust?

logical extension Eurojust's new role to similar issues

- best place for witness relocation
- best place for sentence execution international tribunals

adoption legal framework cross-border investigative powers police and judicial authorities of the MS (Article 89 TFEU; ex Article 32 TEU)

- to be preferred over supranational investigative powers

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Questions and discussion

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