



# Justice & Home Affairs

## *Justice Cooperation in the EU*

### *Assigned readings for this session:*

- *Peers (2011), pp. 655-675, 855-860*
- *Mitsilegas (2008), pp. 153-169*
- *Carrera, Mitsilegas & Stefan (2021), pp. 8-20*

# Common justice policy

## Defining justice cooperation

- (Cooperative) establishment of judicial authorities (judges, prosecutors, investigative judges, etc.) involved in national or cross-border

*Justice cooperation is mainly facilitated by 'criminal procedural law':  
A wide set of rules and procedures that govern all stages of a criminal proceeding, from criminal detection, investigation to prosecution.*

*At the international or inter-state level of judicial cooperation,*

*Subject of common justice policy in the EU concerns mainly 'substantive criminal law':*

*a wide set of common definitions and standards of criminal conduct, as well as the definition of the level and nature of penalties*

*measures concerning proceeds of crime (i.e. freezing, confiscation, seizure of acquisitions of crime)*



# Competence issues



- Before Lisbon, there were the following issues:
  - *competence issues in the field of substantive criminal law*
    - *first-pillar competence to establish common rules on criminal conduct and sanctions: only since 2005*
    - *no first-pillar competence to establish common rules on criminal sanctions (2007)*
  - *competence issues in the field of procedural criminal law*
    - *reluctance to establish common rules on procedural law*
    - *introduction of mutual recognition principle (Tampere 1999) as an alternative solution (to approximation/harmonisation)*



## Issues on substantive criminal law

### Before Lisbon (2009):

- *exclusive third pillar competence*
- *enforcement of community rules through criminal law would be more effective if there is criminal law competence in Community first pillar, however .....*
- *... resistance by member states*

In 2005, ECJ ruled that adoption of criminal law measures in first pillar was a necessary element of Community legislation

In 2007, ECJ indicated that Community competence does not extend to determination of penalties

***Since Lisbon Treaty***, the EU can (on the basis of ordinary legislative procedure):

- ***not only*** establish minimum rules on definition of criminal offences and sanctions in relation to cross-border crime (terrorism, organized crime, trafficking in human beings, drug trafficking, etc.) – see article 83(1) TFEU;
- ***but also*** enforce through criminal law in traditional fields of Community action (environmental protection, consumer protection, food safety, subsidies, agriculture etc.) – see article 83(2) TFEU

## Examples of EU legislation on substantive rules

- *Framework Decision 2002/475/JHA on combating terrorism*
- *Framework Decision 2004/757/JHA laying down minimum provisions on the constituent elements of criminal acts and penalties in the field of illicit drug trafficking*
- *Directive 2008/99/EC on the protection of the environment through criminal law*
- *Framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law*
- *Directive 2009/52/EC on sanctions and measures against employers of illegally staying third-country nationals*
- *Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive)*
- *Directive 2013/40/EU on attacks against information systems*





## Issues on procedural criminal law

- *national concerns about pressures from “Europeanisation” to change deeply entrenched procedures*
- *difficulty of harmonisation due to highly different approaches and to ‘what is possible’ and ‘what is not possible’ under national procedural laws*

Tampere (1999) *mutual recognition* of judicial decisions as the 'cornerstone' of judicial cooperation

**Underlying idea:** instead of harmonizing, EU's role is 'merely' facilitating horizontal exchange of decisions taken by national authorities (judiciary & prosecution) by 'fast-tracking' it

### **Mutual recognition: ‘fast-tracking’ exchange of national legal decisions by:**

- *Limiting grounds for refusing a legal decision from another member state (e.g. public policy or security reservations or exclusion fiscal, or political offences)*
- *notably, limiting “double criminality” condition (which requires the act in question to be a crime in both the requesting and requested state) ;*
- *facilitating common rules on processing applications, costs, languages, and use of standard forms*
- *setting strict time limits to comply with (or refuse) another state’s decisions*



2002

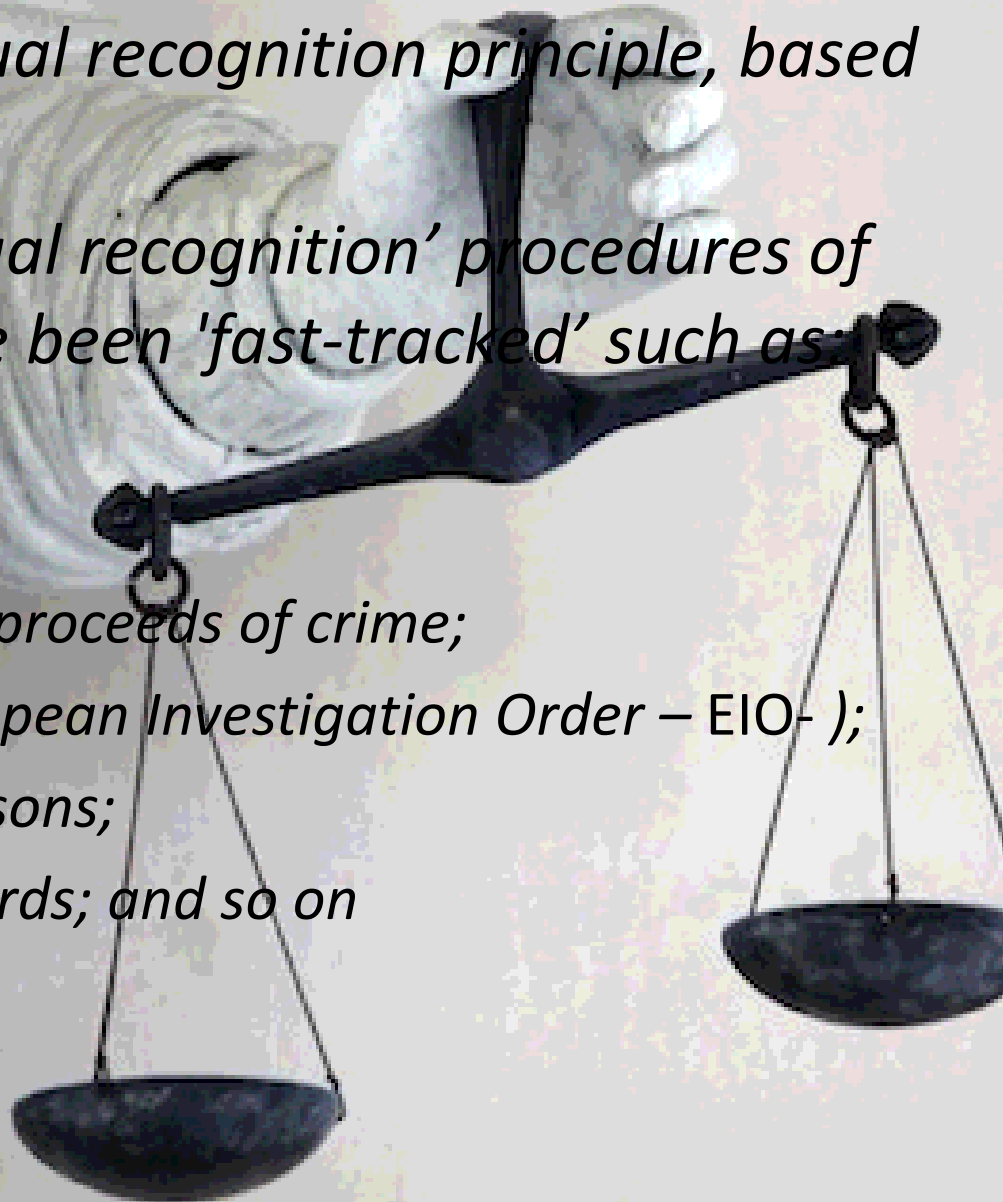
EAW

today

- European Arrest Warrant (2002)
  - *Framework Decision 2002/584/JHA*
  - *first mutual recognition instrument*
- *EAW replaces traditional extradition procedure*
- Key features of EAW
  - *extradition ('surrender') should take place even if the act is not a criminal offence in the requested state ('double criminality' rule)*
  - *member state is obliged to extradite a person charged with a 'political offence'*
  - *states cannot refuse extradition of own nationals*
  - *many other opt-outs, derogation and reservations are excluded*
  - *subject to time constraints: 60 days max ('normal' extradition takes on average 9 to 18 months)*
- EAW in practice: exponential increase of its use

## Other instruments based on mutual recognition

- *Before introduction mutual recognition principle, based on treaties*
- *Since introduction 'mutual recognition' procedures of judicial cooperation have been 'fast-tracked' such as:*
  - *extradition (EAW);*
  - *freezing of evidence;*
  - *executing confiscation of proceeds of crime;*
  - *transfer of evidence (European Investigation Order – EIO- );*
  - *transfer of sentenced persons;*
  - *exchange of criminal records; and so on*







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### *Mutu*

- *Limit*
- *policy*
- *notak*
- *a crim*
- *facili*
- *standarda jormis*

- **Since Lisbon**, there is now **also** (limited) competence for adopting **harmonization** measures in the field of criminal procedure (article 82(2) TFEU)
- This competence is limited to three sorts of procedures: admissibility of evidence; rights of individuals in criminal procedure; rights of victims of crime

- *setting strict time limits to comply with (or refuse) another state's decisions*

# Institutional arrangements in judicial cooperation

1998

EJN

2002

Eurojust

2020

EPP

EJN's role and functions  
EJN/Eurojust  
EPP's role and functions  
EPP/Eurojust  
EPP's role and functions  
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EPP's role and functions  
EPP/Eurojust

Article 86 TFEU as provided in Treaty

**It operates as one single office with a decentralised structure organised at two levels.**

- Central Office composed of European Chief Prosecutor and College (with one European Prosecutor per participating Member State),
- At decentralised level European Delegated Prosecutors located in Member States

**facilitate cross-border judicial cooperation in criminal matters**

Currently, the idea is to extend its competence also to combating terrorism.

**Its competence is limited to the field of defending (hence prosecuting) criminal conduct that is harmful to the financial interests of the EU**

**offences against the Union's financial interests**

**recognition and to support other ways the effectiveness of national**

**EPP became operational in 2020**

**and prosecutions**



*Leading statement for in-class debate of tomorrow:*

*The EU should not have more CT (counter-terrorism) powers.*



*Leading statement for in-class debate of today:*

*The EU should have its own EU Criminal Code and EU Criminal Procedure Code.*

A marble statue of Lady Justice, the personification of the goddess of justice. She is depicted from the waist up, wearing a long, flowing robe. Her right hand is raised, holding a pair of black scales of justice. The scales are balanced, with two pans hanging from a central beam. The background is a soft, out-of-focus light blue and white. The word "END" is written in a bold, yellow, sans-serif font across the middle of the image, partially overlapping the statue's arm and the scales.

**END**

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