EU cross-border cooperation and information exchange in criminal matters and in fiscal & social matters in particular

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Structure: EU cooperation & infoex

- in criminal matters
- in fiscal & social matters
- criminal justice/administrative purpose demarcation fundamental?
- criminal justice/administrative purpose cross-over or mixed purpose?
- *de lege ferenda* options?
EU cooperation & infoex in criminal matters

cooperation type
• operational (less relevant?) | information-related

levels/models
• within respective MS
  • plainly domestic | centralised (administrative) preparation (OLAF)
• between (authorities from) MS (horizontal)
  • directly (on request, spontaneous, ordered)
  • directly with support network/database (SISII, EJN, CIS, ELO network, EIS, Siena, Prüm, ECRIS, EPRIS, ...)
  • jointly with coordination support (Europol, Eurojust, ...)
    • intelligence work, investigation and prosecution (EU-worthy or cross-border crime), positive jurisdiction conflicts, ne bis in idem, ...
• upon request/order supranational body/agency (EPPO?)
in fiscal matters

• traditional fiscal exception (and bank secrecy) removed in fiscal criminal matters
  • initially only for indirect tax (CISA): customs, excise, VAT (specialty)
  • in the meantime further reduced
• administrative cooperation between fiscal administrations
  • OECD developments, FACTA, una via ... (blurring boundaries)

in social matters

• if amounting to serious labour exploitation/THB: no problem
• offence in criminal matters – administrative sanction: no problem
  • 2005 FD financial penalties
• administrative offence + sanction: posting enforcement directive ...
Purpose demarcation fundamental?

part of the EU acquis (be it in a fragmentary and ad hoc fashion)
- also reflected in posting enforcement directive: specialty (6.8), fines (13.2)
- however: built-in flexibility for administrative authorities (supra) and for type of liability of legal persons (penal, administrative, civil)

further lack of purpose distinction/demarcation problematic
- separation of powers (criminal justice vs administrative finality)
- guaranteeing the integrity of procedural guarantees in criminal matters
  - MS level: often circumvented/undermined by administrative detours and inter-agency cooperation & info sharing
    - UK (interception), The Netherlands (BIBOP, RIECs, Emergo),
    - EU/international/cross-border level: blurring demarcation line
      - Europol access to SISII, VIS, Eurodac (interoperability)
      - to be complied with by administrative authorities
        - de facto: e.g. OLAF investigations | de jure: ECtHR/ECJ impact on administrative enforcement mechanisms (e.g. Chambaz vs Switzerland)
  - data protection (purpose limitation being a lead principle)
Purpose cross-over or mixed purpose?

inspiration from?

• road traffic & vehicle registration data (Eucaris, Prüm, ...)
• OLAF participation in JITs
• customs: police-customs (Europol), Naples I (customs adminstrations), Naples II (customs administrations and judicial authorities)
• police: police and judicial authorities (Swedish FD), PoA
• fully mixed model conventions: e.g. 1969 BASS treaty (Benelux)
  • comparable rules for administrative/criminal justice cooperation
  • no administrative erosion of (criminal) procedural guarantees
  • far-reaching competencies (equivalent powers abroad, including for drafting official reports, ...)
  • comprehensive instrument (MLA, notification, transfer of prosecution, choice of jurisdiction, ...)

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De lege ferenda options?

compelling and elaborate administrative cooperation framework?
• cfr judicial cooperation, police cooperation after PoA, customs cooperation, fiscal cooperation, road traffic cooperation, ...)
• posting enforcement directive sufficiently elaborate?
mixed model framework?
sending by post + protection against in absentia decisions (vs notification)
asset sharing above 10.00 €
reversed/shared burden of proof system?
radical horizontalisation? (like for judicial -, unlike for police cooperation)
aut exequi, aut tolerare? (as a solution for capacity and priority issues)
supported by cross-border database, SPOCs, EIXM for social fraud?
direct (hit-no-hit based?) access to national databases (vs IMI?)
central coordination support in cross-border or EU-worthy cases?
definitional (multiple) and classificational benchmarking tool (EULOCS-like?)
ECRIS-like system & MR of disqualifications of legal persons sanctioned?
due diligence obligation/criminal participation for chain responsibility?
no supranational powers proper needed/wanted
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