EULOCS session II

The EU level offence classification system: A benchmark for enhanced internal coherence of the EU’s criminal policy

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Potential added value in numerous spheres

- mutual legal assistance instruments
- mutual recognition instruments
- exchange of criminal records data
- approximation of procedural law
- delineation of mandates/EU-worthiness
- protection of the internal market
Mutual legal assistance (MLA) instruments

- dual sanction threshold for certain forms of MLA
- approximation acquis
  - including minimum sanction levels, which are higher than traditional MLA thresholds
- limit threshold test to bare necessity
- use jointly identified offences (JIOs) and approximated sanctions to speed up MLA and even allow for it in case MS have not criminalised and sanctioned as required
  - (scarce) instruments already do refer to JIOs ad hoc
Mutual recognition instruments

- abandonment of dual criminality test
  - for 32+ offences, left to exclusive definitional discretion of the issuing MS
  - official rationale: differences not significant
  - practice proves differently (cfr also EEW)
  - moreover: illogical to lift a condition which is fulfilled

- EULOCS
  - reintroduction of logic: no dual criminality test only for the JIOs/JIO parts
  - would even allow to drop artificial ‘enumeration’-based list (which is not time-proof, clearly)
Exchange of criminal records data

- Art 22 1959 MLA Convention, 2008 FD prior convictions, 2009 FD organisation/content, ECRIS
- EULOCS
  - allows to introduce JIOs in ECRIS
    - which would add to interpretation/sensing of the seriousness/comparability in applying the 2008 FD
    - scope of application of the latter could/should be limited to JIOs/-parts, like in other MR instruments
    - to that end, judges could state whether domestic qualification coincides with EULOCS qualification
  - would allow Eurojust/Eurojust/third MS ... access
Approximation of procedural law

- initiatives underway
  - Lisbon will formally allow for such approximation
  - some MS are/remain reluctant
- IRCP study “Standards in witness protection and cooperation with justice”
- EULOCS
  - limit approximation *ratione materiae* to JIOs
  - e.g. crimes within the ICC mandate, terrorism in the sense of the FD on terrorism, etc
Delineation of mandates/EU-worthiness

- Current situation is confusing
  - E.g. Europol vs Eurojust

- EULOCS
  - Minimum definitions/JIOs as maximum mandates
  - Advantages
    - Common interpretation Europol-Eurojust offences
    - Added value in uploading into/strengthening EIS etc
    - Easing of tension between EU/domestic competence
    - No (parallel) EU competence but for JIOs
    - Limit right of initiative EU bodies and duty MS to cooperate with the to JIOs
Protection of the internal market

➤ importance of fair competition
➤ conditions for public procurement
➤ EULOCS
  ➤ would allow EU certificate of non prior conviction
  ➤ limiting exclusion criteria to JIOs
Questions & discussion