

EU Balance of Competences Review: Police and Criminal Justice report
Stakeholder Roundtable
London, 25 June 2014

The following is a summary record of key points made by participants during the event. It was agreed that the event would run under the Chatham House Rule. An agreed note of the meeting would be used as evidence for the Police and Criminal Justice Balance of Competences report, but contributions at the event would not be attributed directly to any individuals or organisations.

General comments - Has the development of EU police and criminal justice competence over the years led to improved cross-border co-operation?

1. It is important to acknowledge the distinction between 'cooperation' and 'integration'.
2. There was a time when it was very difficult to get evidence or assistance to extradite from outside the UK; for issues such as 'Costa del Crime' this was substantially difficult. Bilateral relations are out of date; multilateral cooperation is needed in this internet age. Anything multilateral is better than anything bilateral.
3. UK participation in multilateral measures will help the UK in improving conditions in the field of criminal justice in other Member States. There are lots of positives in participating which are ignored when we sometimes look at the "narrow" UK interest.
4. The EU is the 'ideal format' as the EU competence allows you to create a framework and is good at multi-lateral (Europol and Eurojust for example). Although it could work within a Council of Europe framework it wouldn't have the same impact or 'bite'. The EU has a parliament which helps in providing democratic credibility to its provisions.
5. There needs to be an obligation on Member States to implement measures and to not simply ignore them. It was suggested that the CJEU could have a role in disciplining Member States and this was countered with the point that giving this power to CJEU could be a threat to national sovereignty.
6. In regard to the opt-in mechanism set out in Protocol 21 to the EU Treaties, it was suggested that if the UK does not opt-in to measures, those measures will develop further and further away from common law system so if the UK changes its mind, post-adoption will be difficult without lots of amendments.

Judicial Cooperation

7. A question of terminology was raised. Many English and Welsh judges would not recognise the 'judicial cooperation' as discussed here as judicial.
8. It was suggested that EU criminal justice proposals are at times a "solution in search of a problem". There are natural limits to the extent that we can consider the importance of EU criminal justice as crime remains largely local or national rather than a pan-European phenomena. EU measures such as the European Investigation Order (EIO) are useful but will probably be used in national investigations with an "add-on" EU dimension. There needs to be a 'reality check' on notions of a European criminal justice system – this argument is politically important but not necessarily for practitioners.
9. This was countered by the view that measures at EU level do not reduce cooperation, and that where there is cross-border crime it is likely to be rather substantial and significant criminal activity, so it is essential there are sufficient structures in place in order to tackle it.
10. It was considered that mutual recognition continues as a valid as a concept. It is useful as the alternative would be very resource-heavy.
11. It was also noted that the introduction of Qualified Majority Voting (QMV) for post-Lisbon measures has/should make new legislation more clearly drafted as its progress is not subject to the compromises needed to reach unanimity.
12. The European Investigation Order was needed and is a good thing.
13. Improving the implementation and operation of existing measures in this area is a good first step. Evaluating and revisiting current arrangements is necessary before embarking on new proposals.

Police cooperation

14. Law enforcement agencies have always worked bilaterally and will continue to do so and some countries have a cultural preference to work bilaterally. Alongside that, they will work more multi-laterally to make use of useful tools such as Europol, Eurojust and JITs.
15. The European Police College (CEPOL) positive contribution is as a facilitator of networking and subsequent cooperation, rather than as a provider of training.
16. It was discussed whether EU action to facilitate cooperation was over engineering the situation. The point was made that cooperation only happens if

people want it to, and if so is there any need for formal EU structures to force this to happen? You cannot push people into being cooperative. It was agreed that there is enough legislation in place now, and that progress needs to now happen on a practical level.

17. The EU funds operational meetings with “simultaneous translation” for arrangements to be discussed; conversations can take place in different languages with participants from different Member States. Attendees believed that it would be unlikely that individual Member States would fund this provision which is critical to timely and effective co-operative working because of other priorities and limited national resources.

18. Organised crime is an international business; it is nonsensical to think the UK can tackle it alone.

Minimum standards in criminal law and procedure?

19. The UK starts from a position of strength in this field with existing high standards. In some (particularly newer) Member States standards are much lower; one example is that some Member State forensic laboratories are of the same standard of those found in undeveloped countries. The UK should help raise standards as best it can on other Member States otherwise the rights of UK citizens will be diluted as they travel across or live in other areas of the EU.

20. The point was also made that “institutionalism stifles cooperation”. An example was given. The probation service in Hungary that has been formed was largely through informal support and interventions. What has been achieved may not have been as successful if a formal structure had been imposed.

21. Attendees stated that cooperation on the whole works in this area; what is needed is funds rather than standards. It was noted however that the twinning projects that are EU-funded are largely considered to be tick-box exercises.

22. The point was made that international academic committees are just as effective in the role of driving up standards in this area as any “state actor”.