

EU Balance of Competences Review: Police and Criminal Justice report
Stakeholder Roundtable
London, 18 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. Generally, it was agreed that EU competence in this area makes it easier to do business but it is not necessarily a pre-condition of it.
2. The answer to this question is 'yes', but that further development was needed; that cross-border co-operation was "improving" rather than "improved".
3. There are both formal and informal reasons for this improvement. Alongside the establishment of a new framework for rules and procedures there has been a creation of networks (e.g. in Eurojust) so that all actors can meet each other and share best practice.
4. However, from a victim perspective the answer to this question is "no". Cross-border cooperation is not happening with "all the players", but only if the "players" are governments and their agencies.
5. There may have been improvements which help the agencies themselves, but these improvements are not felt at grass roots level. Victim Support Europe is good at helping organisations but it does not offer translation services and you cannot access EU support services whilst you are based in the UK.

Judicial Cooperation

6. The measures in the scope of this review have not been fully implemented yet so it is difficult to provide views on their effectiveness.
7. In regards to the opt-in mechanism set out in Protocol 21 to the EU Treaties, it was recognised that measure rarely stand alone and their interlinked nature made the UK's ability to opt in to some and not others problematic.
8. In regards to mutual legal assistance, the progress of a letter of request is usually faster in EU countries than in non-EU countries but it is still important to look

closely at the added value of EU action as opposed to standard international agreements with non-EU countries.

9. The mutual legal assistance (MLA) treaty with Japan was agreed partly to promote trade. It was to reassure Japanese companies; to provide security and assurance to this third country.
10. In regards to evidence giving at criminal trials, there are traditional differences in practices between Member States. For example, a view was expressed that UK courts often insist on the provision of oral evidence while courts in other Member States will routinely accept written statements. The practical consequence of this is that some Member States provide no support (travel costs/accommodation) for victims and/or witnesses to attend trials and examples were given of British victims/families having to pay for witnesses to go to court. Figures in excess of £30,000 for a British citizen to get justice in another Member State were quoted. It was also pointed out that if the trial was in the UK and a victim/witness was located in another Member State then UK institutions would pay for witnesses to attend court and cover the associated expenses. There was a sense that the European Commission could do more to ensure existing rules were properly and fairly applied by other Member States and for them to provide greater reciprocity.
11. The European Commission was also criticised in relation to the lack of action in enforcing compliance of the Council Directive 2004/80/EC relating to compensation to crime victims. It was stated that Spain is conducting means-testing on families and that Greece only implemented the Directive fully this year yet so far no compensation has been paid out to any victims as a result of this measure. From the perspective of victims, a view was expressed that it could work better if each Member State took responsibility for providing support to their own citizens - rather than responsibility for crimes committed on their territory.
12. From the perspective of victims, some attendees stated that they did not trust other Member States to behave as they should towards victims from the UK. They would like to see more common standards of legislation so that people can better understand their rights. This may also mean a greater consistency in compliance with, and enforcement of, those rights.
13. From the perspective of victims, attendees outlined that they would want:
 - a. To see more legislation that is EU-wide
 - b. The Commission to become more involved with ensuring Member States are complying with such legislation, which isn't happening at the moment.
 - c. That victims and the accused should enjoy equal rights EU-wide. Views were given that presently the balance is not there.

14. *Future Challenge: Technology*

It was debated whether new and evolving technology will help on its own, or EU action is needed to assist development. Some voices said that technology will help developments on its own, so the need for EU measures is not essential. It was suggested, however, that even though such formal action might not be needed, the EU “soft level” influence in this area has a subliminal effect of gently moving Member States in the right direction. Further to this, it was pointed out that the 2000 EU Mutual Legal Assistance Convention¹ has a video-conferencing provision in it. Therefore, candidate countries have to address IT capabilities in their criminal justice systems and prepare for this – it was questioned whether all Member States would provide for this if it wasn’t a formal EU criteria.

Police co-operation

15. The starting point for the UK is often problematic as our systems of separating the judiciary, prosecutors, and police forces does not exist in some other Member States which make co-operation harder. Where Member States have police that are instructed by judges they will assume ours are also.
16. EU action has improved co-operation in this area but it is still a time-consuming task. Comments were made that the Police and Criminal Evidence Act 1984 (PACE) had also introduced strict limits. It was pointed out that the Association of Chief Police Officers (ACPO) Criminal Records Office (ACRO), through which requests were directed and received,² can take an unpredictable amount of time e.g. one month, one week, or maybe a couple of hours. It was pointed out that the implementation of Council Framework Decision 2009/315/JHA on the organisation and content of the exchange of information extracted from the criminal record between Member States (ECRIS), when implemented, will help matters here as it sets out specific deadlines.
17. CPS-funded Liaison magistrates are useful, relatively cheap, and some attendees reported on positive practical experiences. One draw-back cited was that practitioners can only utilise them for prosecution but not for defence.
18. It was stated that Eurojust can in practice be used for both prosecution and defence. When Eurojust is used it works well and is incredibly helpful, but the issue is that a lot of practitioners are not aware of what EU tools and processes are available for them to use.

¹ Council Act of 29 May 2000 establishing in accordance with Article 34 of the Treaty on European Union the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

² The Chief Constable of Hampshire now carries out this role.

Minimum standards in criminal law and procedure?

19. Minimum standards legislation is still young, but in theory it is a 'good thing'.
20. Mutual trust is promoted by minimum standards and it is also important to ensure minimum standards "in-(EU)house" before assessing candidate countries.
21. Our pre-trial system has many positive aspects such as mandatory recording of police interviews and pre-trial detention limits. It is in the UK interest where other Member States raise their standards as UK citizens can quite easily find themselves involved in proceedings abroad.
22. The example of the 'letter of rights' showed how EU action encourages Member States to improve standards. When the European Commission began to discuss a 'letter of rights' only the UK and Luxembourg had one. By the time the EU legislation was in place, more than half the Member States had one. This is indicative of the snowball effect that can occur when JHA matters are addressed at EU level.

23. *Future Challenge: creating criminal offences?*

There was concern at a possible move towards common or minimum standards in criminal law, which it was considered goes beyond the boundaries of the current competence. (In this context it was also necessary to bear in mind the principle of subsidiarity.) We need to prioritise making sure what we've got now works and not move into standardising criminal offences across the EU.