

MUTUAL RECOGNITION IN CRIMINAL MATTERS: BUILDING A EUROPEAN UNION PUNISHMENT LEGAL ORDER

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Abstract

This article will introduce the development of the principle of mutual recognition in the domain of criminal law. It provides an overview of how the principle was borrowed from other domains of EU integration and how this was reflected in an expansionist and demanding shape in ECL – in fact its application grants extraterritoriality to nothing less than to the *ius puniendi* of the different Member States. Furthermore, not only does it require Member States who are receivers of requests to recognize a foreign decision, it obliges them to execute it too, often by lending its law enforcement apparatus to the service of the requesting State. This is a more demanding form of mutual recognition than in other EU policy areas. It will look at the infamous European Arrest Warrant – the first and most important legislative development of mutual recognition thus far. It will be seen how, with a view of facilitating the surrender of individuals to face criminal proceedings or serve sentences in a different Member State, the EAW dropped long lasting extradition protectionist principles that enshrined national constitutional orders and practices such as the principle of non extradition of nationals, the possibility to refuse extradition based on human rights concerns and the principle of dual criminality. It will be shown how these changes greatly enhanced States' capacity to prosecute and seek sentence enforcement across the EU and how they have the potential to favor the most severe or more 'active' legal system. Indeed, it will be seen how this punitive impetus is used differently by different States: whilst some have issued a significant amount of EAWs, others show little interest in seeking prosecution beyond their national borders. Also it will be shown how the punitive impetus of the EAW had a strong impact upon many domestic systems and was not necessarily well received by many national constitutional courts. This ultimately led to a fragmented implementation across the EU. These were mostly driven by concerns with the possible deterioration of individual protection and the enhanced position of requesting. Also look at how the CJEU has interpreted the principle of *ne bis in idem* in the context of mutual recognition in criminal matters. It will be seen how the CJEU had repeatedly taken a broad view of the interpretation of the principle granting a wide protection to individuals who faced threats of repeat prosecution or punishment by different Member States.

Keywords: *criminal law, EU integration, law enforcement apparatus, mutual recognition*