

JUDICIAL COOPERATION BETWEEN THE EU AND NON-MEMBER STATES

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ABSTRACT

More and more, the EU looks beyond its member states when enhancing judicial cooperation in criminal matters. For example, it recently concluded agreements on extradition and mutual legal assistance with the USA and a mutual legal assistance agreement with Japan; the Stockholm Programme calls for more such agreements to be negotiated in future. Their potential direct applicability and the partial abolishment of classic safeguards cause constitutional implications, which were already tested in Hungary and may pose a severe issue in future cases before the German Constitutional Court. In order to truly create a “Europe that protects”, a stronger emphasis needs to be put on a union-wide territoriality exception and a ground for refusal based on EU citizenship.

Keywords: judicial cooperation; external relations; extradition; mutual legal assistance

1. THE EXTERNAL DIMENSION OF FREEDOM, SECURITY AND JUSTICE

Cooperation in criminal matters is *the* core theme of the Europeanization of Criminal Law¹: How can criminal proceedings which affect more than one state be made easier,

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¹ In comparison, the *harmonization of criminal law* only affects few types of crimes, and the Stockholm Programme (infra footnote 13) is sceptical regarding future harmonization of criminal laws. The *harmonization of criminal procedure* and the step-by-step approach initiated by the Swedish presidency (OJ C 295 of 4.12.2009, p. 1) is only in its beginning: A (*vertical*) *coordination of criminal proceedings* – as discussed by the Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal

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NJECL

New Journal of European Criminal law

Quarterly Journal | ISSN 2032-2844
each issue approx. 120 pp.

145 euro | 203 US dollar | 137.75 GB pound

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