

STRATEGIC SEMINAR

Conflicts of Jurisdiction, Transfer of Proceedings and *Ne Bis In Idem*:

Successes, shortcomings and Solutions

The Hague, 4 June 2015

REPORT



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Introduction

The strategic seminar '*Conflicts of Jurisdiction, Transfer of Proceedings and Ne Bis in Idem: Successes, Shortcomings and Solutions*', jointly organised by Eurojust and the Latvian Presidency of the EU, took place on 4 June 2015. The seminar was organised in combination with the 9th Meeting of the Consultative Forum of Prosecutors General and Directors of Public Prosecutions of the Member States of the European Union (Consultative Forum) that was convened on 5 June 2015 by the Prosecutor General of Latvia with the support of Eurojust. Participants of Member States, EU institutions and Eurojust attended both events.

The goal of the seminar was to bring practitioners together to identify difficulties, best practice and possible future developments or improvements in the field of conflicts of jurisdiction, transfer of proceedings and *ne bis in idem*.

The conclusions of the four workshops held during the seminar were presented during the Consultative Forum meeting. Forum members also gave written input in advance of the seminar and Consultative Forum meeting.

The seminar was chaired by *Michèle Coninx* (President of Eurojust) and opened by *Maija Andrijauska* (Prosecutor of the International Cooperation Division of the Prosecutor General's Office, Latvia).

Session I – Opening Session

The President of Eurojust and the representative of the Latvian Prosecutor General welcomed those attending the seminar. They stressed the relevance of the topic for practitioners since potential conflicts of jurisdiction are increasingly common today. Moreover, they emphasised the importance of the principle of *ne bis in idem* in European criminal procedure. The principle that nobody can be punished twice for the same facts is not only enshrined in the national laws of the Member States, but was given a transnational dimension through Article 54 of the Convention Implementing the Schengen Agreement of 19 June 1990 (CISA). Moreover, the entry into force of the Lisbon Treaty has elevated this principle to EU primary law, since Article 50 of the Charter of Fundamental Rights of the EU enshrines the right not to be tried or punished twice in criminal proceedings for the same criminal offence.

The application of the *ne bis in idem* principle in cross-border cases, however, gives rise to practical difficulties. A first difficulty lies in the early identification of parallel proceedings, without which no common solution can be found and a double jeopardy situation is likely to arise. Moreover, where parallel proceedings are detected, there may be a need to coordinate the investigations or to otherwise prevent or resolve conflicts of jurisdiction. Deciding which jurisdiction is best placed to prosecute or transferring the proceedings to another Member State can nevertheless prove difficult. The President of Eurojust recalled the role that the Lisbon Treaty and EU legislation entrust to Eurojust. The assistance Eurojust can provide has proved extremely helpful in the past. Tools such as coordination meetings or the 2003 Eurojust Guidelines for deciding which jurisdiction should prosecute can indeed be the determining factor in preventing and resolving conflicts of jurisdiction.

Session II – Conflicts of jurisdiction, transfer of proceedings and *ne bis in idem*: The challenges of today and future perspectives

The following keynote speakers intervened during this session.

Katalin Ligeti (Professor, University of Luxembourg) presented a critical assessment of the existing EU legal framework on conflicts of jurisdiction from an academic perspective. She underlined that there is a collection of soft law instruments with modest ambitions and modest outcomes, but no legal instrument setting up a binding mechanism to allocate cases or trigger the jurisdiction of Member States in cases of negative conflict. In this context she recalled that the 2003 Eurojust Guidelines, together with the powers conferred on Eurojust under Articles 6 and 7 of the Eurojust Decision (EJD), are the strongest mechanisms in place, since Framework Decision 2009/948/JHA organises horizontal coordination between competent authorities but does not oblige a Member State to exercise or waive jurisdiction. Professor Ligeti pinpointed certain problems arising from the current state of play, such as the ‘first come first served’ approach resulting from the practical application of the *ne bis in idem* principle, the lack of foreseeability for the defendant of the prosecuting jurisdiction or the absence of an EU instrument governing the transfer of proceedings. She concluded that the Treaty of Lisbon, and particularly Article 82(1)(b) TFEU, offers a legal basis to resolve all shortcomings and loopholes in a complete and comprehensible manner. Lastly, and in view of the limited reform that the Eurojust Regulation will bring about, Professor Ligeti encouraged Eurojust to make use of its powers under Articles 6 and 7 EJD in relation to conflicts of jurisdiction.

Sue Patten (Head of Crown Prosecution Service, Specialist Fraud Division, United Kingdom) presented the Director of Public Prosecutions’ Guidelines in relation to concurrent jurisdiction cases, as well as the Forum Bar provisions introduced in the 2003 Extradition Act. She explained that the Guidelines, which apply to investigators and prosecutors in England and Wales facing an international conflict of jurisdiction, largely follow the 2003 Eurojust Guidelines, although an additional criterion is introduced concerning the suspect’s link with the UK. As to the Forum Bar legislation, the application of which was illustrated through a number of practical cases, Ms Patten explained that, where a ‘substantial measure’ of the defendant’s relevant activity was performed in the UK, the extradition court has the power to decide that it is ‘not in the interest of justice’ on the grounds of forum for the requested person to be extradited. In considering the forum, the court must consider the factors set out in the legislation, which again are similar to

the Eurojust Guidelines, and include a specific criterion relating to the prosecutor's belief that the UK is not the best place to prosecute.

Jeannot Nies (Premier Avocat Général, Parquet Général, Luxembourg) presented the experience of Luxembourg. He focused on national rules governing the criminal jurisdiction of its courts, which establish the territoriality principle as the main criterion. Taking into account the gravity of the offence committed abroad, the active personality principle applies to all 'crimes' and 'délits', although for those 'délits' not listed in the law the double criminality condition must be fulfilled and a complaint must have been lodged either by the victim or the foreign authorities. The passive personality principle and the *aut dedere, aut judicare* principle only apply to very few serious offences provided for by law. Mr Nies underlined that the *ne bis in idem* principle is rarely applied, since in practice most conflicts are resolved consensually. Moreover, the Luxembourgish courts interpret the principle in line with the Court of Justice of the European Union (CJEU) case law.

Ignazio Patrone (Deputy Prosecutor General, Office of the Prosecutor General, Italy) presented the Italian legislation and experience in relation to conflicts of jurisdiction. He explained that the principle of territoriality is the principal criterion to establish the jurisdiction of Italian courts. In addition, extraterritorial jurisdiction is provided when an interest of the Italian Republic has been damaged or threatened (the so-called protective principle), or when the most severe crimes are committed abroad against Italian citizens (the passive personality principle), although prosecution in such cases is sometimes subject to a specific request of the victim and/or the Minister of Justice. Mr Patrone recalled the particularities of cooperation with Italy, which has not ratified the 1972 Council of Europe Convention on the transfer of proceedings. Moreover, the application in Italy of the strict legality principle renders a 'simple' transfer of proceedings impossible without a previous dismissal of the case by the competent national judge.

Ola Sjöstrand (Chief Prosecutor, Public Prosecution Unit, Malmö, Sweden) presented the legal and practical experience regarding the transfer of criminal proceedings among the Nordic States, which is governed by the Nordic Agreement on prosecuting and investigating in a Nordic country other than the country in which the criminal act was committed and which applies to Sweden, Norway, Denmark, Finland and Iceland. Arguing that their close history, culture and legal traditions renders cooperation easy and fluid, Mr Sjöstrand explained that under the Nordic Agreement extraterritorial jurisdiction is possible if the suspect is a resident and the double criminality condition is fulfilled. Direct contact is the rule, and in examining a request to transfer proceedings the interests of the suspect must be considered, but the effectiveness of criminal proceedings is the decisive factor. Mr Sjöstrand stressed that any emerging issue is resolved through close consultation and that the other party is kept informed of the outcome of the proceedings.

Pietro Suchan (Assistant to the Eurojust National Member for Italy, Chair of the Judicial Cooperation Instruments Team) gave an overview of Eurojust's experience in the field of prevention and resolution of conflicts of jurisdiction. He explained that while conflicts of jurisdiction can arise in principle in all types of crime, the cases most often dealt with at Eurojust concern crimes where the offence itself is of a cross-border nature such as trafficking

in human beings or drug trafficking, but also VAT fraud and cybercrime cases. Eurojust can help to facilitate the exchange of information in order to gain a complete picture of complex cases, clarify links between different parts of criminal networks and facilitate subsequent decisions on which jurisdiction should prosecute. He highlighted the importance of coordination meetings and Joint Investigation Teams (JITs) as tools to prevent and resolve conflicts of jurisdiction. In addition, he emphasised the need to inform Eurojust under Article 13(7) EJD of cases where a conflict of jurisdiction has arisen or is likely to arise. Moreover, he mentioned the Eurojust Guidelines for deciding which jurisdiction should prosecute, which have been in use since 2003 and are still considered very useful guidance.

Holger Matt (Chair of the European Criminal Bar Association) presented the perspective of the European Criminal Bar Association on conflicts of jurisdiction in the European Union. He stressed the importance of also listening to defence or victims' lawyers, since the perspective of suspects and victims is also the perspective of the normal citizens. He highlighted the burden put on the suspect by double investigations, *e.g.* the need to have different lawyers in all Member States involved. From the perspective of the defence, it is crucial that procedural safeguards and reliable rules on jurisdiction choices are introduced and that defence lawyers have a right to be involved in the consultation process leading to the decision on where to prosecute a case. He highlighted the importance of the use of foreseeable criteria to determine the best place to prosecute as well as the need for judicial review of the decision taken by the national authorities in this regard.

Session III – Workshops

Participants were split into four workshops with different topics. Each participant attended two workshops consecutively. The chairs later reported the conclusions of all workshops in the plenary. The session closed with final remarks by the President of Eurojust.

Workshop 1

Identification and coordination of parallel proceedings in the EU

Chair: *Leif Görts (National Member for Sweden at Eurojust)*

Discussions in the workshop focused on two main points: (i) the identification of parallel proceedings within the EU and (ii) the coordination of such parallel proceedings, including JITs as a tool for that purpose. Across the topics, the role of Eurojust was also touched upon (iii).

- (i) With regard to the identification of parallel investigations in the European Union, participants concluded that:
- A distinction should be made between intentional and coincidental parallel investigations, with the difficulties arising in the latter when the parallel investigations are unknown to the competent authorities of the Member States where they are being carried out.

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- Participants emphasised the importance of detecting parallel investigations at the earliest stage possible, making communication between national authorities crucial.
 - Concerning the actual detection of the so-called coincidental parallel proceedings, participants noted that this can result, *inter alia*, from information obtained through i) mutual legal assistance requests and requests for the execution of decisions giving effect to the principle of mutual recognition, ii) police channels, iii) competing European Arrest Warrants (EAWs) received by Eurojust on the basis of the FD on the European Arrest Warrant (FD EAW), iv) coordination meetings at Eurojust, v) notifications under Article 13(7) EJD which obliges Member States to inform Eurojust of cases where conflicts of jurisdiction have arisen or are likely to arise.
 - Participants noted that there is a general issue in international cooperation, and that practitioners need to be encouraged to use existing tools such as Eurojust and Europol in a more efficient way and to talk more to each other.
 - In this respect, while the need to focus more on the quality of international cooperation and the effective use of existing tools was pointed out, it was also noted that a new instrument at EU level replacing FD 2009 on prevention and settlement of conflicts of jurisdiction (FD 2009) might need to be considered.
 - Participants also concluded there is a need to raise awareness among practitioners in relation to the types of situation/case that may be indicative of an element of parallel proceedings in other Member States (*e.g.* certain types of crime such as trafficking in human beings, drug trafficking or foreign victims).
 - FD 2009 and Article 13(7) EJD should be promoted and made more visible among practitioners. One participant indicated that in their Member State there were guidelines in place on the sending of Article 13 EJD information to Eurojust.
 - As a proposal for the future, it was put forward that a first step could be the creation of centralised national databases of ongoing investigations; as a second step, the creation at EU level of a system to link all centralised national databases and to develop a hit/no hit system for detecting parallel proceedings. In this respect, it was noted that a European Criminal Records Information System could be developed to include linked national registers of ongoing investigations.

(ii) With regard to coordination of parallel investigations, the participants concluded that:

- Parallel investigations are positive if coordinated to avoid, *e.g.*, waste of resources, duplication of work, or risk of breaching the '*ne bis in idem*' principle.
- Coordinated parallel investigations allow for the collection and/or exchange of information and evidence, and contribute to more informed decisions in relation to who is better placed to prosecute.
- The coordination of parallel proceedings is essential for effectiveness and should be carried out as soon as possible. Participants, however, also noted that a flexible approach to coordination should be borne in mind, *i.e.* in some cases it is better to

coordinate mature investigations, that is, at a later stage when more information is available.

- Participants noted the possible outcomes of parallel proceedings: concentration of proceedings in one Member State (resulting from, *e.g.*, transfer of proceedings) or the splitting (but coordination) of prosecutions between the involved Member States.
- With regard to JITs, it was noted that they are a viable option for coordinating parallel proceedings, for contributing to the decision on where to prosecute and the avoidance of '*ne bis in idem*' situations. It was also noted that the purpose of a JIT can change during its lifetime, *e.g.* the potential transfer of proceedings can be envisaged at an early or later stage of the lifetime of the JIT.
- It was also noted that JITs may be seen not only as an investigative tool, but also as a tool for preventing conflicts of jurisdiction, *i.e.*, as also having a prosecutorial dimension. It was proposed that JIT agreements could contain a clause whereby parties would agree to discuss/decide, at a later stage, on the matter of which jurisdiction(s) should prosecute and for which offences.

(iii) With regard to Eurojust's role – present situation and proposals for the future, participants concluded that:

- Eurojust plays a role in the detection and coordination of parallel proceedings through, *e.g.*: *i*) the information it receives from national authorities under Article 13(7) EJD; *ii*) coordination meetings held at Eurojust; *iii*) information received in the context of competing EAWs under the FD on EAW, or *iv*) JITs supported at Eurojust.
- National authorities should be made more aware of the purpose of Article 13 EJD in order to use it more. The obligation of sending information under Article 13(7) EJD is a shared responsibility, involving both the national authorities (obligation to report) and Eurojust (obligation to provide feedback to the national authorities –Article 13a EJD). An Article 13(7) EJD database has the potential of being essential for early detection of parallel proceedings and avoidance of conflicts of jurisdiction. In this respect, it was suggested that perhaps the legislator could consider revisiting the three-year storage period of personal data at Eurojust to make this more efficient.
- The possibility of nominating contact points in the Member States, perhaps the national correspondent for Eurojust within the Eurojust National Coordination System, for assistance in the identification of ongoing investigations, was proposed. This would be particularly helpful in Member States where there are no centralised databases.
- It was also proposed that Eurojust could, in the future, have binding powers in relation to the settling of conflicts of jurisdiction.

Workshop 2:

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SUCCESSSES, SHORTCOMINGS AND SOLUTIONS

(THE HAGUE, 4 JUNE 2015)

Criteria to decide which jurisdiction should prosecute

Chair: *Maria Poza Cisneros (Deputy National Member for Spain, Eurojust)*

The discussions within this workshop mainly addressed two areas: (i) the assessment of the criteria laid down in the 2003 Eurojust Guidelines, and the eventual need to revise them, and (ii) the advisability of ranking the criteria or adopting a new EU instrument providing for binding or flexible unified criteria. To facilitate the discussions, participants were presented with the list of ‘factors’ to decide which jurisdiction should prosecute included in the 2003 Eurojust Guidelines as well as a list of other possible criteria not included in the Guidelines but drawn from other relevant EU or Council of Europe instruments or from national legislation.

(i) With regard to the assessment of the criteria laid down in the 2003 Eurojust Guidelines and the eventual need to revise them, participants at the workshop concluded that:

- Although in practice not many conflicts of jurisdiction arise, there is a need to have some criteria to decide on the best place to prosecute. When a conflict does arise, direct and early consultation between the authorities involved is essential: in most cases conflicts can be resolved through an agreement between the parties concerned.
- The vast majority of Member States have not set criteria for deciding the best place to prosecute in relation to cross-border conflicts of jurisdiction. Also for this reason, the Eurojust Guidelines are considered a useful tool, which guide and remind national authorities of the criteria to be considered. They are a sort of check list of the ‘common sense’ factors that should be taken into account when deciding the best jurisdiction to prosecute, and provide a shared starting point on the basis of which to reach a decision.
- There is a need to revise and update the Guidelines by introducing limited changes, *e.g.* to reflect the developments that have taken place in the area of criminal justice since their adoption in 2003, notably with regard to the relevant instruments of mutual recognition. For instance, the Framework Decision on custodial sentences in combination with the Framework Decision on the EAW, renders the location of the accused a criterion of secondary importance. Similarly, the entry into force of the European Investigation Order (EIO) and its provisions relating to videoconferencing affect the need to consider the attendance of witnesses criterion. In the future, reference to the EPPO might be necessary to reflect the particular rules that apply to conflicts of jurisdiction in the field of PIF.
- In spite of the challenges that phenomena such as cybercrime or organised crime present, there should continue to be a preliminary presumption that, if possible, prosecution should take place in the territorial jurisdiction.
- The territoriality and personality criteria should be reworded in the Eurojust Guidelines to ensure that not only their quantitative dimension, but also their qualitative dimension, be duly considered. Thus, territoriality should not only refer to the place ‘where the majority of the criminality occurred or where the majority of the loss was sustained’, but also to the place where the most important part of the

criminality or loss occurred. Similarly, where several co-defendants can be identified, not only their number is relevant, but their respective roles in the commission of the crime and their respective locations must be considered. Also, the stage of proceedings in each Member State involved is a criterion to be taken into account that is currently missing from the Eurojust Guidelines.

- Similarly, the possibility to include a criterion in relation to the interests of the suspects was discarded. Within the EU, jurisdiction is exercised in accordance with the law, and all Member States guarantee the right to a fair trial, which is an important element of mutual trust among national authorities. Thus, there is no need to specifically mention such a criterion: the interests of the suspects are sufficiently considered when deciding where to prosecute. Moreover, suspects have no individual right to choose the place of jurisdiction: a possible involvement of the suspects in this phase would in many cases lead to unnecessary delays.
- The Eurojust Guidelines must be kept short, simple and flexible. The list is merely indicative, and thus other factors may also be weighed when deciding on the best-placed jurisdiction to prosecute.

(ii) With regard to the advisability of ranking the criteria or adopting a new EU instrument providing for binding or flexible unified criteria, participants at the workshop concluded that:

- In view of the need to ensure flexibility and adaptability to the different case scenarios, ranking the criteria provided in the Eurojust Guidelines was considered detrimental. Such ranking would bring no added value and might signal that mutual trust does not exist between Members States' national authorities.
- Deciding the best jurisdiction to prosecute largely depends on the facts of each case; a hard law instrument containing rigid criteria would be very limiting. Thus, a new instrument containing binding or flexible unified criteria would adversely affect the choice of jurisdiction in the best interest of justice.

Workshop 3:

Transfer of proceedings in the EU criminal justice area

Chair: Mariana Radu (*Seconded National Expert, Romanian desk, Eurojust*)

The workshop discussed transfers of proceedings on the basis of practical experience. In particular, discussions revolved around: (i) current legal and practical issues encountered in concrete cases, (ii) best practice and possible solutions, and (iii) the role of Eurojust and the European Judicial Network.

(i) With regard to current legal and practical issues, workshop participants concluded that:

- The burden imposed on Member States by transfers of proceedings, both from a financial and an organisational standpoint, should not be underestimated. In particular, translation

costs and the quality of translations are usually a major concern, since case files must generally be translated for proceedings to be transferred.

- Coordination of provisional measures between the requesting and the requested Member States might prove difficult, for instance with regard to the handling of seized illicit drugs.
- From experience, internal coordination within the requested State is also essential: for example, when there is no coordination between the authorities deciding on the request for proceedings and those responsible for the execution of a requested provisional arrest, the suspected person might have to be released.
- Evidential problems might also arise in relation to the validity, admissibility and consistency of evidence transferred from one Member State to another, mostly due to differences between the applicable national laws.
- In the absence of mandatory time-limits, transfers of proceedings may prove extremely time-consuming. In addition, because of a lack of information about the follow up given by the requested State, the results of a request for transfer of proceedings may sometimes remain uncertain for a long time.
- Based on the current legal framework, requests for transfers of proceedings may still have to be channelled *via* central authorities (*e.g.* Ministries of Justice): since direct contacts between judicial authorities are not yet the rule, the efficiency and effectiveness of proceedings may be put at stake.
- Difficulties may also arise from the absence of a legal definition of ‘criminal proceedings’ applicable to both common and civil law systems. Different rules deriving from different legal systems, for instance with regard to jurisdiction or live witness examination, may complicate and delay transfers of proceedings.
- Reference was made to the rights of suspects and victims. It was generally felt that the extent of their involvement should be carefully considered so as not to impede the effectiveness of proceedings. Possible claims for judicial review of transfers of proceedings should be taken into account. A transaction model involving all parties, i.e., the suspect, the victims and the requesting State, was also proposed as an alternative approach.

(ii) With regard to best practice and possible solutions, workshop participants concluded that:

- Preliminary consultation with the requested State before transmitting the requests for transfers of proceedings, and translating only a summary of the case in this phase, is best practice to prevent unnecessary costs, and future delays in the carrying over of the procedure (*e.g.* due to evidential problems). The Nordic Cooperation Agreement involving Sweden and other northern European countries may be considered an effective model.
- EU funding to support translation costs would be beneficial. EU financial support could be provided in relation to judicial cooperation and mutual recognition instruments. As recommended in the context of the 6th round of mutual evaluations on the

implementation and practical operation of the Council Decisions on Eurojust and the EJM, the possibility of setting up a dedicated EU translation unit should be explored.

- To overcome current legal and practical issues, alternative approaches are possible, including developing a new EU legal instrument (regulation or directive), or soft law measures (guidelines), or continuing to use the existing, albeit fragmented, EU and international legal framework.
- A new EU legal instrument should provide for: a mandatory preliminary consultation mechanism between relevant Member States; mandatory deadlines to speed up decision-making and overcome the lack of follow-up; primacy of direct contact between judicial authorities over transmission *via* central authorities; and specific provisions on translation and sharing of costs. The new instrument should clarify the role of victims and defendants and regulate provisional measures, such as the handling of freezing orders during transfer of proceedings. There is also a need to ensure interaction between relevant judicial cooperation and mutual recognition instruments.
- For some participants, the criteria for deciding on transfers of proceedings should remain broad and flexible, since the matter should be handled on a case-by-case basis. For others, there is a need for binding criteria to increase certainty of law and to reach a harmonised approach throughout the EU.

(iii) With regard to the role of Eurojust and the European Judicial Network, workshop participants concluded that:

- Eurojust plays a key role in facilitating preliminary contacts and consultations, resolving jurisdiction issues, and advising on accessory measures for transfers of proceedings. Coordination meetings have allowed the involved national authorities, *inter alia*, to agree on the best way to proceed and to draft requests for transfer of proceedings, also in light of the 2003 Eurojust Guidelines for deciding which jurisdiction should prosecute. Regular information about the follow-up given to Eurojust's non-binding recommendations would be essential in assessing Eurojust's impact. Further, an update of the above Eurojust Guidelines would be beneficial.
- The EJM was used in concrete cases to facilitate communication between the requesting and requested Member States, identify the competent authorities, and obtain information on the legal system applicable in the other Member States.

Workshop 4:

The principle of *ne bis in idem* in the EU Criminal Justice Area

Chair: Michael Rothärmel (*Seconded National Expert at the German Desk, Eurojust*)

The discussions in workshop 4 focused mostly on two areas (i) identifying current practical issues related to the application of the principle of *ne bis in idem*, and (ii) proposing tools and solutions for practitioners on this matter.

(i) With regard to the current practical issues and specific problem areas relating to the principle of *ne bis in idem*, the participants concluded that:

- Despite the increasing number of decisions by the Court of Justice of the European Union (CJEU) with regard to the application of the principle of *ne bis in idem*, some issues still cause problems for practitioners.
- Questions of what constitutes the same acts occur frequently, particularly in cases concerning membership of or association with criminal organisations vs. the single criminal acts committed within the context of such organisations. It is especially difficult to foresee overlap at the beginning of investigations; therefore, early coordination is desirable. Transfer of proceedings may offer a solution in cases of uncertainty.
- Difficulties may arise from the relationship between administrative and criminal sanctions. Administrative sanctions may prohibit criminal proceedings for the same acts in some Member States but not in others.
- There are differences among legal systems of the Member States concerning the question of what is to be considered a ‘final decision’ disposing of a case. Cases where new evidence appears constitute a particular category in this regard. Eurojust and the EJM can help clarify the final character of decisions under national law. Participants discussed the *Kossowski* case, pending before the CJEU, specifically with regard to the question of what constitutes a final decision under their respective national laws.
- The validity of reservations under Article 55 CISA might be called into question following the entry into force of Article 50 of the Charter of Fundamental Rights of the European Union.
- Different wording in different legal instruments can cause problems in practice. Practical difficulties also occur as a result of the specific structure of procedural documents in different Member States or establishing the acts of foreign authorities. In such situations the way in which an indictment is constructed may make it easier to identify the acts concerned.

(ii) With regard to the possible tools and solutions for practitioners concerning the application of the principle of *ne bis in idem*, participants concluded that:

- Minimum standards already exist and are, for the most part, set by jurisprudence. In addition, soft law and practical experience should be shared among practitioners from all Member States. Harmonisation of national legislation might be of added value; the differences are however quite significant and it is difficult to imagine a tangible result which could be achieved at this stage. A new European Union legal instrument in this field is also difficult to imagine, particularly because new grey areas could easily be created. Coordination between relevant authorities of the Member States however remains crucial and Eurojust shall continue playing its role here.
- It would be very useful for practitioners in Member States to have easy access to a compilation of existing case law (CJEU and national courts), including summaries, as well as an overview of national legislation in force and other relevant information on the application of the principle of *ne bis in idem*. Once such tool is available, it should be

updated regularly and made available to practitioners. It is to be agreed who would be in the best position to carry out this substantial task.

- To build up knowledge and keep up-to-date about recent developments in this area, training and awareness-raising among judges and prosecutors should continue to take place. The sharing of good practices in the Member States is particularly vital for practitioners.



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