



# Freedom, Security and Justice within the European Union

- with special emphasis on criminal justice issues

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## MODULE 2

### Shaping Factors for the Area of Freedom, Security and Justice

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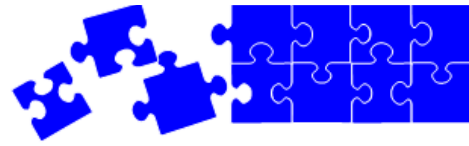
#### Reading Lecture 6

#### YELLOW BADGE – Cooperation between Authorities

##### 1. In this lecture you will learn about...

- the dynamic of the evolution within the AFSJ (justice and home affairs),
- the criteria of the development (from the traditional point of view of criminal justice being a closed national system) and
- how the forms of cooperation between law enforcement and judicial authorities has evolved due to the European integration.

**Learning time – approximately 2 hours**



# Criteria of Europeanization



union law

unfolding the legal relationship between EU law and national criminal law



functional integration

protecting EU supranational interests through criminal law



ius puniendi

development of supranational ius puniendi



competence gaining at supranational level

extension of justice and home affairs competencies in the supranational framework



cooperation in criminal matters

facilitation and juridification of cooperation between MS



procedural law & fundamental rights

approximation of criminal procedure; fundamental rights context; European standards



## 2. Yellow Badge

Read the following texts!

The easy and cheap mobility of persons and the



cooperation in criminal matters

facilitation and juridification of cooperation between MS

progressive elimination of border controls within the EU has considerably facilitated the free movement of European citizens but has also made it easier for criminals to operate transnationally.<sup>1</sup> Moreover the **evolution of modern technologies and the interrelated social changes** have resulted in an increase of transnational and cross-border crime in Europe. It soon became clear – at least for the front line professionals such as police officers, public prosecutors or judges – that making law enforcement and judicial cooperation effective could be the key to success in tackling cross-border crime. However, this development also meant a breakup with the traditional model of cooperation, which was neither easy nor quick for Member States. For this reason, it is necessary to honor each milestone with a yellow badge.

<sup>1</sup> <https://www.europarl.europa.eu/factsheets/en/sheet/155/judicial-cooperation-in-criminal-matters>



### 3. Leaving the traditional model & approaching the European model

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Generally, the original purpose of cooperation between states was to prevent the perpetrator from escaping criminal prosecution, so that cooperation was exercised against the interests of the person concerned. **The importance of the re-socialization of the perpetrator** has also increased since the middle of the 20th century, which is why the interests of the person concerned are now taken into account in most forms of international criminal co-operation. Thus, there are three interests in international cooperation: **the requesting state, the assisting state and the person concerned.**



Cooperation in criminal matters includes the following measures:

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(a) obtaining **information** or **evidence** necessary for its own criminal proceedings from another State,

(b) **assisting** the other State in obtaining information and evidence for the purpose of conducting its own criminal proceedings,

(c) tracing, apprehending, and surrendering the (escaping) **offender abroad**,

(d) if necessary, taking **procedural action** by a member of the authority in the territory of the other State, and

(e) **accepting** and recognizing information, evidence, or decisions from another State.

The traditional model of criminal cooperation is framed by intergovernmental co-operation surrounded by international treaties (or reciprocity), the specific course of which is determined by **the requesting principle** on a case-by-case decision basis. The requesting and the requested State shall have a relationship under international law, and their sovereignty shall apply equally. The **protection of sovereignty** is served by a braking system of mutual guarantees and principles, which not only limits the framework but also **excludes effective cooperation** in cases of urgency or when the matter involves more than two states.





Components of the traditional model:



The traditional interstate cooperation model, due to its sovereignty and the 'internal affair' nature of criminal justice, is characterized by the following **components**. [Incidentally, this model is still followed in relations with or between non-EU countries.]

1. there is **no direct contact** between the officials (the front-line professionals) (neither information sharing nor communication) – TM1
2. **diplomatic level** and foreign affairs ministerial officials are who communicate in the majority of cases – TM2
3. the **decision** on the cooperation will be made primarily on a diplomatic level – TM3
4. the non-surrender (extradition) of **nationals** is a rule [in case of measure under c) before] – TM4
5. cooperation is possible only in cases where the given offence is punishable in both countries (**double punishability**) – TM5
6. **prohibition** of entering the territory of another state by exercising state power – TM6
7. the **recognition** of any information, evidence and decision sourced from another state is not obvious or legally not binding. – TM7



Through the protection of sovereignty, as political reasons, these 'brakes' express **distrust** in the judicial system of another state. Thanks to developments from recent decades and the strengthening of human rights protection within Europe, the purpose of the primary protection of sovereignty has now become detached from this argument, and new cooperation agreements and new developments in international criminal cooperation truly serve to protect the individual. And while respect for these rights also constitutes a constraint on cooperation, this constraint must be fully respected by states in the face of traditional obstacles to sovereignty, which in turn can and must be removed. **This development is the strongest in Europe and in the European Union, and it is a change of attitude embodied in specific rules.** A specific European style cooperation has evolved step by step.



What do you think, why the trust/distrust has a central role in the international cooperation of states?



#### 4. The European model

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Today, cooperation between authorities in the EU has completely moved away from the traditional model. In addition to maintaining the recognition of sovereignty, the so-called **mutual trust** (see Module 3) is governing, which has significantly expelled the brakes resulting from the unrestricted sovereignty of the system.

What are the key features?

1. A typical form of exchange of professional information and cooperation in the EU is the **networking** and establishment of a system of contact points (or liaison officers) within the MS which central agencies coordinating and facilitating the stream of information back and forth between contact points. – EM1

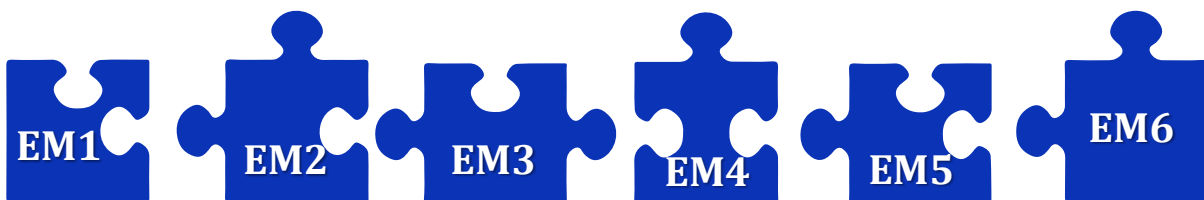
2. The legal instruments allow for direct contact between frontline professionals, there is **no need for diplomatic** or foreign ministerial contacts on such issues anymore. – EM2

3. **Decisions are juridified**, instead of making political decisions, MS work together within regulatory legal frameworks (and not on a case by case basis). – EM3

4. The absolute protection of a MS's own nationals is **relativised** by the principle of mutual trust. – EM4

5. Rules are in place that allow a member of a MS authority to enter the territory of another MS in order to exercise his / her public powers (perform procedural acts). – EM5

6. Information, evidence and decisions from another Member State **should be accepted** without any internal procedure (mutual recognition – in Module 3 reading lecture 2-3) or at least treated as if they had been taken or made within its own procedure (principle of assimilation). – EM6





## 5. Comparison

Compare the models and fill in the following sheet based the information you have learned from the text under 3.

*Use the recommended abbreviations, see above.*

	Traditionally	European style
obtaining information (and evidence) from another MS		
assisting to obtain information (and evidence) for another MS		
apprehending the sought person		
acting at the territory of another MS		
recognising the evidence or the decision from another MS		

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## 6. Questions for review

1. Which measures belong to the different forms of cooperation in criminal matters?
2. What does juridification mean?
3. Describe the communication between authorities in criminal matters!

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