



Recognition and Enforcement of Foreign Judgments in the EU: Introductory Remarks

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1. Brief introduction

- The important role of principles in each legal order
- The **interaction among principles in EU legal order**:
 - **vertical interaction** (from EU to Member States and vice versa);
 - **horizontal interaction** (from Member State to Member State).
- The European Union features a strong emphasis on principles, that is EU general principles

2. The Origin of Mutual Recognition in the EU

- Historically, **mutual recognition was the principle of EU common market for the free movement of services, goods, workers and capitals**
- The principle, indeed, stems from **Public International Law and Private international Law**
- It was included in the original Treaty and then **it shifted from the commercial and economic fields to the European Area of Freedom, Security and Justice.**

- At **first**, the principle was included in **article 57 TEEC** (now article 53 TFEU) addressed the mutual recognition of diplomas and qualifications
- Likewise, **article 220 TEEC** (now repealed) introduced the mutual recognition among companies
- This principle found a jurisprudential consecration thanks to the judgment ***Cassis de Dijon*** of 20 February 1979, Case C-120/78

- The case concerned a French liquor *Cassis Dijon* that couldn't be sold in Germany because the spirit drink didn't fulfil the requirements of alcohol in Germany
- The Court of Justice held that a product “*lawfully produced and marketed in one of the Member States*” has to be **recognized** as such **by other Member States** [§14]
- The judgment, though, **did not plainly label** the Mutual Recognition **principle**, as it simply was referred as the *Cassis de Dijon* formula from that time on

3. The Extension to the Area of Freedom, Security and Justice

- The **principle** was extended to more fields other than the economic one
- In **1998**, the European Council held in **Cardiff** laid the foundation of a **broader** mutual recognition principle
- During **the Tampere European Council** of 15 and 16 October 1999, Mutual recognition was recognized as **cornerstone for judicial cooperation both in civil and criminal matters within the Union**
- **this extension to criminal law was criticized by the doctrine**

On 26 July 2000, a Commission's **Communication** titled '***Mutual Recognition of Final Decisions in Criminal Matters***' underlined that [COM(2000) 495 final]:

"Mutual recognition is a principle that is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that **they are accepted as equivalent to decisions by one's own state**. **Mutual trust** is an important element, not only trust in the adequacy of one's partners rules, but also trust that these rules are correctly applied.

Based on this **idea of equivalence and the trust** it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case.

Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered, be it by according it the legal effects foreseen for it by the foreign criminal law, or be it by taking it into account in order to make it have the effects foreseen by the criminal law of the recognising state.

Not always, but often, **the concept of mutual recognition goes hand in hand with a certain degree of standardisation of the way states do things**. Such standardisation indeed often makes it easier to accept results reached in another state. On the other hand, mutual recognition can to some degree make standardisation unnecessary".

- Member States accept the effects of a foreign decision in their legal system according to some other **corollaries of the principle**:
 - the **EQUIVALENCE** of offenses between legal systems;
 - the **MUTUAL TRUST** in others' legal system functioning and values;
 - the **EXTRA-TERRITORIALITY** of the effects entailed by the decision.

- One of the main applications of this principle concerned **the 2002/584/JHA: Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (EAW)**
- Thanks to the EAW, national authorities can now freely interact between them **without the ‘political filter’ of the extradition**
- The States are no longer classified in requesting and requested, but only in **issuing and executing Member States**
- There isn’t the need for **double-checks** from the executing State
- Substantive and procedural guarantees are necessary

- **Article 82 TFEU**

“1. Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions and shall include the approximation of the laws and regulations of the Member States in the areas referred to in paragraph 2 and in Article 83.

.....

2. To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules. Such rules shall take into account the differences between the legal traditions and systems of the Member States”

- **Article 83 TFEU**

“1. The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis”

4. Conclusions

- On the basis of Articles 82 and 83 TFEU, **several directives concerning substantive and procedural criminal law have been adopted**
- Many of the **previous framework decisions have been replaced by directives**
- There are several legal instruments, but **many of these are still waiting to go fully operational**
- **These directives must be transposed within the national legal orders**
- The transposition of directives, as well as the execution of decisions are affected by **the differences between the legal systems of the Member States**
- Some critical issues concerning **the principle of legality, the principle of legal certainty**, as well as the recognition and enforcement of decisions in some EU Member States that do not respect **the principle of the rule of law**