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Feedback for the initiative 'Law enforcement cooperation in the EU'

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Brussels, 4 June 2021

With this short feedback document, we would like to summarize five points that we consider important for the further development of the initiative by the European Commission (Commission) on law enforcement cooperation in the European Union (EU).

1) Unclear aim of the public consultation

While we are aware that this is a proposal in the early stages of its development, we note with concern that it is very difficult to understand what the Commission is actually planning. The [Inception Impact Assessment](#) includes all options from no changes to far-reaching changes for the area of law enforcement cooperation. The public consultation includes a number of questions that actually seem to be aimed at data gathering, especially those asking the perceived threat level (Questions 1-4), and the various questions asking for an assessment of the effectiveness of existing/potential measures (Questions 5, 7-11). We sincerely hope that the final impact assessment for any proposed impact assessment will not only rely on these essential self-assessments without actual knowledge of what is being proposed but be based on objective scientific studies.

2) Undefined empirical sources

The Inception Impact Assessment highlights the existence of evidence 'establishing the benefits of the EU police and law enforcement cooperation framework'. Nevertheless, from these sources listed, currently only a pilot project on fundamental rights is publicly available. We encourage the Commission to make accessible in advance the sources used to develop any new legislative proposals. We recommend that any assumption over the necessity and efficiency supporting EU intervention are at least empirically referenced in the development of legislative initiatives.

3) Use of ambiguous concepts

At several points, the public consultation relies on ambiguous concepts without defining them. For example, as noted above, at several points the questionnaire asks to assess the effectiveness of a measure, without however, clarifying how the Commission understands effectiveness. Similarly, already the use of the word 'law enforcement cooperation' has ambiguity as it does not clarify which law enforcement authorities (LEAs) are supposed to cooperate at which level. Differences in criminal procedural laws among Member States and in the competences attributed to the different authorities within the broad concept of EU LEAs has already been the source

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of operational inefficiencies in the field of cross-border cooperation. This is a consequence not so much derived from the quality of existing instruments for cooperation, but the particularities of the Member States' legal systems and traditions. For example, while some Member States conceive investigatory measures as falling within the scope of judicial cooperation others understand them as being police cooperation. In the further trajectory of this proposal, we believe it would be helpful, if the Commission would define any ambiguous concept they are using.

4) The fundamental rights of privacy and personal data protection

We are very concerned that in question 18 of the questionnaire, privacy and personal data protection is portrayed as an obstacle to law enforcement cooperation. As noted in answer 19, privacy and personal data protection as fundamental rights and law enforcement cooperation are not mutually exclusive, rather they need to be balanced. It is therefore highly misleading to have privacy and data protection legislation as an obstacle. We also note in this context that while the Inception Impact Assessment noted to some extent the importance of alignment with data protection legislation in the EU, in the section of 'Likely Impacts on fundamental rights', this concern has completely vanished from the public consultation, where, as just mentioned, privacy and data protection are actually noted as hindrances. We note that the proper alignment of any new proposals in the area of law enforcement cooperation and data protection rules is of utmost importance, especially as, data protection rules for law enforcement in the EU are already suffering from fragmentation, a situation where the Commission has also promised consolidation, that we hope is swiftly forthcoming.

5. The issues with mutual trust and cooperation

Recent EU initiatives in the field of law enforcement cooperation have shown that despite mutual trust and mutual recognition being a 'cornerstone of AFSJ policy', Member States often do not share the level of trust that cooperation under the mutual recognition principle would require. The lessons learned from the European Arrest Warrant and the European Investigation Order, suggest that framing/labelling cooperation under mutual recognition does not magically generate trust between authorities (Report on Eurojust's casework in the field of the European Investigation Order; available [here](#)). Additionally, the significant role played by the authorities' lack of adequate training in using existing instruments currently available is often not adequately discussed.

Finally, it is at this point not clear that all Member States are equally motivated or interested in investing the necessary resources for any new initiatives in the area of law enforcement cooperation. An analysis of the impact assessment accompanying the latest Commission's proposal for a European Production and Preservation Order indicated that despite the Commission's position towards a need to enhance cross-border cooperation in the EU, the actual predisposition and incentives all Member States are demonstrating in practice, paint a different picture (Vazquez Maymir, 2020 [here](#)).