

MODULE I FORUM

TOPICS FOR DISCUSSION

Dear all,

You will probably have already noticed that in the first stages of the course the pace has been rather relaxed, with new elements being introduced gradually and "low intensity" participation. This is in line with the course managers' policy that, in order to avoid any unnecessary stress, participants should be given the time they need to get used to the web platform through which the course is delivered.

Over the next few weeks, you will realise that the methodology employed in the course demands a good amount of individual effort on your part, which makes it advisable to take an orderly approach to your studies, carrying out the different activities regularly and including them as far as possible in your daily routine.

Even so, if the coursework becomes an exclusively individual and isolating experience, students run the risk of falling prey to apathy and a lack of motivation. This is where the possibility to share your views and concerns with others becomes a useful ally. Our intention at this point is to encourage participation in the forum with a view to making the Module more dynamic while stimulating communication among all the participants.

As I announced in previous communications, the aim is to introduce topics that will arouse interest among all those taking part – debate seems complicated given the nature of the subjects concerned – in the hope that this will lead to closer interaction between us, thereby lightening the burden of the coursework.

A number of elements are already at your disposal: the introductory video, a brief introduction to the Module and the full text of units 1, 2 and 3, with an overview of their contents in the introduction.

You have already seen that the author of the first unit offers an outline of cooperation in criminal matters, starting with the concept, content and basis of this field and then focusing on its development over time. I would like to concentrate on the first of these points and draw your attention to the extent of the subject of cooperation, which is so significant that we should indeed be using the term "legal" and not merely "judicial" cooperation, in view of how often it involves fields and legal professionals who are clearly outside of what is usually referred to with the word "judicial".

I also think it is worth pointing out the steady increase in the content of cooperation acts. We are witnessing an interesting development in which the different states are leaving their traditional reluctance to one side in the interests of Justice, even if it is to be effected outside of their own territory, in order to guarantee the right of all citizens to a fair and effective remedy.

In connection with these points, I would like to put forward some more ideas which I hope will help to "break the ice". Naturally, this is not a closed list of questions, and you do not need to reply to every one. My intention is in fact very much the opposite: these suggestions are simply there as a guide for an exchange of ideas between experts and you are free to post any comments you think fit:

- The States have shown a good amount of good will in the negotiations and in their adoption and ratification of the different legislative instruments. Do you think this attitude is genuine or is it merely a stance intended to please the international community?
- The effective results of these agreements ultimately depend on the diligence and interest with which the different countries and their agencies actually deal with these matters. Do you think that the legal professionals concerned in the different countries take a real interest in the execution of acts whose direct effects will be felt in a process conducted in another state?
- As legal professionals, what has been your experience in this respect? Have you ever had to deal with a case with international implications? If so, were you in the state requesting the assistance or was it you whose assistance was sought? What is your opinion of the experience as a whole?
- From your perspective as members of society and not legal professionals, what is your perception of the degree of cooperation between the different states at this level?
- As I mentioned above, cooperation is conceived of today – at least in theory – as a way to guarantee the citizens' right to an effective legal remedy. Notwithstanding this view, do we really believe that the individual seeking justice is the true focus of this complex activity?

Turning to the subjects covered in units 2 and 3 in the Module, and following in the approach taken in those units, we can say that we are currently at a crucial time in the process of configuration of the European Judicial Area. Firstly, the results of the Irish referendum have set a new turning point with clear links to the failure of the project for a European Constitution. The current situation is one in which certain countries are still pending ratification of the Treaty, some initiatives are still to be concluded and a new action programme is to be approved to determine the current initiatives that will be implemented and new objectives set for the configuration of the European Area of Freedom, Security and Justice, a process which is indeed becoming a dire endeavour due to the many impediments found along the way.

The latest achievements in this field may be analysed in the General Report of the European Union for the year 2008, which has been recently published and is available at the URL <http://europa.eu/generalreport/fr/welcome.htm>. Moving on to the present year 2009, I would like to call your attention to the Commission's approval on 5 March of a new mechanism to supervise the application of Schengen regulations, which provides inspections of the Member States and assessments of their internal protocols.

This state of affairs and the prospects for the immediate future give rise to further points for reflection:

- The consequences of the Irish people's rejection of the Treaty are as yet unclear. How should we view this negative response? Looking to the future, and in order to avoid repetitions of this situation, should the conditions for use of the referendum be unified in the different Member States?
- Switzerland has recently joined the Schengen Treaty. Does this increase the possibilities of the country effectively joining the EU? And in view of the current economic situation, should the EU demand that Switzerland take concrete steps in other areas, such as the control of capital flow?
- Every year numerous breaches of the European Convention on Human Rights are reported, with the expected negative implications for the implementation of the principle of mutual recognition of criminal judgments. Should we recover and relaunch the proposed Framework Decision on procedural safeguards for suspects and accused persons in criminal proceedings conducted in the EU, or is the project definitely dead?
- Regarding Community institutions established to facilitate the prosecution of offenders, are we familiar with the work carried out by Eurojust? The Community now aims to boost the role of this agency. Do you expect this policy to produce any real results?
- As for the European Public Prosecutor, what internal problems could arise as a result of the creation of this office – which is due in the immediate future – and its intervention in the domestic systems of the Member States?

That is all; I now look forward to reading your contributions. Best wishes and good luck with the work ahead!

Marcos Loredo