

## ONLINE COURSE ON JUDICIAL COOPERATION IN CRIMINAL MATTERS IN EUROPE

### MODULE I "JUDICIAL COOPERATION IN CRIMINAL MATTERS IN EUROPE"

#### PRESENTATION

#### APPROACH

I would like to start the presentation of this Module I by welcoming the participants enrolled in the course and expressing my wish that this formative experience prove satisfactory and enriching for everyone involved in its development.

As a university professor, I am taking on this challenge to tutor a course aimed at active professionals with renewed illusion and trust that I will be able to meet your expectations in this regard. For my part, I am determined to put all my effort into it and, in that sense, as of this moment I am at your complete disposal for any questions, doubts or suggestions you may have in the coming weeks in relation to the contents and activities of this Module. To that end, we will be in permanent contact via email.

At this point, all that is left for me to do is thank you for your attention and encourage you to read these introductory pages before embarking on a thorough study of the different topics.

#### CONTENTS OF THE MODULE

In line with the programme supplied in this regard, this "Online Course on Judicial Cooperation in Criminal Matters in Europe" starts with Module I, which is of a clearly introductory and general nature, and comprises the following units:

- Topic 1: "The Evolution of Judicial Cooperation in Criminal Matters" (by Ms Amaya Arnaiz Serrano).
- Topic 2: "The change of paradigm: the principle of mutual recognition and its implications. Perspectives from the Treaty of Lisbon" (assigned to Mr Víctor Moreno Catena)
- Topic 3: "Enhancing mutual trust: procedural guarantees, the rights of the victim and personal data protection" (with Jorge Albino Alves Costa).

These first three lessons aim to offer the participant a panoramic and wide-ranging view of legal cooperation in criminal matters, analysing the different geographic environments affected and highlighting the different landmarks during the evolution of this field, while at the same time putting into context the instruments and institutions involved in this process, and which will be duly dealt with in subsequent topics and modules.

This being the case, we will start with a conceptual definition of legal cooperation, its contents and the basis for it, in order to then study the area from a general perspective, carrying out an analysis of situation of cooperation in criminal matters in the different international contexts –bilateral and multilateral–. Following that, we will go into the specific aspects affecting this field in the context of the EU in greater depth and the evolution of the same in this environment, paying special attention to the principle of mutual recognition of decisions, the true "cornerstone" of judicial cooperation. Finally, we will look at several essential initiatives aimed at enhancing the mutual trust of the Member States of the EU –which are those regarding the accused's procedural guarantees, the rights of victims and the protection of personal data of the parties involved in criminal proceedings–, something that is mandatory if the principle of mutual recognition is to be implemented effectively.

In line with this approach, the presentation of the different topics that comprise this Module I can be done independently, while at the same time maintaining the necessary connection between them, as the dividing line between the different lessons is more a product of pedagogical or methodological criteria than due to actual frontiers between their contents. Still, the sequential nature of the material studied means that we recommend you study it in the way it has been programmed, following the order in which it is laid out in order to thus ensure the correct assimilation of the same and advance in a progressive and coherent manner towards the acquisition of knowledge.

Having explained this state of affairs, I would now like to deal with some aspects that, in my opinion, are the most relevant ones dealt with in each topic, in order to make it easier for the participant to get to grips with a field that may be new to him/her and that we hope he/she will come to master as the course progresses.

Thus, the first topic starts off with the mandatory conceptual definition allowing us to mark out the object of our study, establishing *ab initio* what we should understand by judicial cooperation. In this regard, the more exact expression of "legal cooperation" is introduced as the field we are dealing with surpasses mere assistance or collaboration between courts for the exclusive purposes of criminal proceedings. The contents of this activity have become broader and more complete, both in relation to the object of the collaboration requested and the subjects involved, to the extent that specific institutions have been created for this kind of matter. In any event, these actions are aimed at fighting international crime more effectively, while at the same time reducing impunity and spreading a feeling of security among citizens.

This means that a panoramic vision of the evolution of cooperation in criminal matters is necessary also in relation to the basis for it and its justification, from its origins to the present day, ultimately including a look at the most immediate future prospects. We will then turn our study towards the different geographic contexts, both bilateral and multilateral, thus developing the appropriate frame of reference. On this last point, we should call attention to the approach taken, so that this question is analysed in the context of the UN, the Council of Europe and the EU, setting out the conditions, advances and failings in the different sectors and thus allowing the participant to organise the contents of the course properly. In conclusion to this section, we offer a non-exhaustive list of the different instruments of international legal cooperation in criminal matters arising from the different ambits studied and organised according to their material contents.

Having established these general premises, the second topic deals in greater depth with the evolution undergone in the sphere of the EU in the context of the movement towards the integration of the Member States.

Specifically, we will study the cooperation instruments, the progressive transformation of which is clear to see. Thus, we will start out with the provisions of the main conventions before going on to study the instruments of the different policies mentioned earlier –integration and communitisation–, which have their distinguishing features, as is to be expected.

Meanwhile, we will reflect on the provisions of the Treaty of Lisbon –finally in force–, whose guidelines will determine our immediate future and undoubtedly represent a significant change of direction, as it has established the communitisation of judicial and police cooperation in criminal matters, making it possible to adopt new legal instruments and explore other original avenues in this area. Basically, we will see just how judicial cooperation has gone from being considered an end in itself to become a prerequisite for achieving Justice, a means of helping guarantee respect for individual rights and preventing impunity and how this has involved the creation of special bodies to meet these challenges.

In this context, we will deal with the longed-for legislative harmonisation both of substantive and procedural law as a precondition for the implementation of the principle of mutual recognition (the "cornerstone" of international judicial cooperation), considered as complementary routes. We will then see a clear extension of the fields of criminal matters in which the EU intervenes and highlight the importance of the work of the Court of Justice of the EU in this regard.

Finally, the third and last of the topics deals with some of the initiatives considered essential for enhancing mutual trust between the Member States of the EU, something that is necessary for the effective implementation of the principle of mutual recognition. Thus, we first analyse the long road that leads to the harmonisation of the minimum guarantees of the accused in criminal proceedings, starting with the unsuccessful planned Framework Decision and leading up to the recent approval of a Directive on the rights to translation or interpretation, an initiative that opens up a new avenue, the results of which are expected to be more optimistic. In this regard, it refers to the protection of the victim –by means of a specific text enshrining his/her rights– and the existing measures for the protection of the personal data of the parties involved in criminal proceedings.

With this we reach the end of our first Module and we trust the participants will have been able to assemble the basic structure of the complex edifice of judicial cooperation in criminal matters in the EU, within which the following detailed Modules will be installed.

## **METHODOLOGY**

Meanwhile, we must not forget that the course we are embarking on is conceived as an online one, and the intention is for the participant to receive the training without having to be in the same physical space as the lecturers and by using the teaching tools provided by information technology. Thus, the participants have access to all the materials

by using a specific tool, which also facilitates direct interaction with the tutor and permanent contact between all the operators involved.

To that end, individual communication is facilitated by email and the collective participation of students by means of the forum, where different topics of debate will be raised and we will be able to reflect on them together, availing of this cooperation to advance in our acquisition of knowledge. Participants are invited to raise their voices (in a metaphorical sense, of course) and make proposals for these discussions and reflections in which we will attempt to introduce topics from the realm of current affairs that have a practical relevance insofar as the area in question allows us to do so.

Likewise, as the Module unfolds, a single case study will be proposed in relation to the materials studied, which will set a series of questions for the participants to answer, thus employing the knowledge acquired. The answers in this case will be sent directly to the tutor, who –apart from sending an individual comment to each participant– will also send a proposed answer, which we can also debate and revise as a group

On a final note, I would just like to thank you for your attention, reiterate that I am at your disposal and encourage you to assume this task with all the necessary dedication, as I sincerely believe that your efforts will be rewarded.

I look forward to hearing from you soon:

Oviedo, 1 October 2010

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