

Research/issue paper on the “Impact of the COVID-19 pandemic on international cooperation in criminal matters: challenges encountered, good practices and lessons learnt in the aftermath of the pandemic”

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ANNOTATIONS

1. The introduction provides a brief overview of the restrictions that were introduced with the pandemic, in particular international travel, workspaces (physical distancing) and mailing services. It then considers some areas of international cooperation in criminal matters that were impacted by the restrictions. These include, most prominently, extradition and the transfer of prisoners, as they were impacted by the lack of available flights and health restrictions, but also searches/seizures as they were affected by travel restrictions and physical distancing requirements and, more generally, mutual legal assistance and any cooperation that required the physical printing, signing, and stamping of official documents which was impacted by COVID-19 restrictions that required physical distancing and consequently working from home. At the time of the pandemic there was an abundance of procedures that had to be carried out under challenging circumstances. This issue paper will therefore explore first how the COVID-19 pandemic impacted international cooperation in criminal matters, but more importantly also aim to highlight the solutions that were found to overcome such difficulties at various governance levels. Finally, the paper will determine which of the good practices developed might be usefully employed beyond the crisis they were born out of.
2. This part of the paper examines the work of central and other competent authorities in the area of international cooperation in criminal matters and addresses the challenges of the COVID-19 pandemic for cooperation at national, regional and international levels. This part also discusses the impact of the pandemic on “horizontal” cooperation among central authorities at the international level and the “vertical” inter-institutional cooperation domestically between the central authority and the competent authorities to execute MLA requests.
3. The third part of the paper evaluates the specific adaptation of cross-border cooperation procedures to the emergency situation encountered. Based on expert interviews, this part explores how specific mechanisms persisted throughout the pandemic despite the emergency restrictions. In the field of extradition, for example, a major challenge was the timely execution of requests. Particular difficulties posed here the lack of transportation and the lack of available staff. In the case of the European Arrest Warrant (EAW), the extension of the strict time limits for extradition was enabled by specific legislation (2002 EAW Framework Decision) which included in Article 23(3) an exception in case of ‘circumstances beyond the control of any of the Member States’ and in Article 23(4) and exception for serious humanitarian reasons. Both were used in the European Union cooperation to overcome the time restrictions set by the legal instrument. Less problematic than extradition appeared to be the transfer of sentenced persons as the time limits were here less restrictive. In many cases the transfer of prisoners was simply suspended. Mutual Legal Assistance also had to adapt as the transfer of documents in particular had to be ensured throughout the pandemic. This

required significant flexibility from national systems as they, for example, had to accept documents sent by emails and with electronic signatures. This was furthermore complicated by the fact that systems might not be compatible or able to accept large file attachments.

4. Legal frameworks applicable in the field of international cooperation in criminal matters at national, bilateral, multilateral, regional or international levels could both restrict and facilitate cooperation in times of the pandemic (see, for example, the EAW example above). In this part, the specific requirements of applicable legislation are discussed, together with any changes that might have been necessary to adapt such legislation more efficiently to the requirements of the pandemic. Any relevant initiatives (adoption of new regulatory frameworks; and/or amendment of existing legislation) or plans for future legislation to address pertinent issues in the aftermath of the pandemic will here be addressed. Examples might include legislation on data protection that had to be changed to facilitate e-justice, or legislation regulating in detail the submission of requests by emails or videoconferencing during the pandemic. The legal reasons for change (e.g. varying possibilities for legal implementation) will be discussed. Particular areas where new legislation might have become necessary include the electronic transmission of requests for international cooperation, the use and acceptance of electronic signatures or the paperless administration of work in central and other competent authorities relating to cooperation with foreign counterparts. Existing normative instruments at international (regional/United Nations (UN) levels) and/or their - potentially reported - innovative use might furthermore have been important to counteract the impact of the COVID-19 pandemic. Hence, this part also explores the utility of international cooperation provisions of, in particular, international instruments such as the United Nations Convention against Transnational Organized Crime (UNTOC) and the United Nations Convention against Corruption (UNCAC). A particular focus will be on the harmonising effect of the conventions and whether they have been used in practice offering solutions to, for example, problems resulting from differences in legal requirements for cooperation. In relation to bilateral and multilateral legislation this part of the paper will furthermore discuss whether bilateral agreements, or signed MoUs on operational arrangements, have been developed between countries as a result of the COVID-19 pandemic. Furthermore, accession to multilateral instruments at the regional level, to address specific problems that emerged in the field of international cooperation in criminal matters due to the pandemic, including through sharing of information will be explored including any particular experience and good practices.
5. This part considers whether the potential increase in specific crimes (e.g. cybercrime) during the pandemic might have led to a more prominent need for targeted or tailor-made criminal justice cooperation practices developed in the field such as international cooperation arrangements (both public and private, e.g. with communication service providers) and, where appropriate, involving the obtaining and sharing of electronic evidence.

6. This part discusses any relevant institutional frameworks at national and regional levels that had to adapt in the field of international cooperation in criminal matters, or related criminal justice and law enforcement areas in support of such cooperation, to address challenges posed by the coronavirus disease (COVID-19). Such changes can include the move from face-to-face to online or hybrid working, as well as any set of administrative regulations or circulars that, for example, have authorized the reorganizing of the structure of authorities involved in international cooperation, or any set of guidelines of administrative nature that set new rules in prioritizing casework of central and other competent authorities involved in international cooperation.
7. This part of the paper explores whether any initiatives geared towards enhancing cooperation and coordination with regional, multilateral and international organizations by establishing channels for the exchange of information, good practices and experience have been undertaken in response to emergency situations such as that of the coronavirus disease (COVID-19). It also addresses aspects pertaining to support by international and regional bodies, such as UNODC, INTERPOL, Europol, Eurojust or REDCOOP (International Cooperation Network in Criminal Matters of the Ibero-American Association of Public Prosecutors (AIAMP)), provided during the pandemic that could be helpfully institutionalised beyond the pandemic. This part of the chapter furthermore looks at whether there was an increased use of or participation in criminal justice networks and/or practices that helped overcome issues created by the pandemic.
8. In this part of the paper, reported good practices are compiled and assessed, for the first time at the global level. These might include particular practices that evolved or technologies that helped cooperation. Good practices can relate to any of the specific cooperation measures discussed in the previous part. They can also be a specific legal change or adaptation that facilitated cooperation in a bilateral, multilateral or international cooperation scenario. It appears that informal cooperation, such as direct contacts with competent law enforcement authorities of other countries, became more pronounced throughout the pandemic and a frequently used good practice. Informal cooperation seems to have increased and in some cases was even developed for the first time between countries out of necessity as during the COVID-19 pandemic formal channels were not available anymore.
9. This section discusses briefly whether there was an impact of the pandemic on human rights of persons involved in international cooperation in criminal matters. These issues are particularly sensitive and difficult to be assessed without already existing case law in the field. Should there be relevant case law, it will be discussed here and later taken into account when evaluating new strategies and emerging best practices. However, and focusing on the operational level, new measures might also have been adopted during the COVID-19 pandemic that prevent breaches of human rights or provide a stronger footing for existing rights. One example of this could be the use of videoconferencing in the prevention of trials

in absentia and a stronger support therefore for the rights of the defendant in cross-border trials.

10. This part of the paper addresses any action in countries/regions to develop, adapt and use tools for data collection in the criminal justice and law enforcement sectors to provide solid evidence and knowledge base on changes in policies, strategies or operational arrangements due to the coronavirus disease (COVID-19). Such data collection is crucial to learn from past mistakes and develop good practice.
11. In one of its final parts, this paper addresses what investments are necessary at the national, regional and international levels to further the positive impact of cooperation initiatives developed during the pandemic and to learn from mistakes made in the past years to prevent any further negative impact during future emergencies. What will be more specifically discussed here is which kind of investment should be made in central and other competent authorities involved in international cooperation in criminal matters to achieve this aim. Also, any priorities in addressing capacity building needs in the field of international cooperation in criminal matters that the coronavirus disease (COVID-19) made of particular relevance shall be discussed here to explore future funding strategies amplifying the positive effect of lessons learned. Furthermore, the contribution of international organizations, such as UNODC, as technical assistance providers, is addressed here to determine good practices and highlight the importance of provision of external resources, also building on the analysis under part 7 above. Finally, this part discusses the potential for public-private partnerships in the field of international cooperation in criminal matters. It will be explored whether cooperation with the private sector developed as a response to the COVID-19 pandemic and facilitated access to and use of information technologies to combat transnational crimes.
12. The conclusions provide an overview of the main findings of the paper and finally evaluate the impact of the coronavirus disease (COVID-19) on international cooperation in criminal matters more generally drawing on the interviews with experts in the field. The paper will close with some final reflections on the “legacy” of the pandemic in international cooperation in criminal matters.