

Book reviews

Book Review: Wendy de Bondt, "Overcoming offence diversities in EU policy making – Needs and feasibility assessment"*

Dr. Annika Suominen¹

The PhD thesis consists of three main parts; an overview of the doctoral thesis, the five scientific articles the author has submitted, and finally, references.

In the *first part*, the author makes an overview where she ties the submitted articles together into a coherent whole, which she labels the need for and feasibility of an EU offence policy. The author demonstrates that the offences are in a central position in relation to the criminalisation acquis, to ensure comparable criminal statistics, to avoid problems in relation to double criminality and also in relation to problems with gathering evidence. She argues that there is a need to clarify the mandates in relation to EU level actors, and furthermore that an offence policy is necessary to support identification of equivalent sentences and when taking prior convictions into account. The offence diversity is applied as a connecting research theme throughout the thesis.

The author manages to tie the need and feasibility of an EU offence policy first of all to the criminalisation acquis. She makes a point in the fact that the EU lacks a coherent offence policy and that basing policy on cooperation mechanisms is clearly not sufficient (nor feasible). An offence policy is furthermore essential in order that crime statistics are compatible. This approach is very welcome as evidence-based policy making is clearly lacking within EU criminal law today. The author then follows up with applying an EU offence policy to avoid redundant double criminality testing. Here she argues that for the EU offences which have been subject to approximation, double criminality testing is redundant as the outcome of the test is known to be positive. Continuing on a similar issue, the author discusses evidence gathering and the arguments introduced are important. The author continues by stating that it is illogical not linking the mandates of the EU level actors to the offences that have been subject to approximation, which seems well motivated.

In relation to taking prior convictions into account, either in new criminal proceedings or in public procurement, the author again shows the importance of an EU offence policy. Although one may not completely be convinced that the offence policy is the (only) leading argument in relation to sentencing (as more attention

* Dissertation, 2012, Faculty of Law, Ghent University, 430 pages. Available at <http://hdl.handle.net/1854/LU-2129164>.

¹ University of Bergen

could have been given to sentencing being part of the national legal system and that in some cases equivalences cannot always be achieved, perhaps even for those core EU offences) the analysis in relation to public procurement clearly shows that applying an EU offence policy on this part as well would lead to improvements.

The author manages to sum up the different parts under an umbrella theme, which she defines as the need for an EU offence policy. Although the first part to some extent is general, it sufficiently ties the different parts to the relevance of an EU policy offence. It shows that the author has insight in the various fields and that she manages to gather the relevant points into the introduction. Her critique is well formulated and shows that she has insight in this area. She concludes by stating that the only condition is having an EU offence policy. Of course this conclusion can, and perhaps should, be seen as a first step for realising a more genuine area of freedom, security and justice.

The first article in the *second part* is entitled “Evidence-based EU criminal policy making: In search of valid data”. This article can be considered a criminological study, with a rather innovative approach. The statistical approach to finding the top 10 EU offences and the tables she presents is interesting. Although the author does not explain thoroughly why a particular approach was chosen for all parts (such as the ability of police officers to provide data, where in some other legal systems perhaps courts or statistical bureaus would have been better) or whether there is a possibility for any statistical margin of error, the article is well written. The author has a clear EU approach to the matter and concludes that the EU needs to take a stronger approach in demanding (and making possible) evidence-based policymaking. Practical and feasible solutions are called for and in this (even further) harmonisation is called for which the author motivates at least partly with the new competences of the EU in criminal matters. It is easy to agree on the need for a consistent European criminal policy, which preferably would be evidence-based.

The second article in part two is entitled “Double criminality in international cooperation in criminal matters”. This article deals with the double criminality requirement (or test) in different areas of cooperation. It applies a systematic approach in the analysis, which consists of adding both the EU and the individual concerned as parties to the double criminality issue. The author thoroughly analyses the requirement in relation to the different areas of cooperation, and based on the findings she proposes some alternatives for future cooperation. Although one might not be completely convinced that enabling the individual to enter into a dialogue with a Member State in order to get a decision recognised which otherwise would be refused based on the double criminality requirement, the solutions offered seem reasonable from an EU perspective. In some cases the national criminal justice system would nevertheless seem to have more fundamental problems with accepting recognition without double criminality, and although this is described in the article (e.g. in relation to transfer of pre-trial detention and international validity and effect of decisions) this aspect could perhaps also have been chosen as a party to the double

criminality issued. Especially in relation to the proposed principle *aut exequi, aut tolerare*, this would have been interesting.

The third article is entitled "EULOCS in support of international cooperation in criminal matters" and is co-written with Prof. Gert Vermeulen (also Ghent University). This article is an impressive piece developing a classification system which is connected to the harmonisation acquis. The possible problems of EULOCS are also commented on, which shows a realistic approach to the problems within EU criminal law today. The article lists the areas where a classification system would have an added value, which are in relation to double criminality, proportionality and capacity, admissibility of evidence, information exchange and in relation to EU level actors (Eurojust and Europol). Even though one might not agree on all issues, such as introducing minimum standards to evidence gathering, the argumentation in relation to EULOCS and its functions is well-structured. EULOCS is included in the article as an annex. The article and the annex clearly show that the suggested system is feasible and although consisting in some parts of a very detailed system – which in a national setting might seem unnecessary – it shows in comparison to the existing ECRIS, that EULOCS would seem to be a better starting point for a well-functioning system. This is a creative contribution to data-gathering in EU criminal law.

The fourth article is entitled "Cross-border Recidivism: fact or fiction? Evaluating the supporting policy triangle". This article combines the relevant policy factors in relation to cross-border recidivism. These are the prior conviction, offence approximation and information exchange policies of the EU. The author explains why all these three policies need to be developed and that they are intertwined. As even more generally in EU criminal law, policy making is neither consistent nor all-encompassing (in relation to what is necessary), which leads to cross-border recidivism being imbalanced at the moment. The author introduces a solution based on the EULOCS classification and pinpoints the issues that still need to be amended for obtaining a balanced and workable system. With this article the author accomplishes to show the intertwined nature of the topic.

The fifth and last article is entitled "Rethinking public procurement exclusions in the EU". Public procurement exclusions in relation to offence policy have not been thoroughly dealt with in the past, also in relation to mutual recognition, and the article is a welcome contribution to the field. The current problems with public procurement exclusions and different feasible solutions are analysed. The author shows that the current situation, again, suffers from a lack of offence policy and that when it comes to mutual recognition the added value is limited, especially when compared to attaching equivalent effect to foreign convictions. Several national examples are included, which show the complexity of the topic. A link to EULOCS is furthermore made when the author discusses the approximation acquis. The author demonstrates how the current problems could be solved in future policy making.

Overall, the thesis represents a collection of well-written articles. The articles cover issues from different angles of EU criminal law to issues of a more crimin-

ological approach, which is welcome. The themes chosen represent a good spectrum, and each of these could easily have been made into a study of their own. With the article approach, the author however lifts up the most essential matters, and she manages to enshrine the current lack of a well-balanced offence policy, which could even be considered to amount to the lack of an overall criminal policy. In this respect, a comment or an evaluation of the Manifesto on European Criminal Policy (made by ECPI, European Criminal Policy Initiative) would have been interesting. Especially in relation to evidence-based policy-making the author demonstrates well the current lack of such policy-making. She presents suggestions for how the situation can be remedied in relation to the different problems. Although the thesis to some extent suffers from repetitions when read from start to finish, this is naturally a result from the articles being published separately. Had the thesis been written as a monograph, it could have benefited from cross-references, whereas the reader is now left to remember where the matter was previously dealt with. The thesis can easily be recommended to everyone with an interest in EU criminal law and more specifically those who yearn for the EU having a more evidence-based criminal policy.