

European Supervision Order

Past, present and future of a controversial instrument

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The past...

- Concerns for growing number of EU citizens (non-residents) arrested or detained in States other than the country of residence (median: 28%, Space I, 2019)
- Detention-bias: non-residents are more likely than nationals to receive custodial measures during the investigations
- A new approach to mutual recognition? Protecting the individual:
 - a. a pragmatic rationale: relieving the burden, saving money, compensatory function
 - b. a principled rationale: inaugurating a new criminal policy, ultima ratio, rehabilitation

...the present...

- Council has launched 9th round of mutual evaluation, including FDs 947 and 829
- A slow and delayed implementation, poor quality of implementing measures (see Report 2014), a lukewarm reception by practitioners
- Exploring the causes of the present failure (Council's presidency June 2019): lack of information and training; mistrust
- The crux of the problem: a lack of coordination to exchange of information between issuing -> executing authorities before bail is granted (Article 22 FD)
- Overcoming detention bias, not enough incentives!

...the future?

- The EU should take a more holistic approach, by harmonizing some aspects of pre-trial detention (AG, Pitruzzella, C-653/19, *DK*)
- The devil is in the details: Norms on pre-trial detention facilitating remand on preventive grounds
- Presumption of detention (instead of presumption of liberty, see ECtHR, *Caballero v. UK*)
- ESO shows that a link between mutual recognition (Art. 82 TFUE) and pre-trial detention exists: This can translate into harmonisation of some rules (Art. 8.1 FD)
- Minimum safeguards to ensure detention is last resort

Thank you for your attention!