

Faculty of Law,
Economics
and Finance



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Victims and multiple competent jurisdictions

How to consider their interests in the forum choice?

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Introduction

- A ‘new’ perspective, beyond the Directive
- Where the trial takes place
- EU objective (Art. 82 TFEU)
- Concurring jurisdictions
 - “*Positive conflicts*”: parallel proceedings for the same facts
 - “*Negative conflicts*”: a ‘denial of jurisdiction’
- Ongoing research project on conflicts of jurisdiction

The problem...

EU

- *Negative conflicts*: security for EU citizens
- *Positive conflicts*: use of resources in a common area, good administration of justice

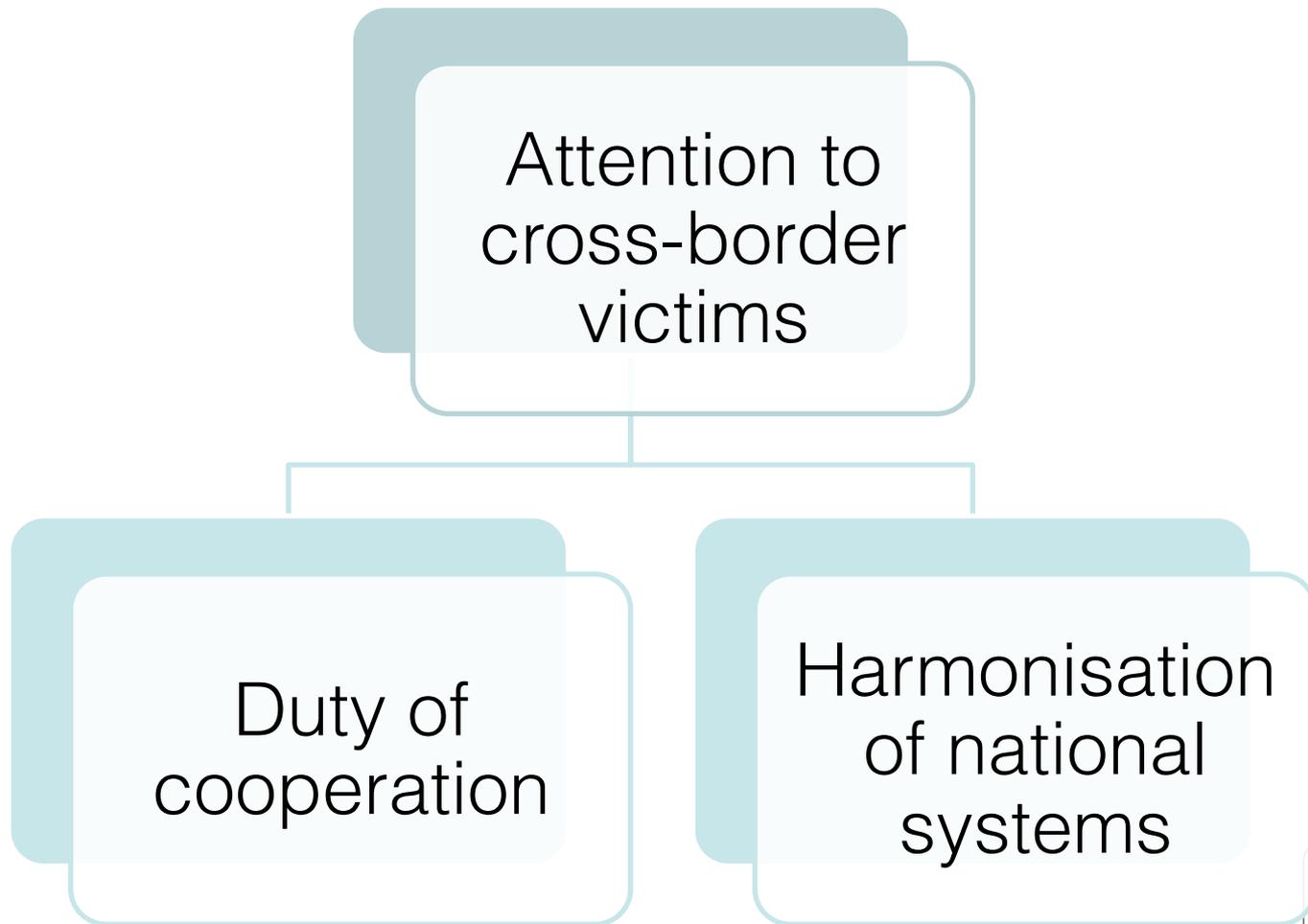
Defendant

- *Positive conflicts*: risk of *bis in idem*, or arbitrary decision on the forum
- *Negative conflicts*: ...'tant mieux!'

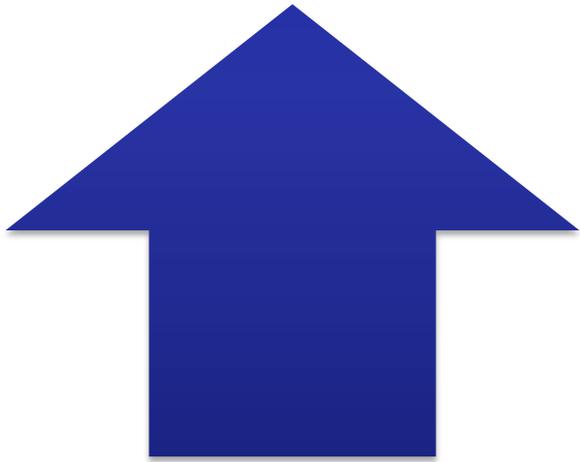
Victims

- *Negative conflicts*: lack of protection
- *Positive conflicts*: ...?

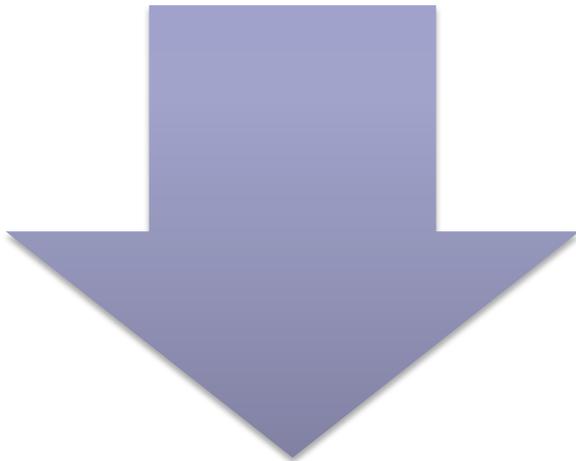
*“cross-border victimisation
can impose difficulties in many ways”*



...when several Member States are competent



Multiple investigations?
Multiple trials?

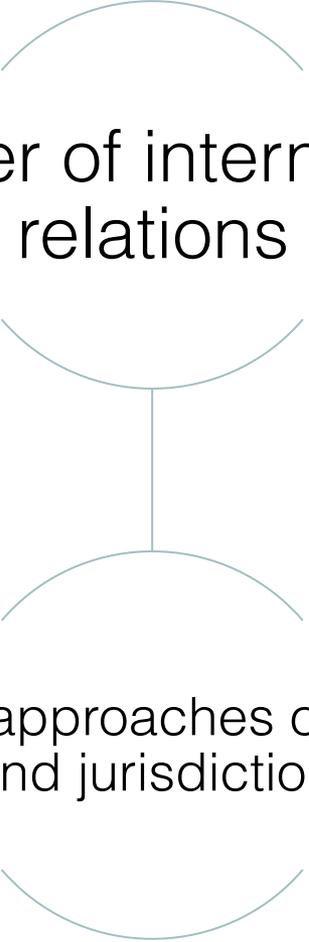


Multiple burdens
Choice of one forum
Denial of jurisdiction

How are conflicts of jurisdiction solved in the EU?

- No common rules on jurisdiction
- EU *ne bis in idem*
(54 CISA and 50 CFR)
- No binding mechanisms
- Consensus between national authorities (prosecutors)
(Possible support of Eurojust)
- No participation of defendants and victims
- No hierarchical criteria, but case-by-case approach
(Only Eurojust guidelines)

Current scenario



A matter of international relations

Neglected position of defendants and victims

National approaches on victims and jurisdiction

Unclear role of victims in the forum choice

Current scenario *in practice*

- Eurojust guidelines

“Prosecutors *must take into account the interests of victims* and whether they would be prejudiced if any prosecution were to take place in one jurisdiction rather than another”

- Field research at Eurojust

- Different answers
- Residence of victims
- Victims as witnesses?

Future scenario?

- Victims' interest should be better considered
 - Humane administration of justice
 - Autonomous position of victims
 - Also in the light of the EU citizenship:
 - Non-discrimination and free movement
 - A new position vis-à-vis the joint Member States?

Key question:

How to include their interests in a future instrument?

1. What are the victims interests?
2. What active role of victims in the forum choice?

1. What interests?

- Multi-faceted interests
 - Higher compensation
 - Higher sentence
 - More participation rights
 - More ‘restorative justice services’
 - Better ‘negotiated justice’
 - Better protection from the offender
 - Better protection from secondary victimisation
 - Practical reasons...
 - ...*better chance to obtain justice*

(a) Should they prevail over defendants’ interests?

(b) Lesson from private law: ‘substance neutral’ criteria

(a) Victims v. defendants?

- Interests to be weighed up against each other
 - Defendants (Art. 6 and 7 ECHR)
- Victims' fundamental rights at stake in the forum choice? (i.e. is there a legitimate expectation on the choice of one jurisdiction?)
 - Positive obligations?
 - Right to a fair trial?
 - Right to a lawful judge (tribunal previously established by law)?

(b) any 'objective' criteria?

- Linked with territoriality
 - Member State of residence (not nationality)
 - Member state where the result occurred
- Number of victims
- Costs for the participation in the proceedings
- Availability of evidence

2. What active role in the decision?

- Same standing as defendants?
- Full participation?
- Right to effective remedy (47 CFR)
- ...also for negative conflicts?

Conclusion

- Exercise of jurisdiction (in the EU) should not be only a 'matter of international relations' but part of the criminal process
- Victims should be part of this process...
- ...and part of a common EU area

Thank you!

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