

Wouter van  
Ballegooij

# The Nature of Mutual Recognition in European Law

Re-examining the Notion from an Individual Rights Perspective  
With a View to Its Further Development in the Criminal Justice  
Area



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Intersentia Ltd  
Sheraton House | Castle Park  
Cambridge | CB3 0AX | United Kingdom  
Tel.: +44 1223 370 172 | Email: [mail@intersentia.co.uk](mailto:mail@intersentia.co.uk)

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The publication of this book signifies an important step in a process of professional and personal discovery. When I embarked on this process of discovering the nature of mutual recognition in EU Law, there seemed to be something contradictory in portraying what should be a process of integration as a process of submission, particularly if such submission would be at the expense of the rights of individuals.

That intuitive observation, however, needed to be translated into a proper analysis of the notion and its relationship with individual rights. A number of teachers have helped me develop the legal, analytical and practical skills needed to meet this challenge. I would like to particularly thank Tom Eijsbouts, Annette Schrauwen, Joe Dunne, Baroness Sarah Ludford, Leen Nys and Jan Albrecht. Furthermore, I am deeply grateful to my PhD supervisors; Taru Spronken and André Klip for helping me develop my analysis at a very practical and human level. In doing so they handed me the key to the successful completion of this book.

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## PREFACE

This book examines the nature of mutual recognition in European law. The concept of mutual recognition appears in a number of policy areas in the internal market and the Area of Freedom, Security and Justice. There is even a growing convergence in academic literature that mutual recognition should be deemed a principle of European law, with a number of ascribed consequences for the substantive norms and procedural requirements Member States and their authorities are allowed to impose on a product, person or judicial decision originating from another Member State, before it is allowed market access or is to be executed. As is, however, apparent from societal and policy debates (including those by the Commission, Council and European Parliament), the case law of national courts, the Court of Justice and the European Court of Human Rights, and the academic debate, there are clear tensions, notably between free movement and individual rights derived from primary and secondary EU law.

The tensions between free movement and individual rights necessitate a re-examination of the nature of mutual recognition in European law from an individual rights perspective in accordance with the research questions identified in section 1.3. This entails looking at mutual recognition in the context of the aims and (other) principles and norms laid down in primary and secondary EU law, both in the internal market and the Area of Freedom, Security and Justice, with a focus on the impact of mutual recognition on individual rights.

The front cover of this book intends to depict mutual recognition as a wave or as the 'concise Oxford dictionary' describes it:

- '1. Ridge of water between two depressions or long bodies of water curling into an arched form and breaking on the shore; or
2. Disturbance of the particles of a fluid medium e.g. water, air, ether into a ridge and through oscillation by which motion is propagated and heat, light, sound, electricity, etc. without corresponding advance or without any advance of the particles in the same direction; single curve in the course of such motion.'

Let us imagine that this wave is part of a sea, for example the Adriatic between Italy and Croatia where the waves are going back and forth or the Channel between France and the UK where the waves break ashore on the white cliffs of Dover.

Mutual recognition engages the Member States in a process of recognising and giving effect to each other's decisions concerning the marketing of products, allowing access to a profession, pre-trial decisions and judgments in criminal matters, thereby supporting the free movement of products, persons and judicial decisions. They are, so to speak, 'riding the wave' of mutual recognition between Member States.

Waves have the capacity to transport an incredible amount of energy, but they are also part of and rely on a bigger body of water and external factors like the sun, moon, wind, and underwater seismic activity. There is also a parallel here. The specific aims, principles and level of harmonisation in the legal area concerned determine the capacity of mutual recognition to contribute to free movement. To use the area of professional qualifications as an example: the better regulated the professional standards are at the EU level, as well as the recognition procedure and grounds that may be used to refuse access to the profession or impose conditions, the more likely is it that the mutual recognition procedure will result in the professional being able to exercise his/her profession in the host Member State. But, even in a fully harmonised situation, there might be grounds to deny access to the profession reflecting the tensions within the internal market between economic and public interests, such as health and consumer protection.

Brussels, 13 April 2015

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