

## **Doctoral Thesis Auke Willems**

### **Mutual trust as a core principle of EU criminal law. Conceptualising the principle with a view to enhance mutual recognition in criminal justice matters.**

#### **Abstract**

This thesis examines the principle of mutual trust in EU criminal law. Mutual trust has become a household term in the EU criminal justice vocabulary and is widely regarded to be a prerequisite for a successful application of the principle of mutual recognition. But despite its widespread use, the parameters of the concept are not clear. Since mutual trust has become one of the core objectives of the EU's criminal justice policy, and legislation is adopted to build trust, a more substantial understanding is required. This thesis has taken a three-fold approach to substantiate and conceptualise the principle of mutual trust. Firstly, a multi-disciplinary assessment of social science literature to gain a better understanding of what trust is and how it functions. Secondly, a black letter approach combined with a discourse analysis, in order to reveal the practical difficulties that have arisen in relation to (insufficient) trust. This has revealed a number of flaws in the legal framework, as well as in policy documents dealing with trust, mainly due to the strict nature of the trust presumption. Thirdly, a comparative study with the United States of America, focused on interstate cooperation within a federal structure, offers fresh insights. Several lessons and limitations have been drawn from this study that have allowed scrutinising the EU's trust building policy and logic.

The thesis argues that mutual trust, a core principle of EU criminal law, is multi-faceted: a collective notion bringing together various aspects and principles relevant to rendering mutual recognition in criminal law a success. Its constitutive elements can broadly be categorised into social, legal and political elements. The first relates to the inherent subjective character of trust, the latter to its specific application in the legal EU criminal justice context. By bringing these elements together, a principle with a meaning specific to EU criminal law appears, a term of art. Most importantly, the substance of the principle builds on the idea of a similar European legal culture: more specifically of a European criminal law. It furthermore relates to the motivation for Member States to cooperate, *i.e.* fighting increasing cross border crime and building an Area of Freedom, Security and Justice. But whilst building on a shared legal culture, mutual trust also relates to the ideal to maintain national diversity in criminal law.

On the basis of this dual notion, a comprehensive approach is proposed to tackle trust related difficulties. These relate mainly to harmonisation, most prominently of procedural safeguards; non-legal forms of trust building, aiming to enhance the provision of accurate information; and finally allowing the trust presumption to be rebutted, to create a more substantive principle of trust mindful of realities on the ground. Together, these should enable the principle of trust to operate in accordance with its two main functions, namely to facilitate the application of mutual recognition in the criminal justice sphere, while paying due regard to fundamental rights and liberties.