



IRCP

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Prof. Dr. G. Vermeulen – Cross-Border Data Exchange & Enforcement – European Road Safety Day, Brussels, 14 October 2010

European Cross-Border Data Exchange and Cooperation in Criminal Matters Related to Road Traffic

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European Road Safety Day
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Road traffic-related offences

- driving licenses, vehicle registration and other vehicle-related fraud and criminality
- speeding, failing to stop at a red light
- driving under the influence of alcohol, not using a seat belt
- traffic accident
- flight after an accident resulting in death or serious injury
- disrespecting driving hours & rest period



EUCARIS: (mere) data exchange

- > what
 - > European Vehicle and Driving License Information System
 - > communications network which allows participating countries to exchange data relating to motor vehicles and driving licenses and to consult on-line motor vehicle and driving license data kept in the national registers of countries affiliated to EUCARIS
- > legal bases for exchange
 - > treaties: Eucaris Treaty, Prüm Treaty, bilateral treaties
 - > cross-border road safety enforcement directive?



EUCARIS relevance for criminal matters

- Eucaris Treaty
 - relevance for criminal matters very limited
 - Article 2.2: to assist in preventing, investigating and prosecuting offences against the laws of individual States in the field of driving licenses, vehicle registration and other vehicle-related fraud and criminality
- Prüm Treaty - bilateral treaties
 - adequate legal bases for use in criminal matters
- Cross-Border Road Safety Enforcement Directive
 - adequacy unclear; only if police chapter-based
 - even if: infoex added value compared to Prüm?



International cooperation-related problems

- > overview
 - > investigation into offences (vehicle registration infoex)
 - > recovery/return to lawful owner stolen vehicles
 - > enforcement of sanctions
 - > vehicle confiscation
 - > custodial sentences (& pre-trial detention) traffic offenders
 - > training/learning as alternative/conditional sanction/sentence
 - > road traffic fines
 - > driving bans
 - > compensation of victims
- > relevance future directive?



Traditional legal framework

- > cooperation levels
 - > CoE, Schengen, EU, (bilateral)
 - > overview: hereafter
- > principal rules of play
 - > inter-state cooperation
 - > MLA, extradition/surrender, transfer of proceedings, transfer of execution of sentences
 - > when execution of sentences-related
 - > exequatur or transfer procedure
 - > compatibility with law requested state
 - > dual criminality
 - > often: low ratification rate



Traditional legal framework: CoE

- 1957 Eur Conv on Extradition + Protocols
- 1959 Eur Conv on Mutual Assistance + Protocols
- 1964 Eur Conv on the Punishment of Road Traffic Offences
 - R:5 - extraterritorial competence state of residence to take over prosecution or execution of the sentence
- 1964 Eur Conv on the Supervision of Conditionally Sentenced or Conditionally Released Offenders
- 1970 Eur Conv on the International Validity of Criminal Judgments
- 1972 Eur Conv on the Transfer of Proceedings in Criminal Matters
- 1976 Eur Conv on the International Effects of Deprivation of the Right to Drive a Motor Vehicle
 - R:12 - notification driving ban - license issuing state may execute
- 1990 Conv on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime



Traditional legal framework: Schengen and EU

> Schengen

- > 1990 SIC - Article 41.4.a
 - > hot pursuit for flight after accident resulting in death/serious injury
- > 1999 Agreement on Cooperation in Proceedings for Road Traffic Offences and the Enforcement of Financial Penalties Imposed
 - > vehicle registration information exchange, direct service and sending of documents, execution financial penalties in state of residence - no entry into force

> EU

- > 1998 Convention on Driving Disqualifications
 - > 3 notifications only – no entry into force
- > 2000 Convention on Mutual Assistance in Criminal Matters
 - > restitution vehicles (Article 8)
 - > copied into Article 12 2nd Additional Protocol to CoE 1959 MLAT



Mutual recognition (MR)

- > Tampere 1999
- > 2000 MR Plan
 - > earlier final judgements (individualised sanctions; European criminal records system); pre-trial orders (freezing of assets and evidence; European arrest warrant; ...); decisions to prosecute; sentencing (fines; fast track surrender procedures; ...); post-sentence follow-up (disqualifications; European disqualification register; conditional sentences, ...)
- > practice
 - > via FDs, to be implemented/transposed into the MS' domestic law
- > characteristics
 - > issuing state and executing state – between judicial authorities
 - > blind recognition via warrant or via order + certificate
 - > no more exequatur procedure
 - > no more dual criminality requirement for 32+ offences



MR relevant for road traffic context

- FD June 2002 European Arrest warrant
- FD July 2003 MR freezing property/evidence
- FD October 2006 MR of confiscation orders (impl 03/07)
 - vehicles as crime proceeds (theft, trafficking in stolen vehicles) or instrumentalities
- FD 2007 European Evidence Warrant
- FD 2009 (pre-trial) supervision order
- FD 2008 probation measures and alternative sanctions (impl 12/11)
 - relevant for alternative/conditional training/learning sanctions
 - recital 10: obligation to follow a safe-driving course
 - all above: no dual criminality requirement only in cases of grievous bodily injury (in road traffic context) and trafficking in stolen vehicles
- FD 2005 MR of financial penalties (infra)



FD February 2005 MR of financial penalties

- > only one with extended offence list (beyond 32)
 - > including: conduct which infringes road traffic regulations, including breaches of regulations pertaining to driving hours and rest periods and regulations on hazardous goods
- > both administrative and penal monetary sanctions
- > imposed for either criminal offences or infringements of the rule of law
- > to either natural or legal persons
- > financial penalty
 - > sum of money on conviction of an offence (listed in the FD)
 - > compensation for victims
 - > costs of court or administrative proceedings
 - > sums of money to a public fund or a victim support organisation
- > implementation date: 03/07



Disqualifications and criminal record

- > disqualifications
 - > unsuccessful decision on increasing cooperation with regard to disqualifications (initiated by Denmark in 2002)
- > criminal record
 - > Decision November 2005 (to be abrogated from by)
 - > FD 2009 organisation & content (more recent version)
 - > 2009 ECRIS decision
 - > 3000 prohibition of right; 3006/3007 cancellation & suspension driving license; 3008 prohibition to drive
 - > FD 2008 on taking account of earlier EU convictions in the course of new proceedings
 - > relevant to extent that driving ban had been imposed in foreign EU MS – assimilation



Future options?

- > cross-border road safety enforcement directive
 - > added value?
 - > offence set too limited
 - > data exchange already possible < Prüm
 - > MR fines, confiscation, custodial sentences already possible
- > mandatory MR driving ban in state of residence
 - > Communication COM(2006)73 final on disqualifications arising from criminal convictions in the European Union
 - > “In the future, the EC plans to propose a FD to replace the 1998 Convention [...] with a view to ensuring the full recognition of driving disqualifications.”
 - > strictly spoken only domain where progress is required
- > instant access police to ECRIS?
- > satellite-based control (Galileo?)
 - > speeding offences - disrespect driving hours & rest period