



**IRCP**

Institute for International Research on Criminal Policy  
Ghent University

Prof. Dr. G. Vermeulen – Evaluation Directive Cross-Border Road Safety Enforcement, Trier, 30 June 2011

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# Evaluation of the Proposal for a New Directive in the Context of Cross-Border Data Exchange and Cooperation in Criminal Matters Related to Road Traffic

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## Introduction

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- › Directive Cross-Border Road Safety Enforcement
  - › fill gap in enforcement chain?
- › COM (2008)151 final – 19 March 2008
- › legal basis discussion: 1st – 3rd pillar
- › Lisbonization
- › 2010 Belgian Presidency breakthrough (Council)
  - › “police” legal basis
  - › more offences within scope
  - › offence notification > information letter
  - › specific EU electronic network > Prüm
- › Commission communication re Council’s position
- › Council: Coreper 23 June 2011 - EP?



# Approach: Evaluation in Broader Context

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- > road traffic-related offences
- > Eucaris
  - > (mere) data exchange
  - > relevance for criminal matters
- > international cooperation-related problems
- > solutions
  - > traditional legal framework
    - > cooperation levels
    - > common characteristics
    - > brief overview
  - > new(est) EU developments
    - > mutual recognition (MR)
    - > MR relevant for road traffic context: overview
- > future options



## Road traffic-related offences

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- > Eucaris
  - > driving licenses, vehicle registration and other vehicle-related fraud and criminality
- > Commission proposal Directive
  - > speeding, failing to stop at a red light, driving under the influence of alcohol, not using a seat belt (4 “killers”)
- > Council broadening proposal Directive
  - > drug-driving, mobile devices use, use of a forbidden lane, failing to wear a safety helmet
- > Schengen traffic accident
  - > flight after an accident resulting in death or serious injury
- > disrespecting driving hours & rest period
- > criminal matters in general
  - > traffic accidents (unintentional bodily harm etc), vehicle theft, etc



## EUCARIS: (mere) data exchange

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- > 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

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- > 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
    - > ununderstandable EP-standpoint < PNR ruling
  - > even if: no infoex added value compared to Prüm!





# International cooperation-related problems

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- > 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

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- > 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

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- 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

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### > 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)
  - > sending and service of documents (horizontalization 1959 ECMA)



## Mutual recognition (MR)

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- > 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

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- 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

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- > 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

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- > disqualifications
  - > unsuccessful decision on increasing cooperation with regard to disqualifications (initiated by Denmark in 2002)
- > criminal record
  - > Decision November 2005 (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?

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- > cross-border road safety enforcement directive
  - > added value: what gap is being filled
  - > 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
    - > “EC plans to propose a FD to replace the 1998 Convention [...] with a view to ensuring recognition driving disqualifications.”
  - > = strictly spoken only domain where progress is required
    - > IRCP 2011: JUST/2010/JPEN/PR/1010 Study on disqualifications as a sanctioning measure in the national systems of the Member States
- > instant access police to ECRIS?
- > satellite-based control (Galileo?)
  - > speeding offences - disrespect driving hours & rest period