



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

EU Criminal Policy: Extradition and the European Arrest Warrant, New Trends in Mutual Assistance in Criminal Matters, and Eurojust

Prof. Dr. Gert Vermeulen

European Institute Conference
Sofia, Sheraton Hotel Balkan, 7 February 2002

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 1




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Structure

- > EU institutional/policy issues
 - > TEU post-Amsterdam
 - > Schengen incorporated
 - > Tampere European Council October 1999
- > criminal policy
 - > substantive criminal law
 - > procedural criminal law
 - > judicial cooperation in criminal matters
 - > extradition and European arrest warrant
 - > new trends in mutual assistance in criminal matters
 - > Eurojust (vs European Public Prosecutor)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 2




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - Post-Amsterdam (1)

- > as from 1 May 1999
- > European Union, based on three pillars
 - > 1st pillar = traditional 3 European Communities
 - > 2nd pillar = CFSP
 - > 3rd pillar
 - > scope narrowed to judicial and police co-operation in criminal/customs matters (instead of JHA in general)
 - > Title VI of the Treaty (Articles 29-42)
 - > asylum/external frontiers/immigration matters transferred to the EC/1st pillar (transition period 5 years)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 3



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - Post-Amsterdam (2)

- > Legal Instruments of the 3rd pillar
 - > Joint positions
 - > Framework decisions (new)
 - > binding upon the Member States as to the result to be achieved, but leaves to the national authorities the choice of form and methods - no direct effect
 - > for the purpose of approximation of the laws and regulations of the Member States - mainly in the field of substantive criminal law (infra)
 - > Decisions (new)
 - > no direct effect – binding as well
 - > for any purpose excluding approximation of the laws and regulations of the Member States
 - > Conventions/Treaties

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 4

 Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - Post-Amsterdam (3)

- > Right of Initiative
 - > Member States & Commission
- > Decision-making
 - > still unanimity required
 - > JHA Council - Coreper - Committee Article 36 (CATS) - working groups (many)
- > Role traditional EC institutions
 - > Parliament (mandatory consultation)
 - > Court of Justice (Member States may accept jurisdiction to give preliminary rulings on the validity /interpretation of (framework) decisions, conventions and implementing measures)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 5


 Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - Post-Amsterdam (4)

- > remaining 3rd pillar
 - > aim: to provide citizens with a high level of safety within an an area of freedm, security and justice
 - > by developing common action in the fields of police and judicialco-operation in criminal matters and by preventing and combating racism and xenophobia
 - > this by preventing and combating (organized) crime, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, corruption and fraud

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 6


 Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - Post-Amsterdam (5)

- > Police co-operation
 - > Europol: started its activities on 1 July 1999
 - > Article 30, under 2 TEU: within a period of 5 years after the entry into force of the A'dam Treaty
 - > Europol must be enabled to facilitate/support the preparation/encourage the coordination and carrying out, of specific investigative actions by the Member States, including operational actions of joint teams comprising Europol representatives in a support capacity
 - > a proper legal basis must be created allowing Europol to ask the Member States to conduct/coordinate their investigations in specific cases (Europol II)
 - > liaison arrangements must be promoted between prosecuting/investigating officials specialized in fighting organized crime in close co-operation with Europol

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 7


 Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

TEU - post-Amsterdam (6)

- > Judicial co-operation
 - > Article 30, under 2 TEU
 - > facilitating and accelerating co-operation between competent ministries or equivalent authorities in relation to proceedings and the enforcement of decisions
 - > facilitating extradition
 - > ensuring compatibility in rules applicable in the Member States, as may be necessary therefore
 - > preventing conflicts of jurisdiction
 - > progressively adopting measures establishing minimum rules relating to constituent elements of criminal acts and penalties in the fields of organized crime, terrorism and illicit drug trafficking

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 8



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Schengen incorporated (post-A'dam)

- › A'dam Treaty added a protocol to TEC & TEU
 - › integrating Schengen-acquis in EU Framework
- › 1990 Schengen Implementing Convention (SIC)
 - › applies between 13 EU MS
 - › + Norway and Iceland
 - › UK and Ireland underway
- › Schengen-acquis
 - › = part of the EU acquis in the field of JHA!
- › to be fully accepted by candidate countries

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 9




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Tampere European Council October 1999

- › European Police College
- › a more operational Europol
- › Task Force Chiefs of Police
- › joint investigative teams (infra)
- › mutual recognition (infra)
- › Eurojust (infra)
- › ...

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 10



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Approximation substantive criminal law

- > Article 31, under 2 TEU (judicial co-operation)
 - > progressive adoption minimum rules relating to constituent elements of criminal acts and penalties in the fields of organized crime, terrorism and illicit drug trafficking
- > Tampere – Millennium Strategy Organized Crime
 - > adoption of instruments with a view to approximate the legislation of Member States, at least for the following offences: financial crime (money laundering, corruption, € counterfeiting, tax fraud), drug trafficking related offences, trafficking in human beings (particularly exploitation of women), sexual exploitation of children, terrorism related offences, high tech crime (computer fraud and offences committed by means of the Internet) and environmental crime
- > practice: much wider effort

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 11



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Approximation procedural criminal law

- > not foreseen in TEU - only result from policy making
 - > Organized crime 'Millennium Strategy'
 - > mutual recognition principle (Tampere)
- > through framework decisions mainly
- > issues
 - > joint investigation teams (infra)
 - > freezing of assets and evidence
 - > reversal burden of proof for confiscation of assets
 - > confiscation as autonomous sanction
 - > position victim in criminal procedure
 - > protection of/collaboration with criminal witnesses (IRCP drafted EU-model agreement)
 - > special police/investigation techniques

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 12

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Judicial co-operation in criminal matters

- > extradition
 - > major changes (European arrest warrant)
- > mutual assistance in criminal matters
 - > major changes
- > transfer of proceedings
 - > limited EU output
 - > Eurojust: coordination of prosecutions
- > transfer of the enforcement of foreign judgements
 - > major changes to be expected as result from mutual recognition process

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 13

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Extradition: traditional co-operation levels

- > Council of Europe (hereafter: CoE)
 - > 1957 European Convention on Extradition
 - > 1975 Additional Protocol
 - > 1978 Second Additional Protocol
 - > 1977 European Convention on the Suppression of Terrorism
- > Bilateral level

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 14




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Extradition: future co-operation levels

- > Schengen
 - > Schengen Implementing Convention (SIC) – Articles 59-66
 - > intended to supplement and to facilitate the implementation of the 1957 CoE Convention
- > European Political Co-operation/EC
 - > pre-Maastricht EC acquis
 - > Agreement of 26 May 1989 between the EC Member States on the simplification and modernization of methods of transmitting extradition requests
- > EU
 - > 1995 Convention on simplified extradition procedure
 - > 1996 Convention relating to extradition
 - > 2002 European arrest warrant

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 15




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Schengen Implementing Convention (SIC)

- > (Part of the Acquis)
- > interruption of prescription - amnesty: ruled by law requesting State only (Article 62)
- > extradition duty for matters of excise duty, VAT and customs duties (Article 63)
- > notice included in the SIS in accordance with Article 95: same force as a request for provisional arrest under the 1957 CoE Convention (Article 64)
- > transmission allowed via Ministry (Article 65)
- > informal (simplified) procedure possible (Article 66)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 16



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

1996 Convention relating to extradition

- > supplementing
 - > 1957 CoE Convention on Extradition
 - > 1977 CoE Convention on the Suppression of Terrorism
 - > SIC
- > new developments
 - > extraditable offences (changes in threshold)
 - > conspiracy/association to commit offences: dual criminality rule abandoned for terrorism
 - > political offence exception abandoned
 - > fiscal offences - prescription - amnesty: SIC improved
 - > extradition of own nationals
 - > specialty principle abandoned
 - > transmission by fax allowed: EPC acquis incorporated

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 17



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

2002 European arrest warrant

- > Commission proposal for framework decision tabled 19 September 2001
- > aimed at replacing extradition with system of simple surrender on the basis of mutual recognition of 'European' arrest warrant
- > political agreement ('frozen') in between JHA Council 6-7 December and Laeken Summit 14-15 December 2001
- > formal adoption due after opinion European Parliament
- > considerable improvement since initial draft
- > however: various remaining weaknesses
- > to what extent anti-terrorism-triggered?
- > overview contents

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 18



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Anti-terrorism-triggered?

- > European arrest warrant necessary/proper anti-terrorism measure?
 - > JHA acquis unsatisfactory? (gap analysis)
 - > added value European arrest warrant?
 - > relation 3rd states (global war against terrorism)
 - > intra-EU
- > if not
 - > why so much presented that way
 - > why pushed so hard

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 19




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

JHA acquis unsatisfactory?

- > traditional terrorism-related gaps in extradition law
 - > political offence exception
 - > refusal political(ly) (inspired) offence (e.g. terrorism)
 - > official rationale: neutrality, i.e. non-interference
 - > unofficial message: extradition requested on political grounds
 - > CoE 1977 Convention Suppression Terrorism
 - > 1996 EU Extradition Convention
 - > exception not be invoked for (criminal organisation or association to commit offences aimed at) terrorism
 - > requirement of double criminality
 - > abolished for terrorism in 1996 EU Extradition Convention
- > already resolved in JHA acquis

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 20




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Added anti-terrorism value?

- > relation 3rd states
 - > conflicting internal/external requests
 - > initial draft: precedence European arrest warrant over extradition request 3rd non-CoE state (US)
 - > text improved, but still: hesitation
 - > no added value, on the contrary
- > intra-EU: cut conceptual link asylum/extradition
 - > asylum: to be granted in case of likely prosecution on discriminatory (inter alia political) grounds
 - > extradition: non-discrimination clause/exception

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 21



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Non-discrimination exception (1)

- > refusal due in case of likelihood of prosecution on discriminatory (inter alia political) grounds
- > rationale
 - > coherence with 1951 Geneva Convention (extradition as opposed to granting asylum or giving shelter)
- > development
 - > Protocol to TEU on asylum for EU nationals
 - > unilateral Belgian counter-declaration
 - > 1999 Tampere European Council: long-term option (2010)
 - > Spanish bilateral initiatives
 - > draft framework decision European arrest warrant

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 22




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Non-discrimination exception (2)

- > European arrest warrant
 - > political offence exception generally abolished
 - > not only for terrorism (as in 1996 EU extradition Convention)
 - > non-discrimination exception formally abolished
 - > only formal safeguard: temporary suspension European arrest warrant system possible in case of serious and persistent breach MS of fundamental human rights
 - > quid individual MS responsibility Geneva Convention?
 - > quid enlargement & human rights issues?

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 23



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Unprecedented pressure & speed

- > notwithstanding absence of apparent added value for combating terrorism
 - > satisfactory JHA acquis
 - > attack on essential safeguards against discriminatory prosecution and internal human rights infringements in European arrest warrant undue and inopportune
- > explanation
 - > political message prevailing over proper policy-making
 - > anti-terrorism 'climate' unexpected opportunity for 'forcing' introduction new concept?

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 24




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Disrespect basic treaties & democracy

- > choice of the instrument problematic
 - > framework decision only to be used for approximation (substantive) criminal law
 - > not for establishing new international framework
 - > entire convention-based extradition acquis to be declared non-applicable by ministerial decision?
 - > convention required
 - > general trend to avoid recourse to conventions
 - > freedom, security & justice reinforced when EU doesn't see the point in observing fundamental rules democratic decision-making?

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 25




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Scope of application

- > threshold for surrender: maximum of at least 12/4 months in 'issuing' MS
- > abolishment double criminality for about 30 offences with maximum penalty of at least 3 years
 - > illogical rationale: punishable throughout EU
 - > why then approximation EU 'core crimes'?
 - > possibility Council to add offences to list + optional refusal
 - > European arrest warrant also applicable on offences not-listed in case of double criminality: extradition abolished
 - > back in history: enumeration instead of seriousness offences
 - > mutual recognition plan: most serious offences Article 29 TEU
 - > = preferred, only logical option ('EU core crimes concept')

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 26



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Grounds for refusal

- > grounds for refusal
 - > reduced in number
 - > new exception based on privileges/immunity?
 - > mandatory + optional
 - > own nationals/residents
 - > 'surrender for purpose execution sentence' or enforce principle
 - > surrender for purpose prosecution may be subjected to guaranty of re-surrender in view of serving sentence
 - > initial Commission proposal improved
 - > reintroduction specialty principle
 - > ne bis in idem protection reinforced

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 27




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Surrender: a matter for judicial authorities

- > no ministerial intervention required any more
- > transmission/reception requests through central authority(ies) possible if organisation administration of justice requires so
- > most direct means of transmission allowed
- > only trace 'in writing' required
- > including SIS notice
 - > having legal effect European arrest warrant
 - > two-in-one-effect: abolition 2 stages (provisional arrest + extradition)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 28



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Deadlines

- > for decision on request
 - > 10 days in case of consent person concerned
 - > 60 days in other cases = very long
 - > ministry not involved anymore
 - > virtually nothing left to decide
 - > potential added value precisely in reduction deadline
- > for surrender
 - > 10 days

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 29



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Emergency ... breaks the law?

- > proclaimed enhanced security at the expense of freedom and justice?
- > no apparent added value for combating terrorism compared to JHA acquis
- > absence proper gap analysis
- > attack on essential safeguards against discriminatory prosecution and internal human rights infringements
- > overall added value limited
- > lack of respect for fundamentals TEU & HR Charter
- > 'Festina lente'

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 30




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Mutual assistance in criminal matters

- > Convention of 29 May 2000
 - > additional to traditional/present legal instruments, concluded at
 - > Benelux level
 - > Council of Europe (COE) level
 - > 1959 Mutual assistance Convention
 - > 1978 Additional Protocol 1959 Convention
 - > (1990 Laundering Convention)
 - > (2001 Second Additional Protocol 1959 convention)
 - > Schengen level (SIC)
 - > Articles 40 and 48-53 SIC
 - > further development Schengen-acquis within EU
- > Protocol of 16 October 2001
- > other MLA-related developments

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 31




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Convention of 29 May 2000

- > compliance with
 - > formalities and procedures of requesting MS
 - > deadlines set by requesting MS
- > interception of telecommunications
- > controlled deliveries
- > covert investigations (infiltration)
- > joint investigation teams
- > sending and service procedural documents
- > hearing by video or telephone conference
- > temporary transfer detainees to requested MS
- > direct transmission of requests

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 32




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Formalities/procedures requesting MS

- > shift from *locus regit actum* principle (1959 CoE convention) to *forum regit actum* principle
- > undertaking to comply with formalities/ procedures expressly indicated by requesting MS, provided that these are not contrary to its fundamental principles of law
- > example & rationale (e.g. presence defense lawyer)
- > duty to inform requesting MS where the request cannot (fully) be executed in accordance with the procedural requirements set by the requesting state
- > not applicable as regards controlled deliveries, undercover operations and joint investigation teams

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 33




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Deadlines set by requesting MS

- > obligation to execute requests for assistance ASAP
- > obligation to take as full account as possible of deadlines set
- > obligation for requesting MS to explain reason for deadline
- > duty to inform the requesting state if it is foreseeable that the deadline set for execution cannot be complied with
- > 1998 Joint Action on good practice in mutual legal assistance
 - > obligation to deposit statement of good practice in executing requests for mutual assistance, including a.o. an undertaking to acknowledge, where requested to do so by the requesting state all requests and written enquiries concerning the execution of requests, unless a substantive reply is sent quickly the request
 - > acknowledgements must provide the requesting authority with the name and contact details of the authority/person responsible for executing the request
 - > model form: website EJN (<http://ue.eu.int/ejn/index.htm>)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 34

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Interception of telecommunications (1)

- > adequate legal basis lacking before
- > real-time interception
- > GSM
- > S-PCS-networks (Satellite Personal Communications System)
 - > LEO's/MEO's (versus GEO's)
 - > upgoing signal not interceptable
 - > network of gateways
 - > i.e. adequate points for interception
 - > various scenario's

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 35

 **IRCP** Institute for International Research on Criminal Policy
Ghent University


Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Interception of telecommunications (2)



The image shows a globe on the left with several red satellite orbits around it, representing satellite communication. On the right, there is a cluster of four mobile phones, including a flip phone and a feature phone, representing terrestrial mobile communication.

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 36



IRCP Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Interception of telecommunications (3)

- > target neither in requesting state nor state technically capable of intercepting (requested state)
 - > obligation to inform that state
 - > permission necessary
 - > right to impose conditions for/prohibit the use of data gathered while the target was on its territory
- > service provider approach
 - > remote interception (2 scenario's)
 - > target in requesting state
 - > target in state where remote interception can be made
- > applicable to criminal investigations
 - > more lenient regime for interception by secret services
- > financial implications

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 37




IRCP Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Controlled deliveries

- > MS must ensure that, at the request of another MS, controlled deliveries may be permitted on its territory
- > broader scope than illicit traffic in drugs
 - > as in Articles 11 UN Vienna Convention & 73 SIC
- > in the framework of criminal investigations into extraditable offences (1996 EU Convention)
- > law and procedures requested ms apply
- > 1997 Naples II Convention
 - > comparable, though not the same provisions
- > 2001 Second Additional Protocol 1959 CoE Convention
 - > for money and goods

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 38




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Infiltration (undercover operations)

- > until now
 - > co-operation on police level, in legal vacuum
 - > facilitated by e.g. International Working Group on Undercover Policing (IWG)
- > Ms may agree to assist each other for investigations into crime by officers acting under covert or false identity
- > 3 possible scenario's (implicitly)
- > decision on the request: taken by competent authorities of requested state with due regard to its national law/procedures
- > law and procedures applicable of state where the action takes place (no forum regit actum)
- > duration, detailed conditions, preparation, supervision, security: agreed between both MS
- > 1996 Naples II Convention (only 1 scenario)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 39




Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Joint investigation teams (1)

- > composed of judicial, police and/or customs officers or even of officials of international organisations & bodies (e.g. Europol, Eurojust, OLAF, ...)
- > may be set up for a specific purpose and for a limited period where
 - > difficult and demanding international investigations coordinated, concerted action between MS necessary
- > headed and led by official state where team operates
- > seconded team members operating in another state shall be bound by the law of that state

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 40




IRCP Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Joint investigation teams (2)

- › seconded team members may be entrusted by teamleader with task of certain investigative measures
- › team members may request their own authorities to take the necessary investigative measures in their own state as if they would be taken in a domestic investigation
- › information lawfully obtained by seconded team members may be used in their own state
- › also in the 1997 Naples II Convention (different rules)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 41



IRCP Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Sending/service procedural documents

- › reinforcement and refinement acquis of Article 52 SIC
- › obligation (instead of possibility) to send procedural documents intended for persons on the territory of another MS directly by post
- › limited number of cases where documents may still be sent via the traditional channels (between judicial authorities, under Article 7 1959 CoE Convention)
- › SIC guarantees as regards translation generalized
- › addressee may obtain information regarding his/her rights and obligations (e.g. if there is an obligation to appear)
- › Articles 8, 9 and 12 of 1959 CoE convention applicable

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 42


 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Hearing by video/telephone conference

- > no obligation to appear under 1959 CoE Convention
- > hearing by video/telephone conference as alternative
- > interesting for witness protection
- > combination of regular request for assistance and direct exercise of jurisdiction
 - > requested MS: summons, technical realisation, procedural guarantees, control, perjury & unlawful refusal to testify
 - > hearing conducted by/under direction judicial authority requesting MS
- > witnesses and experts (investigation and trial stage)
- > video hearing accused persons (trial stage): optional
- > financial implications

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 43


 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Transfer detainees to requested MS

- > until now: only possible under bilateral MLAT's, additional to 1959 CoE Convention
- > possible in the framework of an investigation requested for which the presence of a person held in custody on territory requesting ms is required (e.g. confrontation, reconstruction, recognition places)
- > consent of the detainee: optional

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 44


 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Direct transmission of requests

- > reinforcement acquis of Article 53 SIC
- > obligation (instead of possibility) of direct transmission and return
- > states may declare that their judicial authorities do not (in general) have authority to execute requests received directly - in absence of such a declaration: autonomy for the local judicial authorities to execute requests received directly (and not only to receive them)
- > limited number of cases where documents have to be sent via the central authorities (a.o. for temporary transfer)
- > European judicial atlas (EJN)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 45


 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Protocol 16 October 2001 (1)

- > information on bank accounts & banking operations
 - > natural and legal persons
 - > holder, financial beneficiary, proxy
 - > in as far as available in bank
 - > required level alleged crime: organized, Europol, PFI
 - > possibility to subject execution to same conditions house search/seizure
 - > account 'monitoring' allowed

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 46

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Protocol 16 October 2001 (2)

- > confidentiality
- > information duty
- > additional requests
 - > no duplication
 - > on-the-spot requests allowed
- > no bank secrecy exception
- > fiscal offences
 - > reinforcement SIC and 1978 CoE Protocol
- > political offences
 - > refusal mutual assistance limited to same extent as in 1996 Extradition Convention

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 47

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Other MLA-related developments

- > Framework decision 26 June 2001 on money laundering, the identification, tracing, freezing, seizure and confiscation of the instrumentalities and proceeds of crime
 - > additional to 1990 CoE Laundering Convention
- > draft Framework decision on the execution of judicial decisions to freeze assets or evidence
 - > mutual recognition
- > draft Framework decision on the setting up of joint investigation teams
 - > anticipated entry into force of Article 13 Convention 29 May 2000

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 48



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Mutual Recognition Plan November 2000

- > very ambitious plan
- > earlier final judgements
 - > ne bis in idem; individualised sanctions; European criminal records database (IRCP research project end June 2002)
- > pre-trial orders
 - > freezing of assets and evidence; European arrest warrant; ...
- > sentencing
 - > fines; fast track surrender procedures; ...
- > post-sentence follow-up
 - > disqualifications; European disqualification register (supra: IRCP research project)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 49



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Eurojust (1)

- > history
- > Tampere European Council
- > political recognition of the need to establish a judicial counterpart for Europol
- > definition: international body, composed of national prosecutors, magistrates or police officers of equivalent competence, detached from each Member State according to its legal system
- > to work closely together with the European Judicial Network and Europol, ...
- > legal instrument adopted December 2001
- > opposite concept European Public Prosecutor

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 50



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Eurojust (2)

- > open question: what criteria for coordination prosecutions?
 - > risk of forum shopping: MS where the best evidence can be found, where the regime for the use of intrusive investigation techniques is the most souple, where the heaviest sanctions apply, ...?
 - > solution: inter alia rely on criteria contained in the 1972 CoE Convention on the transfer of proceedings?
 - > expert meeting November 2001 called by Commission
 - > at least (personal opinion): strict respect of the ne bis in idem principle (1), no lex severior choice (2), if two or more options offer equal chances for effective international law enforcement, a choice should be made in favour of the forum that best meets the interests of the suspects and/or the victim
 - > IRCP research project (end June 2002)

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 51



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Nice Treaty

- > political agreement December 2000
- > signed February 2001
- > aim: adapting the EU institutional framework to future enlargement
- > 3rd pillar relevance
 - > explicit reference to Eurojust
 - > 'closer cooperation' facilitated (no right to veto)
- > EU Charter of Fundamental Human Rights

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 52

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Final remarks

- > enhanced risk of higher security at the expense of freedom and justice after 11 September 2001?
- > practice of avoiding 'conventions' confirmed
- > future of the Union
 - > more transparency?
 - > new examples of 'closer cooperation'
 - > important wave of enlargement in 2004?
 - > Laeken: 'Convention' (Giscard d'Estaing)
 - > next IGC in 2004
- > until then
 - > keeping the track of developments
 - > awareness – training
 - > technical assistance

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 53

 **IRCP** Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – EU Criminal Policy – Sofia, 7 February 2002

Questions and discussion

www.ircp.org Universiteitstraat 4, B-9000 Ghent, Belgium gert.vermeulen@rug.ac.be T +32 (0)9 264 69 43, F +32 (0)9 264 69 71 54