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

Prof. Dr. Gert Vermeulen

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Structure

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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