Practitioners’ expectations regarding mutual recognition

Mutual recognition of judicial decisions and confiscation 15 years after Tampere: An additional tool for depriving criminals of their illicit assets all over the Union?

Italian EU Presidency | ISISC, Siracusa | 22-23 September 2014

Prof. Dr. Gert Vermeulen

t. +32 9 264 69 43
f. +32 9 264 84 94
Gert.Vermeulen@UGent.be
Approach

Practitioners’
• no homogeneous notion
• investigating and prosecuting judicial authorities
• trial judges and courts
• law enforcement authorities
• FIU and asset recovery personnel
• Eurojust, Europol
• MS’ central authorities
• defence lawyers
• …

expectations regarding mutual recognition (MR)
• as it has been rolled out until date | evaluation of the MR *acquis*
• as it could/should (have) be(en) rolled out | missed & additional opportunities

focused on tracing, recovery and confiscation of illicit assets
• in a broad sense | EU criminal policy beyond asset tracing, recovery and confiscation-specific instruments
building on (assumed) mutual trust
issuing state and executing state
• not merely a matter of new terminology
based on issuing/execution of
• order + certificate
• genuine “warrant”
full horizontalisation (inter-authority vs formerly inter-state)
stricter deadlines for execution
reduction of traditional exceptions
no more exequatur/conversion/locus-based procedure
• at least not initially (e.g. EAW and EC explanatory report)
• in the meantime: attitude has changed (e.g. custodial sentences)
no more dual criminality requirement
• for standardised list 32 offence types
• according to definition issuing MS (+ punishable there 3y+)
• in the meantime: attitude has changed (e.g. EEW + variations)
extradition
• FD European arrest warrant (EAW)
• FD pre-trial supervision order
mutual assistance in criminal matters
• FD European Freezing Order (Evidence)
• FD European Evidence Warrant (EEW)
• Directive European Investigation Order (EIO)
transfer of proceedings
• no progress whatsoever (coordination of prosecutions)
overall (revision adopted FD’s)
• FD decisions in absentia
transfer of the enforcement of foreign judgements
• FD financial penalties
• FD European Freezing Order
• FD confiscation orders
• FD custodial sentences
• FD probation measures and alternative sanctions
• FD taking account of convictions
  • FD organisation/content exchange CRI
  • ECRIS decision
dual criminality bubble

EU cooperation rendered more difficult | contradiction in terms

- extraterritoriality & immunity exceptions | erroneously introduced, need to be removed
- MR as a legitimisation for trust-building procedural guarantees and legal remedies | new hindrances?

imbalance between judicial and police (law enforcement) cooperation | integrated approach required

- law enforcement authorities | MR of law enforcement decisions, beyond principle of availability and 2006 Swedish FD, EPRIS
- police and judicial authorities | *ratione auctoritatis* exceptions or hindrances, no cross-border operational investigative powers beyond JITs, new *aut exequi aut tolerare* principle?

MLA | no breakthrough for free movement of evidence with EIO
Missed & additional opportunities | 2

Eurojust, Europol

- proposal for regulations, choosing the best place for prosecution, cooperation between both, access to ECRIS

legal persons | despite 2006 FD MR confiscations and preparatory study (*infra*), further step required
disqualifications in criminal matters | still no EU policy despite preparatory study (*infra*), breakthrough especially required in procurement sphere
44

Liability of legal persons for offences in the EU

G. Vermeulen
W. De Bondt
C. Ryckman

Principal
European Commission
DG Justice
(JLS/2010/JPEN/PR/0009/E4)
Disqualifications

22 September 2014 | Italian EU Presidency Conference | Practitioners’ expectations regarding mutual recognition

The disqualification triad

Approximating legislation
Executing requests
Ensuring equivalence

Gert Vermeulen
Wendy De Bondt
Charlotte Ryckman
Nina Peršak

Principal
European Commission
DG Justice
(JUST/2010/JPEN/PR/0010/E4)
Disqualifications | The triad

flexible system approximating legislation
• certain behaviour (approximated) may be required to prompt a certain disqualification in all MS
• can be made trackable in ECRIS/EULOCS

executing requests
• MS to where a person moves, may be required to recognize a disqualification imposed in a MS where it is no longer felt by the person concerned, if the latter MS requires so
• = mutual recognition as in FD probation orders and alternative sanctions

ensuring equivalence
• quite comparable with FD taking account of prior convictions
• in that MS would be required to give at least equivalent disqualifying effects to foreign convictions and disqualifications
• being allowed to go further if they choose to do so in their domestic legislation (examples)
• by requiring certificates of non prior conviction or disqualification in both public and private employment, procurement and contractual relations
CoE

• invalidity of the EU-CoE trust divide + pay more attention to CoE framework, or export EU acquis, Azerbaijan contradiction world

• global cooperation, especially considering asset sharing agreements between EU as a whole and third countries, ideally regions (e.g. EU-LECs, development cooperation-based)
Questions and discussion
Contact
Prof. Dr. Gert Vermeulen
t. +32 9 264 69 43
f. +32 9 264 84 94
Gert.Vermeulen@UGent.be

IRCP
Ghent University
Universiteitstraat 4
B – 9000 Ghent

www.ircp.org