Mutual recognition as cornerstone of cooperation in criminal matters: The European Union criminal justice system


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Approach

introduction

• mutual recognition as a political goal
• comparison with traditional judicial cooperation
  • new legal basis: framework decisions & directives
  • content-related differences

overview

• listing per cooperation area
• systematic oral comments

future?
scheme
Mutual recognition (MR) as a political goal

Tampere European Council 1999
• MR new cornerstone judicial cooperation in criminal matters

MR plan 2000
• earlier final judgements
  • ne bis in idem; individualised sanctions; European criminal records information system
• pre-trial orders
  • freezing of assets & evidence; European arrest warrant; ...
• decisions to prosecute
• sentencing
  • fines; fast track surrender procedures; confiscation; ...
• post-sentence follow-up
  • disqualifications; European disqualification register
replacing (provisions of) convention-based mechanisms

• actus contrarius doctrine & hierarchy legal norms?
• practice legalized by ECJ (Advocaten voor de Wereld)

binding upon MS

• unlike traditional conventions (discretion in ratification)
• only: poor monitoring reports EC

requiring transposition/implementation into domestic law MS

• usually within 2 years from publication date in OJ
Content-related differences

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: changing attitude (e.g. custodial sentences)
no more dual criminality requirement
• for standardised list 32 offence types (37+ in financial penalties FD)
• according to definition issuing MS (+ punishable there 3y+)
• not initially - in the meantime: changing attitude (e.g. EEW)
Overview (1)

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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 (now: Property)
- 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 track explanation
mutual assistance/evidence & information gathering

• EEW also for new and real-time evidence
• completely to be replaced with “warrant”-like MR schemes?
• free movement of evidence?
• availability/free movement police/LE relevant info?

core issues remaining

• political vs real trust(worthiness) as basis for MR
  • urgent need to step up procedural guarantees (happening; Roadmap)
  • or even: MR procedural guarantees?
  • or even: MR lex mitior?
• defining MR offences on basis generic EU offence definitions?
Questions and discussion

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