EU Strategy to Combat Organized Crime, EU Anti-Terrorism Policy and EU-US-Candidate States Law Enforcement Cooperation

Prof. Dr. Gert Vermeulen

European Institute Workshop
Sofia, 7 February 2002

IRCP

› scientific research on criminal policy
  › vertical issues
    › drugs, organized crime and corruption, trafficking in human beings and sexual exploitation of children
  › horizontal issues
    › EU JHA, international and comparative criminal law and criminal justice, Belgian criminal law and criminal justice
› policy advise
  › national ministries
  › European Commission
  › police-LE services/Europol
  › (inter)national NGO’s
EU strategy to combat organized crime

- organized crime = container concept
- EU Action Plan to Combat Organized Crime
  - Irish Presidency: HLG
  - adopted in April 1997 by JHA Council
  - endorsed by Amsterdam European Council
- Joint actions December 1998
  - participation in a criminal organisation
  - prevention of organized crime
- ‘Millennium Strategy’ 2000 (infra)
- European Forum for the Prevention of Crime
  - to a large extent dedicated to prevention organized crime

JHA Council March 2000

- adoption of a ‘European Union strategy for the beginning of a new Millennium’ in the field of prevention and control of organised crime
- = follow-up action plan to the EU action plan to combat organised crime, adopted in April 1997
- setting the lines/goals to be followed/achieved in this area in the coming years
- about 40 detailed recommendations in various fields and setting target dates to implement them
- highly relevant as regards: substantive criminal law, procedural criminal law and co-operation in criminal matters
EU Anti-Terrorism Policy

› before 11 September 2001
  › Trevi - centre of excellence - Europol mandated
  › political offence exception and dual criminality requirement in extradition law abolished – approximation process
› JHA Council 20 September 2001
  › harness measures already adopted at EU level
  › speed up creation of area of ‘freedom, security and justice’
› European Council 21 September 2001
  › approval plan of action to combat terrorism
  › enhancing police/judicial cooperation
  › developing international legal instruments
  › strengthening air security
  › coordinating the EU’s action: road map

Road map (1)

› General Affairs Council
  › coordination and necessary impetus
  › detailed road map
    › instrument to monitor implementation
    › 63 objectives + indication of means, deadlines, responsibilities, progress made, forthcoming work
  › external relations/foreign affairs
  › regulation on specific restrictive measures directed against certain persons and entities
    › immediate freezing of funds 27 terrorist organisations
  › UN General Convention on International Terrorism
  › signing/ratification UN Financing of Terrorism Convention
Road map (2)

- Transport Council
  - air security
- Ecofin Council (and JHA Council)
  - measures against funding of terrorism
  - measures against NCCT’s
  - enlargement FATF action to include measures to combat funding of terrorism
- JHA Council
  - Europol, Eurojust, joint teams, freezing assets, extradition conventions + MLAT’s, …
  - re-establishment internal Schengen border checks
  - criminal law definition terrorism (infra)
  - European arrest warrant (tonight)

Criminal law definition terrorism (1)

- state of the art
  - UN/ICAO: unlawful seizure of aircraft, unlawful acts against safety of aircraft, unlawful acts of violence at airports, unlawful acts against safety maritime navigation/fixed platforms Continental Shelf, crimes against internationally protected persons, taking of hostages, physical protection nuclear materials, suppression of terrorist bombings, supression of financing terrorism, …
  - CoE: 1977 Convention on the Suppression of Terrorism
Criminal law definition terrorism (2)

- unprecedented pressure for speedy adoption
- Commission proposal for framework decision
  - no borders within EU
  - risk for loopholes to be exploited by international terrorist networks
  - only specific anti-terrorism legislation in 6 MS
  - new measures needed
  - for punishing terrorist offences
    - committed with specific terrorist intent
    - defined with reference to national law

Specific terrorist intent

- i.e. in as far as unlawfully committed with the aim of seriously affecting, in particular by the intimidation of the population, or destroying the political, economic or social structures of a country or of an international organisation
- civil liberties issues
  - ‘affecting’ initially ‘altering’
  - no initial reference to ‘international organisation’ (G8)
  - ‘unlawful’: if not justified by international public law or even national law (unilateral military intervention?)
Ordinary national law offences ...

- murder and homicide; serious bodily injury; kidnapping or hostage taking; extortion; aggravated robbery
- seizure of or serious damage to state or government facilities, means of public transport, infrastructure facilities, places of public use and property
  - could include 'urban violence'
  - concern about use protests and non-violent actions
- fabrication, possession, acquisition, transport or supply of weapons or explosives; releasing contaminating substances, or causing fires, explosions or floods, endangering people, property, animals or the environment; interfering with or disrupting the supply of water, power or any other fundamental natural resource; interfering with an information system
- threatening to commit offences listed above

... ‘terrorist group’ related offences

- i.e. structured organisation of more than two persons, established over a period of time, acting in concert to commit terrorist offences
  - added value to ‘criminal organisation’ concept?
- punishable if committed with ‘terrorist intent’
  - directing a terrorist group
  - participating in the activities of a terrorist group
  - supporting a terrorist group, including funding for its activities
  - laundering the proceeds of terrorist or other offences committed as part of a terrorist group
Minimum maximum penalties

- directing a terrorist group: at least 20 years deprivation of liberty for and of 8
- other offences relating to terrorist groups: 8 years
- other terrorist offences: more severe penalties than those provided for the corresponding ordinary law offences under national law MS, unless already highest penalty level allowed for
- aggravating circumstances
- reduction of penalties
- liability of and sanctions for legal persons

Excessive jurisdiction?

- possibility national (extraterritorial) jurisdiction for the entire (virtual) territory of the Union and all its nationals, residents, legal persons and institutions
  - supposed to give a new dimension to the concept of the area of freedom, security and justice
  - flagrant violation Article 31, under d TEU: aim is to ‘prevent’ conflicts of jurisdiction
  - US arrogance in allowing for extraterritorial tribunals
- resolving jurisdiction conflicts and coordination of prosecutions with assistance of Eurojust
  - quid mutual recognition of decisions to prosecute?
  - aut dedere aut judicare (also towards 3rd states)
Enhanced security ...

› ... at the expense of freedom and justice?
  › ad hoc stepping up repression
  › without proper gap analysis
  › instead of relying on existing possibilities
  › added value limited/unclear
  › high risk of disproportionate measures and restrictions of civil liberties

EU-US-Candidate States LE Cooperation

› Pre-Accession Pact Organized Crime
› preparation for Europol (bilateral agreement)
› specific recommendations concerning candidate states in ‘Millennium Strategy’
› Southern European Cooperation Initiative (SECI)?
› Article 38 TEU bilateral EU-US convention?
  › law enforcement cooperation
  › information exchange (data protection)
  › future generic framework for candidate states as well?