Exchanging criminal records and Taking Into Account Foreign Convictions

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Summer Course on European Criminal Justice
ERA – Trier, 7 July 2009
Structure

- acquis (pre-Amsterdam)
- current EU initiatives
  - context
  - overview – state of affairs
  - questions and challenges
  - towards a generic EU data structure?
  - further potential
- questions & discussion
Acquis (pre-A’dam)

> CoE treaties, chiefly
  > 1959 MLA (Articles 13 & 22)
  > 1960ies Road Traffic
  > 1970 Int’l Validity Criminal Judgements
    > =MR avant-la-lettre
> unsuccessful EPC-Convention 1991
> Schengen (road traffic)
> EU (Maastricht): 1996 driving licenses
> …
Context current EU initiatives (1)

- Mutual Recognition (MR) Plan November 2000
  - individualisation of sanctioning
    - take account of previous EU convictions in sentencing for newly committed offences
  - already introduced for EUR fraud/counterfeiting
  - give effect to disqualifications in MS of residence (e.g. driving license withdrawal) or all MS (e.g. working with children)
  - mutual recognition of decisions to prosecute
    - link with avoiding ‘double prosecution’ (extended ne bis)
    - feasibility study requested re EU criminal records system and register of disqualifications
  - IRCP-initiated; co-financed by EC (Grotius)
  - Vermeulen et al (2002), Blueprint for an EU criminal records database
Context current EU initiatives (2)

- Fourniret case 2004 (B-F)
  - what? challenge (real, perceived)
  - recalling Dutroux case 1996 (B), having triggered studies (IRCP) & policy initiatives re EU data collection sexual offences against children

- initiative European Commission
  - White Paper 2005 (+ annex)
  - building strongly on proposals Vermeulen et al
    - searchable central index system
    - detailed (folio) info remains in individual MSs

- JHA Council April 2005: political ‘dual track’ scenario
  - convictions against EU citizens
  - centralisation in MS of nationality
  - triggered by ‘interconnection’ pilot network (B-F-D-E) (expanded)
  - convictions against 3rd country nationals
    - central index system after all? see: COM (2006) 359 working doc
Overview – State of affairs

- Decision November 2005 (to be abrogated from by)
- FD organisation & content 2009
- Centralisation info in MS of nationality
- “develop standardised European format allowing criminal records info exchange in a uniform, electronic & easily machine-translatable way”
  - Unisys & IRCP - has lead to ECRIS 2009 (and classification)
- Improve application CoE 1959 MLA Convention
  - Render Article 22 (more) performant
  - Especially relevant for ministries/central authorities
- Facilitate/accelerate crimrec-related MLA requests Article 13
  - Especially relevant for decentral, competent authorities
- FD on taking account of earlier EU convictions 2008
  - Addresses decentral, competent judicial authorities
- Working doc on feasibility index system 3rd country nationals (supra)
Questions and challenges

- involvement end users?
  - judicial authorities: courts/judges, investigating judges, prosecutors
  - police authorities? (national, Europol; explanation)
- (preliminary) investigation
  - current proposals: minimal investigative relevance (only searchable on name/id-related fields, in case of known EU nationality)
  - Fourniret case at least triggered change in Belgium (not a EU level)
- establishing ‘ne bis in idem’ situation
- sentencing
  - taxation/assessment of foreign sentence/sanction: how?
    - current proposals: bring no EU-wide equivalence of criminal justice concepts/jargon
    - ideal system: double qualification (extra work)
- what about disqualifications?
  - no more negative impact than in sentencing MS (courts/judges’ role?)
  - integration Belgian proposal (children): not really happened so far ...
Towards a generic EU data structure?

- EU criminal justice Esperanto” (single EU interface)
- i.e. new standardized logic, with
  - offender-related fields
  - offence-related fields
    - encompassing EAW categories, pilot network families and classifications Europol IS & Eurojust CMS, etc
  - idea of EU classification of offences officially supported
    - DG JLS/D3 (criminal records) + Unisys/IRCP (crime statistics)
    - EULOCS (enhancing internal coherence EU criminal policy)
  - decision-related fields
  - sanction/measure-related fields
- additional benefits
  - making most of info machine-translatable
  - providing end-user useful interpretative info (where available)
Further potential

- use common format (generic structure?) also for
  - direct exchange under Article 13 1959 Convention
  - EU-index system MS’ info on 3rd country nationals
- maximize investigative/prosecutorial value criminal records infoex system
  - make offence-/other fields searchable
    - via MLA requests or based on PoA
  - link in with Europol information system
  - allow Eurojust access (CMS) (ne bis in idem)
- role Eurojust in hosting index-system
  - for 3rd states’ access?, based on Article 24 j° 38 TEU?
- additional EU legislation based on MR concept
  - regarding legal effect inclusion following notification (see:B)
  - limited introduction EU-certificate non-prior conviction
Questions and discussion