



Institute for International Research on Criminal Policy
Ghent University

Prof. Dr. G. Vermeulen – Police and the EU – Ghent, 1 October 2010

Police and the EU

“Europe comes to us in all domains”
“How can Europe influence the police and vice versa?”

Prof. Dr. Gert Vermeulen

European Awareness Seminar
“Working Together by Learning Together”
Ghent – 1 October 2010

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Structure

- > EU relevance for international cooperation
 - > operational cooperation
 - > information related cooperation
 - > investigation and execution related cooperation
 - > European criminal policy
 - > challenges
- > EU domestic relevance
 - > substantive and procedural criminal law
 - > data protection law
 - > police functioning and management

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Operational cooperation

- > mutual assistance in criminal matters (only labelled as 'judicial')
 - > horizontalization
 - > 'forum regit actum' as new principle
 - > hot pursuit
 - > cross-border surveillance
 - > controlled deliveries
 - > covert investigations
 - > concept 'joint investigation teams' (+ cultural aspect)
 - > prospects for future
 - > special investigative measures
 - > post-trial investigative measures

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Information related cooperation

- > databases & notification/alert/infoex systems
 - > Europol (ELO's, EIS, AWF's), SIS, CIS, VIS, etc
- > FIU infoex
- > Schengen 'for police use only'
 - > Belgium missed out opportunity
- > principle of availability
 - > origin: 2004 The Hague programme
 - > 'Swedish' framework decision 2006 first step
 - > followed by copying Prüm acquis onto level EU27
- > data protection
 - > specific regimes, generic regime (2008 framework decision), formal acceptance 'informal police infoex' (old boys networks) as a result of (further development) availability principle

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Investigation and execution related cooperation

- > investigation
 - > MLA (judicial, but!)
 - > seizure, search, letters rogatory etc
- > execution
 - > (traffic) fines, withdrawal driving licenses
 - > confiscation orders – asset sharing
 - > disqualifications (procurement/subsidies, sex)

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European criminal policy

- > multi-annual planning (Tampere, The Hague, Stockholm)
- > Europol (OCTA), Schengen, Frontex, etc
- > intelligence-led policing
- > CEPOL
- > EPCTF (Cospol)
- > COSI (internal security)
- > crime prevention policy
- > preparedness for terrorism – protection critical infrastructure
- > EU crime statistics
- > recent split DG JLS > DG interior (police) and DG justice & FR
- > external dimension
 - > ROCTA, EU-US PNR, TFTP2, EU liaison officers

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Challenges (1)

- > operational cooperation
 - > comprehensive framework active/operational cross-border action
 - > application special investigative techniques in other EU MS
 - > cross-border witness protection and relocation
 - > post-sentencing investigative measures (must for ENFAST)
 - > development Frontex into operational EU border police force or adjudication EU-operational status to Frontex rabbits
- > Europol
 - > more operational, with right to evocation
 - > limitation mandate to common offence components
 - > regional/country-specific approach police policy vis-à-vis 3^d countries
 - > establishment regional offices within EU?
 - > acces to ECRIS

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Challenges (2)

- > police cooperation lacking behind compared to judicial cooperation
 - > need for EU-US police cooperation agreement (only Europol-US) + other countries
 - > compare: EU-US MLA & extradition convention
 - > need for any practical tools (none now)
 - > compare: EJM, fiches belges, European judicial atlas etc
 - > need for radical horizontalization police information exchange
 - > centralistic models/databases + national units (ENU's, NSIS, Sirene bureaux, Interpol NCB's, ...)
 - > compare: judicial cooperation almost fully horizontalized
 - > European pre-evidence warrant for police
 - > Enhanced availability + introduction mutual recognition for police!
 - > incomprehensible complexity Europol structure
 - > compare: Eurojust college = direction-management board-LO network

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Substantive and procedural criminal law

- > approximation substantive criminal law
 - > minimum rules pertaining to
 - > constituent elements
 - > maximum sanction
 - > for 20some offences (more coming)
- > approximation procedural criminal law
 - > initial lack of competence EU treaties
 - > still: reluctance member states
 - > post-Lisbon (QMV instead of unanimity – co-decision Council-EP)
 - > road map procedural rights
 - > letter of rights, right to legal assistance, including during initial police interrogation (Salduz), etc
 - > potentially/likely: extension to (special) investigative measures
 - > rationale: mutual recognition/free movement of evidence

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Data protection law

- > post-Lisbon: data protection as a subjective right
 - > Article 8 EU Fundamental Rights Charter
 - > Article 16 TFEU - consequences for existing instruments
 - > directive 95/46 (none)
 - > 2008 framework decision
 - > theoretically yes: obligation to adopt new instrument
 - > unenforceable, but if yes, new directive must cover
 - > domestic information exchange
 - > transfer own information to 3rd states

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Police functioning and management

- > customs
- > border guarding
- > police priorities and capacity issues
 - > Europol right of initiative
 - > further roll-out mutual recognition
 - > European Investigation Order
 - > upcoming: further regulation non-regulated issues
- > numerous challenges
 - > turn ECRIS into investigation tool
 - > clarification working sphere EU-domestic level
 - > ...