

Towards and Area of Freedom, Security and Justice

SCREENING WITH CROATIA AND TURKEY
EXPLANATORY SESSION - 23-25 January 2006

European Commission
DG Justice, Freedom and Security
Unit D3 – Criminal justice

Judicial cooperation in criminal matters

General presentation

Judicial cooperation in criminal matters

Historical background

- criminal justice : a new subject for the EU
- necessity to improve judicial cooperation linked with the decrease of border controls (free movement of people)
- first steps taken in the context of Schengen
- first improvement with the Maastricht treaty
- a real step forward with the Amsterdam treaty

Judicial cooperation in criminal matters

Areas of activity

- mutual recognition of judicial decisions
- approximation of legislation
- operational cooperation tools (Eurojust, EJM)

Judicial cooperation in criminal matters

Mutual recognition of judicial decisions

A judicial decision made in one Member State should be recognised and implemented in all the MS as a national decision

Judicial cooperation in criminal matters

Mutual recognition of judicial decisions

- 2000 : adoption of the mutual recognition programme in criminal matters
- 2005 :
 - communication on the mutual recognition of judicial decisions in criminal matters and the strengthening of mutual trust between the Member States
 - adoption of the action plan

Judicial cooperation in criminal matters

Main achievements in the area of mutual recognition in criminal matters

- European arrest warrant
- FD on freezing of assets and evidence
- FD on mutual recognition of financial penalties
- FD on mutual recognition of decisions on confiscation (not yet in the acquis)
- other developments : European evidence warrant, execution of prison sentences, taking account of previous convictions in the course of new criminal proceedings, criminal records.

Judicial cooperation in criminal matters

Mutual confidence is the key
for the good functioning of mutual recognition

Judicial cooperation in criminal matters

Improving mutual confidence through approximation of substantive criminal law

- common definition of offences (in particular transborder crime)
- common minimum level of sanctions

Judicial cooperation in criminal matters

Improving mutual confidence through approximation of substantive criminal law

An important acquis in this field : protection of the Euro, drug trafficking, terrorism, non cash means of payment, illegal immigration, trafficking in human beings, sex offences against children, attacks against information systems, corruption in the private sector, protection of the environment, fight against ship source pollution,..

Judicial cooperation in criminal matters

Improving mutual confidence through approximation of procedural law

- framework decision on victims
- proposal for FD on minimum guarantees
- choice of jurisdiction / ne bis in idem
- proposals to come on presumption of innocence, the handling of evidence

Judicial cooperation in criminal matters

Improving mutual confidence by concrete actions

- training of judiciary
- improving the quality of the justice system

EUROPEAN ARREST WARRANT

What is the EAW ?

- A Judicial decision
 - issued by an issuing judicial authority in a MS
 - with a view to the arrest and surrender of a requested person
 - by an executing judicial authority in another MS
- Two purposes:
 - conducting criminal prosecution (suspects)
 - executing a custodial sentence or detention order (convicted persons)

EUROPEAN ARREST WARRANT

Time for evaluation

- 13 Jun' 2002 Framework decision adopted
- 1 Jan' 2004 Entry into force of EAW

- Feb' 2005 1st Evaluation by COM
- Jun' 2005 Council Conclusions
- Oct' 2005 Conference of Parliaments

- Jun' 2006 2nd Evaluation by COM
- 2006-2009 Mutual Evaluation by MS

EUROPEAN ARREST WARRANT

Outlines

1. Reduction of national barriers
2. Simplification of proceedings
3. EAW practical impact

EUROPEAN ARREST WARRANT

Reduction of national barriers

- Ban on Executive involvement
- Removal of dual criminality principle
- Surrender of nationals
- Limited grounds for refusal

EUROPEAN ARREST WARRANT

Removal of control of dual criminality principle

- Condition 1 : punishable by custodial sentence of at least **3 years**
- Condition 2 : among **32 categories of offences**
- To be followed :
 - Approximation of offences
 - Model for other Framework Decisions
 - Preliminary ruling

EUROPEAN ARREST WARRANT

Surrender of nationals

- **Generalisation** across EU
 - EU Convention of 27 September 1996
 - FD of 13 June 2002
- **Limits**
 - Nationals and/or Residents
 - Art. 4(6) FD : executing the sentence on the spot
 - Art. 5(3) FD : return condition after trial

EUROPEAN ARREST WARRANT

Limited grounds for refusal (1)

- 3 mandatory grounds
 - Amnesty
 - Double jeopardy (sentence served or no longer executable)
 - Person under the age of criminal responsibility
- 7 non-mandatory grounds

EUROPEAN ARREST WARRANT

Limited grounds for refusal (2)

- 7 non-mandatory grounds
 - dual criminality principle when applicable
 - ongoing prosecution for same act in executing MS
 - other forms of double jeopardy (ne bis in idem)
 - statute-barred offences
 - offence committed in territory of executing state or extraterritorial jurisdiction claim not recognized by executing state
 - execution of sentence against nationals/residents in executing state

EUROPEAN ARREST WARRANT

Limited grounds for refusal (3)

Alternatives to refusal

- Additional guarantees
- Postponed surrender
- Surrender under agreed conditions

EUROPEAN ARREST WARRANT

Simplified procedure

- Simple request
- Deadlines
- Individual guarantees

EUROPEAN ARREST WARRANT

Simple request

- Form
 - Standard
 - Translated
 - Unique
- Transmission
 - Direct (EJN can help)
 - Alert first (SIS or Interpol)

EUROPEAN ARREST WARRANT

Deadlines

- Decision
 - within 10 days after consent
 - otherwise within 60 days after arrest
 - may be extended by 30 days
(exceptional circumstances)
- Surrender
 - no later than 10 days after decision
 - may be postponed
(unforeseen circumstances)

EUROPEAN ARREST WARRANT

Individual guarantees

- Information
- Interpreter
- Judicial hearing
- Speciality rules

FD more precise on :

- Ne bis in idem/Double jeopardy
- Legal counsel
- Review of provisional detention
- Deduction of the detention period

EUROPEAN ARREST WARRANT

Practical impact of EAW

- Almost transposed
- Full judicial involvement
- More efficient
- More expedient
- Individual guarantees under scrutiny

EUROPEAN ARREST WARRANT

Further information

- **FD** : OJ L 190, 18.7.2002
- **Council Website** (national laws) :
http://ue.eu.int/cms3_Applications/applications/PolJu/details.asp?id=66&lang=EN&cmsid=720
- **Commission Website** / JLS pages :
http://europa.eu.int/comm/justice_home/fsj/criminal/extradition/fsj_criminal_extradition_en.htm
- **Reports** : COM(2005)63 and SEC(2005)267]

EUROJUST

Council Decision 187/2002/JHA of 28 February 2002 sets up Eurojust.

- Art. 1 to 12 : tasks and composition
- Art. 13 to 27 : information
- Art. 28 to 39 : organisation
- Art. 40 to 43 : implementation

EUROJUST

Tasks and composition (Art. 1 to 12)

- National member seconded by MS (prosecutor, judge or police officer of equivalent competence)
- To improve coordination between MS of investigations and prosecutions in relation to serious crime concerning 2 or more MS
- Through national member(s) or as a College

EUROJUST

Information (Art. 13 to 27)

- Exchange of data with MS and partners
- Process of personal data
- Rules of data protection and monitoring by an independent joint supervisory body

EUROJUST

Organisation (Art. 28 to 39)

- President elected by the College
- Administrative Director heading secretariat
- Legal entity funded on EU Budget

EUROJUST

Implementation (Art. 28 to 39)

- Need to implement

Report COM(2004)457 of 6.7.2004

- Powers of national Members (Art. 6 and 9(3))

Report EUROJUST 58 of 6.9.2005

- Exchange of data with MS (Art. 9(4) and 13)

EUROJUST

Other relevant provisions

- Rules of procedure of Eurojust

OJ C 286 of 22 November 2002, p. 1

- Council Decision 2003/659/JHA of 18 June 2003 amending Decision 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime

OJ L245 of 29 September 2003, p. 44

More information on : <http://www.eurojust.eu.int/>

ARTICLES 54-58 OF THE CONVENTION IMPLEMENTING THE SCHENGEN AGREEMENT

- Trans- national *ne bis in idem* principle
- ECJ in *Brugge and Gozutoc* (case C-187/01 and C-385/01)
- ECJ in *Miraglia* (case C-469/03)
- Pending cases on *idem*

FRAMEWORK DECISION COUNCIL FRAMEWORK DECISION OF JULY 2003 ON THE EXECUTION IN THE EUROPEAN UNION OF ORDERS FREEZING PROPERTY OR EVIDENCE

- Definition and purpose of Freezing order
- Subject matter and Scope
- Removal of Double Criminality.
- What needs to be transmitted with the Order
- Grounds for non-recognition/ non-execution and Postponement

FRAMEWORK DECISION ON THE APPLICATION OF THE PRINCIPLE OF MUTUAL RECOGNITION TO FINANCIAL PENALTIES

- What is a financial penalty?
- Scope and application
- Who can take a decision which can be enforced under the FD
- Member States which can be used for execution of financial Penalties under the FD.
- Double Criminality
- Grounds of refusal

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 1/12)***

Council Decision 2003/169/JHA of 27 February 2003
determines which provisions of:

- 1995 Extradition Convention, and
- 1996 Extradition Convention

constitute developments of the Schengen acquis.

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 2/12)***

1995 Simplified Extradition Convention

Schengen acquis:

- all

JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA (page 3/12)

1996 Extradition Convention

Schengen acquis:

- Art. 2: extraditable offences
 - Art. 6: fiscal offences
 - Art. 8: lapse of time
 - Art. 9: amnesty
 - Art. 11: presumption of consent of the requested MS
- and Art. 1 (general provisions) as far as relevant to those other
Arts

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 4/12)***

Entry into force for Iceland and Norway

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 5/12)***

Agreement between the EU and Iceland and Norway
on the application of certain provisions of
2000 Mutual Assistance Convention and its 2001 Protocol

JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA (page 6/12)

2000 Mutual Assistance Convention

following to apply between ISL/NOR and MSS:

- Art. 4: formalities and procedures
- Arts 8 to 16: specific forms of mutual assistance
- Arts 17 to 22: interception of telecommunications
- Art. 25: no reservations
- Art. 26: territorial application
- and Arts 1 (relationship to other conventions) and 24 (statements) as far as relevant to those other Arts

JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA (page 7/12)

2001 Protocol

following to apply between ISL/NOR and MSS:

- Arts 1 (paras 1 to 5), 2 to 4: bank accounts and banking transactions
- Art. 5: obligation to information
- Art. 6: additional requests for mutual assistance
- Art. 7: banking secrecy
- Art. 9: political offences
- Art. 11: no reservations
- Art. 12: territorial application

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 8/12)***

Entry into force

***JUDICIAL CO-OPERATION AGREEMENTS IN
CRIMINAL MATTERS BETWEEN THE EUROPEAN
UNION AND NORWAY, ICELAND AND THE UNITED
STATES OF AMERICA (page 9/12)***

Agreements between the EU and the USA
on extradition and mutual legal assistance
in criminal matters

JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA (page 10/12)

Extradition agreement:

- Art. 3: relationship with bilateral extradition treaties
- Art. 4: extraditable offences
- Art. 10: competing requests
- Art. 17: non-derogation

JUDICIAL CO-OPERATION AGREEMENTS IN CRIMINAL MATTERS BETWEEN THE EUROPEAN UNION AND NORWAY, ICELAND AND THE UNITED STATES OF AMERICA (page 11/12)

Mutual legal assistance (MLA) agreement

- Art. 3: relationship with bilateral extradition treaties
- Art. 4: bank information
- Art. 5: joint investigation teams
- Art. 6: video conferencing
- Art. 8: MLA to administrative authorities
- Art. 9: limitations to protect personal and other data
- Art. 13: non-derogation

THE 1998 CONVENTION ON DRIVING DISQUALIFICATIONS

- Principles and state of play
- Future work envisaged by the Commission in this field

EXCHANGE OF INFORMATION ON CRIMINAL RECORDS

- The existing mechanisms : articles 13 and 22 of the 1959 European Convention on Mutual assistance in Criminal matters (Council of Europe)
- A first set of improvements : Council Decision 2005/876/JHA of 21 November 2005 on the exchange of information extracted from the criminal record
- Next steps : proposals adopted or under preparation

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- **The 2000 Convention intends to supplement and facilitate the application of existing instruments such as :**
 - the 1959 Convention and its 1978 Protocol,
 - the 1990 Convention implementing the Schengen acquis
 - the 1962 Benelux Treaty.

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- **Mutual assistance is to be afforded in connection with :**
 - criminal proceedings,
 - proceedings brought by the administrative authorities when the decision may give rise to proceedings before a court having jurisdiction in particular in criminal matters,
 - proceedings related to offences or infringements for which a legal person may be held liable in the requesting MS.

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- Co-operation may be realised through :
 - *spontaneous* exchange of information or
 - *following a M S request*.
- In any case the request has to be made **directly** between judicial authorities with territorial competence for initiating and executing them and has to return through the same channels.

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- The requested MS has to comply with the formalities and procedures expressly indicated by the requesting MS
- The 2000 Convention provides for new techniques in the field of technology such as :
 - video-conferencing
 - teleconferencing
 - interception of telecommunication.

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- Other provisions deal with:
 - restitution of articles obtained by criminal means
 - the temporary transfer of persons held in custody for purpose of investigation
 - controlled deliveries
 - covert investigation.

CONVENTION ON MUTUAL ASSISTANCE IN CRIMINAL MATTERS BETWEEN THE MEMBER STATES OF THE EUROPEAN UNION

- AT, BE, DK, EE, ES, FR, HU, CY, LV, LT, NL, PT, PL, SI, FI, SE and UK ratified the Convention.
- The Convention has entered into force on 23 August 2005.

COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON JOINT INVESTIGATION TEAMS

- Article 13 of the 2000 MLA Convention provides about JITs
- Due to the importance of the setting up of the JITs, on the 13 June 2002 the Council adopted a Framework Decision on Joint investigation teams.
- MSs were due to take the necessary measures to comply with the provisions of the FD by 1 January 2003.

COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON JOINT INVESTIGATION TEAMS

- The FD will cease to have effect when the 2000 Convention has entered into force in all MSs.
- On the 28 November 2002 the Council adopted a Protocol amending the Convention on the establishment of Europol.

COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON JOINT INVESTIGATION TEAMS

- The Protocol establishes a legal basis for Europol to participate in joint investigation teams.
- On the 8 May 2003 the Council adopted a Recommendation on a model agreement for setting up a joint investigation team.
- According to the FD, JITs may be set up for:
 - a *specific purpose* and
 - a *limited period*
 - to carry out criminal investigations in one or more MSs.

COUNCIL FRAMEWORK DECISION OF 13 JUNE 2002 ON JOINT INVESTIGATION TEAMS

- The FD provides also about:
 - the leadership of the team
 - the applicable law
 - the organisational arrangements
 - the powers of seconded members and their civil and criminal liability
 - the providing of information.

THE EUROPEAN JUDICIAL NETWORK IN CRIMINAL MATTERS (EJN)

Context.

EJN's *aims*:

- to facilitate judicial cooperation between MS
- to organise meetings of MS representatives
- to provide updated information by means of telecommunications network

THE EUROPEAN JUDICIAL NETWORK IN CRIMINAL MATTERS (EJN)

The Network is made up of *contact points* who

- act as intermediaries to facilitate judicial cooperation
- provide legal and practical information to the judicial authorities in their own countries but also to the contact points of other MS
- improve coordination of judicial cooperation

THE EUROPEAN JUDICIAL NETWORK IN CRIMINAL MATTERS (EJN)

The main **EJN's instruments** are:

- the Fiches Belges
- the European Judicial Atlas
- the Compendium
- the Solon programme

GOOD PRACTICES IN MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Context.

So the ***requested authorities should:***

- acknowledge all requests
- identify the authority responsible for executing the request.
- give priority to urgent requests

Meanwhile the ***requesting authorities should:***

- submit requests as soon as possible
- identify the authority responsible for issuing the request.
- ensure that requests are submitted according international legal instruments.

Austrian, Finnish and Swedish initiative with a view to the adoption by the Council of a Council Framework Decision on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union (J.O. C 150, 21.6.05, p.1)

- a) Purpose
- b) Contents
- c) Problems

*Council Framework Decision of 15 March 2001 on the standing
of victims in criminal proceedings
(OJ L 82, 22.3.2001, p. 1)*

- a) Purpose
- b) Contents
- c) Problems