



MEIOR

Belgium: empirical results

23 May 2023

Michele.Panzavolta@kuleuven.be

Initial remarks

- Belgian context
- Limited array of decisions available
 - Only few (7) decisions of the Supreme Court
 - Limited literature
- Empirical research

EIO in Belgium (EOB) – to recall

- Law 22 May 2017
 - Implementation in separate law rather than through incorporation in law on mutual legal assistance (law 9 December 2004) or law on mutual recognition (law 5 August 2006)
- Minimal changes compared to text of directive (“copy-paste” style of implementation) – “*vlakke omzetting*”
- Art. 24 Belgian law EIO - active
 - Public prosecutor or **investigating judge**
 - Division of labour mirrors internal division of labour (=for equivalent national cases)
- Art. 14 Belgian law EIO – passive
 - Reception- public prosecutor, federal prosecutor, Central office for customs and excise duties(COCE)
 - Execution - Public prosecutor (or COCE) or **investigating judge**
 - Division of labour mirrors internal division of labour (=for equivalent national cases)

Uneven experience

- Very different experience from office to office particularly within public prosecution
 - From many cases per day to limited cases per year
 - From high specialization to low specialization (on passive/execution phase)
- Execution phase
 - Offices working exclusively on EIO
 - Offices with internal for
- Active phase
 - Diffuse competence
- Border areas v other areas

Overall elements stemming from practice

- EIO works smooth
 - “Overall it works well”
 - “Overall no problem”
 - Some problems w/ some countries (slow, no answer)
 - Difference between countries w/ “daily” (“frequent”) cooperation
- EIO faster than other/earlier instruments
- Active EIO: no refusals
- Passive EIO: no refusals
 - (active) Contacts w/ authority instead of refusals
 - (passive) Silence/reaction instead of refusals

Controls

- **ACTIVE**

- Issuing phase (public prosecutor or judge)
- Proportionality of measures
 - Division of views between judges/prosecutors and lawyers
 - Ordinary control v no control
 - Time factor kept into account

- **PASSIVE**

- Control on issuing authority – very light
- Control on refusal grounds and possibility to carry out measures in BE
 - No check on proportionality
 - Infrequent case of ‘vague’, ‘generic requests’

Gavanozov II problems?

- Two reactions to the judgement
- 1) specialized group of officers
 - defuse Gavanozov II
 - Presumption existence of remedies in issuing State
- 2) other officers
 - unaware of Gavanozov II
 - “I will read it with attention”

Receipt of results

- No language problems
- No streamlined way of providing results
 - Each country sends own records (according to own rules/practice)
- No difficulty of reading results
- But difficult to understand/see what procedural steps taken in execution
- And unable to say if entirety of results sent
- Difficulty (impossibility?) of controlling results

Evidence admissibility

- Art. 29

“In the context of criminal proceedings conducted in Belgium, no use may be made of evidence:

1° that has been collected irregularly in the executing State if the irregularity:

- *follows, under the law of the executing State, from the violation of a prescribed form requirement under penalty of nullity;*
- *affects the reliability of the evidence; or*

2° the use of which constitutes a violation of the right to a fair trial.

- Repeats similar provision of law on international cooperation

Evidence admissibility

- Control on foreign law very difficult
 - Still doable with regarding to neighbouring countries
 - Not with other countries
 - Always uncomfortable
 - No cases of evidence excluded
- Control on violation right to fair trial
 - very unlikely to lead to exclusion (similarly to internal evidence)
 - Underlying presumption of trust on foreign authority
 - Ultimately lighter approach

Some further points

- Points coming up from the practice as noteworthy
 - Request of interview instead of videoconference
 - No request of additional safeguards

Conclusions

- General impression everything works well
- Yet: sometimes impression bureaucratic approach
- Lack of in-depth controls
 - Passive side - Executing moment
 - “zo maar passeren”/”EIOs just go through”
 - No/little critical approach
 - Defence normally absent (and otherwise defence passive -often little interest)
 - No use of few possibility to file appeals (eg. against seizure)
 - Active side – evidence control
 - Difficulty/impossibility to control and presumption of compliance – “Mutual trust”
- Everything works well ... particularly when controls are particularly light!

Thank you for your attention!