Editorial

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The development of European Union policy in criminal matters has been the subject of an increasing number of seminars held at the Academy of European Law in Trier over recent years. In 2003, the Academy was fortunate to receive sponsorship from the European Commission under the *Grotius II Programme* (Project no. JAI/2002/GRP/028) for a three-day conference on the topic “European judicial co-operation in criminal matters: from extradition to the European Arrest Warrant”, which took place from 15-17 May 2003. This conference was organised in the framework of the European Judicial Training Network (<http://www.ejtn.net/>). The articles by *Susie Alegre*, *Robert Esser*, *Brian Gibbins*, *Clara Mapelli* and *Bernard Rabatel* in this issue are all revised versions of papers delivered at this conference, which was organised by *Dr Rita Petró*, of the Academy of European Law. *Pierre Jund*’s contribution explains the background to the European Arrest Warrant and takes us through the main legal and policy issues addressed in the conference. *M. Jund* was the informal conference *rapporteur*. Two further contributions from an ERA conference of October 2003 are made by *Giovanni Melillo* and *Caroline Morgan* (see *infra*). A final additional contribution to this volume comes from *Erika Szyszczak*, on the subject “Recent Developments in Social Policy and Labour Law” (it should provide some relief for general *ERA-Forum* readers without strong criminal law interests).

As in other areas of European Community or Union law, the Academy tries to keep its audiences up-to-date with recent developments and to provide a forum in which legal practitioners – in this area judges, prosecutors and defence counsel, in particular – can interact with European Union officials or representatives of institutions such as Eurojust, Europol or OLAF. The Academy has tried to keep pace with both legislative and operational initiatives led by European institutions in those fields of criminal law subsumed under Title VI of the Treaty on European Union (“Provisions on Police and Judicial Co-operation in Criminal Matters” – the part of the Treaty better known as the “Third Pillar”). This task is becoming harder as the Union’s criminal policy remit becomes both more comprehensive and more diversified; more and more specialised and focused training, including tailor-made seminars, will be required to meet the training needs of prosecutors, judges and defence lawyers. The European Judicial Training Network has a potentially crucial role to play in the development of this training.

The Tampere policy guidelines of October 1999 continue to provide the basic and commonly accepted policy platform on which to develop the European Union as an “Area of Freedom, Security and Justice”.¹ This platform has, of course, subsequently been built upon by more elaborate policy documents: for example, *Giovanni Melillo*’s contribution to this issue discusses, *inter alia*, the EU’s millennium strategy

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¹ See Appendix II of *P. Cullen and S. Jund* (eds) *Criminal Justice Co-operation in the European Union after Tampere*, Vol. 33, Schriftenreihe der Europäischen Rechtsakademie Trier, Bundesanzeiger, Köln, 2002.

to combat organised crime. It was made at the conference “Combating Crime in the European Union: The Development of EU Policy after the Convention”, which took place in Trier from 23-24 October 2003. *Caroline Morgan’s* paper to that conference is also included here, as it focuses on the defence rights issue, describing the European Commission’s preliminary “answer” to calls – for example by *Susie Alegre* in this issue – for greater equivalence in the protection of defence rights at European level. *Mr Melillo’s* paper is included in order to lend this issue of *ERA-Forum* a broader policy context. The value and effectiveness of the European Arrest Warrant must be seen in the overall context of criminal justice co-operation in the European Union: does the Warrant “fit” with the scope and organisation of other EU initiatives and what particular contribution will it make to the improvement of judicial co-operation in the European Union?

In the field of criminal policy, Tampere repeated the Amsterdam Treaty goal of a “high level of security in the area of freedom, security and justice” while at the same time emphasising the importance of balancing repressive measures against criminals, on the one hand, with the protection of the freedom and legal rights of individuals and economic operators, on the other. Faced with the need to respond to international terrorism, the European Union and its Member States may find it more difficult to achieve this balance, in particular if military-type strategies are employed (“war on terrorism”).²

The legislative initiatives both of the Member States and the European Commission in the Third Pillar have multiplied, since the entry into force of the Amsterdam Treaty opened the doors to direct – “approximating” – legislation in criminal law matters. In fact, approximation of criminal laws has not been the *leitmotif* of the Union legislator, i.e. the Council of the European Union, since Tampere. Rather, the “mutual recognition of judicial decisions” has been preferred. The European Arrest Warrant is a manifestation of this principle. Its adoption and entry into force – by 1 January 2004 for the existing Member States and by 1 May 2004 for acceding Member States – represents an important first practical test of the principle. The implementation of the European Arrest Warrant will be closely monitored by both the European Commission and the Council of the European Union. The Commission has recently expressed its concern about delays in implementation and the problems which may arise from this.³ Judges and extradition lawyers in the respective Member States of the European Union also have a strong interest in the approach of each other’s judicial authorities to the implementation of Warrant procedures and, indeed, it has been suggested that a common record of judicial decisions be kept – involving a system of reporting of cases.⁴

² Cf. *Gert-Joachim Glaefner*, *Sicherheit in Freiheit. Die Schutzfunktion des demokratischen Staates und die Freiheit der Bürger*, Leske + Budrich, Opladen, 2003, chapter 8.

³ See *Gisèle Vernimmen’s* paper to the conference “Extradition and International Co-operation in Criminal Matters: New UK and European Legislation”, organised by ERA and the Law Society of England and Wales in London on 27 November 2003 (unpublished paper).

⁴ The suggestion was made by *Judge Micheal Peart* of the Irish High Court at the ERA’s *Grotius* conference of 15-17 May 2003. See also *Brian Gibbins* in this issue.

The creation of mutual trust and confidence between judicial authorities in the European Union is essential for all forms of co-operation in criminal justice matters.⁵ On what may or must such trust rest? Is there sufficient confidence in other countries' judges and legal systems to make the new system of surrender of wanted persons operate smoothly? These questions are only just beginning to be examined. According to some of our authors, EU legislation is required to bring standards of criminal justice up to a more even level across the Union. Others, including some of the EU Member States, would disagree, citing the existing "common standard" of the European Convention on Human Rights. Certainly, improved knowledge of each other's legal systems is a prerequisite for mutual trust. The Academy's seminars on EU criminal justice matters and the publication of selected conference papers are intended as a small contribution to the building up of better relations between criminal law practitioners across the European Union. But it is an equally important objective of the Academy to alert the European institutions to issues which are sensitive in terms of national law and practice.

⁵ See the European Court of Justice's judgment in Joined Cases C-187/01 and C-385/01 *Hüseyin Gözütok and Klaus Brügge* [2003] ECR I-1345. If a touch of cynicism be allowed, one might say that this judgment does what Member States like least – it takes them at their word. The Court of Justice states that European law requires the Member States to recognise each other's judicial decisions under criminal law "even if the outcome would be different if its own national law is applied". (para. 33). This principle applies, of course, only within the scope of agreed EU criminal justice co-operation – in the cases concerned, it was the Schengen Convention, as incorporated in EU law, which was implicated.