Cross-border Hot Pursuit in the EU

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1. Introduction

After three criminals were caught whilst raiding a bank in the French town of Cassel early on a Tuesday morning in May 2004, they fled with the French police in hot pursuit. The raiders swiftly decided to cross the Belgian border in the hope that the police would cease the chase at the frontier. To their surprise, however, the French police carried on their pursuit, while the Belgian police took over soon thereafter. A first roadblock, set up by the police with a requisitioned tractor, did not stop the reckless criminals. When they pointed a riot-gun at the police at a second roadblock, this time consisting of two trucks, police fired back. Police and customs occupied all strategic junctions, but the criminals managed to retreat to France where Belgian officers kept pursuing them until the French police took over.¹

There is no doubt that some drivers were surprised when they saw the foreign police vehicles chasing cars and shooting and wondered what the reason was. This study aims to explore the legislative framework applying to hot pursuit and scrutinize the conditions under which officers can cross the border. Attention will also be paid to the operational reality and practical implications. For this study, a

* The author wishes to express his gratitude to the all the people that enriched his work with their constructive criticism and generous help. This article is based on his LLM dissertation and he would like to express his gratefulness to his supervisor Prof. Gilmore. The article reflects the opinion of the author, not that of the EU or EUROPOL.

number of professors and more than twenty law-enforcement officials from Belgium, France, the Netherlands and Germany were interviewed between May and July 2007. Most officers were personally interviewed and it was agreed that their experiences would be shared on a non-attributable manner in this study.

The concept of hot pursuit existed long before the Cassel bank robbers tried to shake off the pursuing officers. Indeed, the origins of hot pursuit can be traced back as far as Byzantine law in instances of stealing wild animals and fish. The theory of ‘fresh pursuit’ was subsequently extended to cases of immediate pursuit of a thief fleeing with stolen goods in order to avoid arrest. However, whilst in the aforementioned cases merely individuals were the beneficiaries of the right to pursue, the theory of fresh pursuit entered into administrative law in the 15th century and justified constables making arrests without a warrant.

In more recent times, numerous treaties have been concluded that further developed the notion of hot pursuit and eventually provided for the right of the Belgian and French officers to continue the pursuit of the raiders across the border. These treaties will be discussed in Chapter 2, which is then followed by a detailed analysis of the applicable law and operational practice in Chapters 3 to 5. To conclude, Chapter 6 will draw some important lessons and delineate possible ways forward.

During the analysis of the different treaty provisions, this study will mainly focus on hot pursuit within the Benelux and their two neighbouring countries of Germany and France. On the one hand, this region is characterized by a distinctive situation in which these countries are closely interconnected with very long borders. For example, the Dutch province of South-Limburg has only a 6km long border with the rest of the country, compared with a 222km border between Belgium and Germany. On the other hand, the implementation of one multilateral instrument at the same place, together with an ongoing trilateral agreement and a recent bilateral treaty provides from a legal point of view for a unique experimental setting.

Fijnaut has aptly described the EU as ‘a garden of delight’ for comparative law. This study focuses solely on hot pursuit by law-enforcement officials and, therefore, hot pursuit by military forces or bands of guerrillas (a form of self-defence

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3) Ibid., p. 7.
4) The Schengen Implementation Agreement, Benelux Treaty and the bilateral German-Dutch Treaty are discussed in Chapter 3.
5) C. Fijnaut, *De Europese Unie: een lusthof voor (strafrechtelijke) rechtsvergelijking* (Deventer 2001).