A REFLECTION ON THE RIGHT TO LIBERTY WITHIN THE AFSJ, IN A POST-BREXIT SCENARIO

27th – 28th – 29th September, Fitzwilliam College, Cambridge
Dear Participants,

It will be our pleasure, to welcome you all in Cambridge for the workshop ‘A reflection on the right to liberty within the AFSJ, in a Post Brexit Scenario’.

The workshop is co-organized by the University of Cambridge (Fitzwilliam College), and by the Université Libre de Bruxelles (Institut d’études européennes). The framework is that of a two years research project ‘Mutual Recognition and Criminal Law: Do We Need a New Right to Liberty in Europe?’. We are particularly grateful to the Brussels-based Anspach-Wiener Foundation, which is engaged in fostering ties between the Université Libre de Bruxelles and the University of Oxford and Cambridge, and which is funding the present project.

You find below the program of the workshop, and some suggestions for debate.

The venue of the workshop is: **Trust Room, Fitzwilliam College, Storey’s Way, Cambridge, CB3 0DG**

Best Wishes,

Nicky Padfield, John Spencer, Anne Weyembergh and Irene Wieczorek
WORKSHOP PROGRAM

27 September

19.30 – Drinks reception (speakers only)

20.00 – 21.30 Dinner (speakers only)

28 September

9.00 – 9.15 – Introduction

9.15 – 10.45 – First Panel

The transfer of offenders across the EU: the law and the practice

Dirk Van Zyl Smit (University of Nottingham) - Chair

Adriano Martufi (Université Saint-Louis de Bruxelles) - Transfers of prisoners, the law and the interests at stake: social rehabilitation as a rationale for transfers

Ioan Durnescu (University of Bucharest) & Esther Montero Perez de Tudela (Universidad Loyola Andalucía) - Discussants

Graham Wilkinson (UK National Offenders Management Service, Europris) - Transfers of prisoners: the practice

Marina Beun (Dutch Central Authority for FDs 829/947 Transfers) - Transfers of probation orders: the practice

10.45 – 11.15 – Coffee Break (speakers only)

11.15 – 13.00 – Second Panel

The European Arrest Warrant (EAW) and detention: the law and the practice

Nicky Padfield (University of Cambridge) – Chair

José Antonio Gutierrez-Fons (Référendaire Court of Justice of the EU) - The Court’s case law on deprivation of liberty

Pedro Caeiro (University of Coimbra) - Discussant

Tony Marguery (University of Utrecht) - Discussant

Rebecca Niblock (Defence Lawyer Kingsley Napley, London) - Detention under the EAW and under extradition procedures: a defence lawyer’s perspective

Kasper van der Schaft (Public Prosecutor International Legal Assistance Office, Amsterdam) - Detention under the EAW and under extradition procedures: a prosecutor’s perspective
13.00 – 14.00 – Lunch (speakers only)

14.00 – 15.30 – Third Panel

**Mutual recognition and individual liberty**

Anne Weyembergh (Université Libre de Bruxelles) – Chair

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<td>Irene Wieczorek (University of Cambridge/</td>
<td>The effectiveness of mutual</td>
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<td>Jannemieke Ouwerkerk (University of Leiden)</td>
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<td>Leandro Mancano (University of Edinburgh)</td>
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15.30 – 16.00 – Coffee Break (speakers only)

16.00 – 17.30 – Fourth Panel

**Brexit, criminal justice, and the respect of fundamental rights**

Chair – Kenneth Armstrong (University of Cambridge)

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<td>Estella Baker (De Monfort University)</td>
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<td>Elise Muir (KU Leuven)</td>
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<td>Kenneth Armstrong (University of Cambridge)</td>
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<td>Martin Steinfeld (University of Cambridge)</td>
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17.30 – 18.00 – Coffee Break (speakers only)

18.00 – 18.15 – General Conclusions

Dirk Van Zyl Smit (University of Nottingham)

19.30 – Drinks Reception (speakers only)

20.00 – 21.30 – Dinner (speakers only)

**29th September**

10.00 – 12.00 – Guided tour of Cambridge (speakers only)
WORKSHOP DISCUSSION TOPICS

The first panel will investigate the law and the practice on transfers of suspects and of offenders according to the Framework Decisions 909/2008, 947/2008 and 809/2009, considering their impact on detention.

Possible practical questions for discussion are:
- Are the instruments used in practice?
- Are there any legal problems linked to their implementation, and especially with respect to the prisoners right to information, right to appeal against involuntary transfers?
- Have the instruments been challenged in national courts?
- Has their use in practice reduced the detention rate in single countries/Europe, and enhanced the liberty of EU citizens?

Possible theoretical questions for discussion are:
- What is the constitutional status for the reintegration function of the criminal law within the EU constitutional law?
- What are the challenges to reintegration in a multi-jurisdictional and multi-cultural environment?
- What is the relation between reintegration and personal liberty?
- Does the goal of reintegration necessarily implies that individuals’ liberty should be fostered?

The second panel will investigate the law and the practice on European Arrest Warrant (EAW) and detention.

Possible practical questions for discussion are:
- Has mutual recognition (EAW especially) reduced the time spent in pre-trial detention – and thus enhanced personal liberty, if compared to extradition?
- What are the interconnection in practice between the EAW and the 909/2008, 947/2008 and 809/2009 framework decisions?
- How does cooperation play out in an asymmetric context, when a MS, did not implement all the four instruments?

Possible theoretical questions for discussion, with specific reference to the case law of the ECJ and the ECHR, are:
- Which Member State is meant to exercise judicial control over detention in the executing state? What happens in cases of unjust detention – when an acquittal follows? Which Member State is bound to give compensation?
- Is the EAW itself the legal basis for detention, and thus must the Framework Decisions comply with Art. 5 requirements of clarity and precision?
- Does the presence of the concerned individual’s consent to the transfer somehow lower the fundamental rights obligations of the involved MSs?
The **third panel** will address transversally the question of the **relations between mutual recognition** and **personal liberty**.

Possible transversal questions for discussion are:

- What are the challenges to personal liberty, which specifically arise in cross border-situations?
- Does mutual recognition imply a de-responsabilisation effect on Member States, shifting the responsibility for respect of fundamental rights?
- Are automatic transfer procedures, where the role for the individual is particularly reduced, effective in achieving special and general deterrence?
- Is Art. 5 ECHR, which was designed in extradition times, an adequate yardstick to frame and protect deprivation of liberty deriving from mutual recognition, which is a more automatic procedure?

The **fourth panel** will address the question of the **fora for the protection of fundamental rights**. Possible questions for discussion are:

- Which level, national or supranational, is better suited to protect fundamental rights, and in particular the right to liberty?
- Are standards with respect to the right to liberty (e.g. the right to information) to be included in mutual recognition instruments, or are they to be included in self-standing instruments?
- Is Brexit going to influence, or lower, the protection of fundamental rights in the UK?
- What would be the impact of Brexit, and of the possible withdrawal from the ECHR, on the trust between judicial authorities that every legal order upholds the same fundamental standards? How is this going to impact the effectiveness of judicial cooperation?
- How is Brexit going to affect rights and understanding of residence in the UK and what would the repercussions be on the question of the right to, or against, transfer based on residence rights?
- What weight will the argument of ‘coherence between EU policies’ have in Brexit negotiations? To what extent will the UK still be able to cherry-pick the legal instruments with which it wants to cooperate?