

Confidence building measures in the creation of an Area of justice in the EU

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Confidence among whom?

- Citizens
- Legislators/parliaments
- Governments/negotiators
- Judges
- Prosecutors
- Police/law enforcement
- Judicial and law enforcement systems

Summary

- Background/history
- Instruments
- Mutual Recognition
- Harmonisation
- The Actors
- Hague Programme
- European judicial culture

Justice and Home Affairs

1. Background – history – 27 systems
2. Maastricht 1/11 93
3. Amsterdam 1/5 99 - Nice
4. Tampere 16/10 99 – The Hague November 2004
5. Rapid development

INSTRUMENTS

- Framework Decision (harmonisation)
- Decision (other)
- No direct effect (but “direct applicability”)
- Obligation to interpret national law to be in conformity (Pupino case)

Joint Investigation Teams

- Framework
Decision (art 13 of
2000 Convention)
- Special
investigative tool
- Simplified MLA
- Innovative



Improve Co-operation

- European Judicial Network - EJN
- Good Practice in MLA
- Liaison Magistrates
- Mutual Evaluation

Mutual recognition

- **Civil and Criminal**
- **Cardiff European Council 15-16 June 1998**
- **Vienna Action Plan, point 45(f)**
"a process should be initiated"

The Tampere Milestones

A. A common EU Asylum and Migration Policy

- I. Partnership with Countries of origin
- II. A common European asylum system
- III. Fair treatment of third country nationals
- IV. Management of migration flows

B. A genuine European Area of Justice

- V. Better access to justice in Europe
- VI. *Mutual recognition of judicial decisions*
- VII. Greater convergence in civil law

Mutual recognition

- **Tampere Conclusion no. 33:**

“Enhanced mutual recognition of judicial decisions and judgements and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights. The European Council therefore endorses the principle of mutual recognition which, in its view, should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union. The principle should apply both to judgements and to other decisions of judicial authorities.”

Programme of Measures

Commission Communication 26/7 2000
OJ C 12/10, 15.1.2001

- **Strengthen cooperation**
- **Enhance protection of individual rights**
- **Rehabilitating offenders**
- **Legal certainty**
- **Rapid**

All stages criminal proceedings

Programme of Measures

1. Taking account of final criminal judgments already delivered by the courts in another Member State

1.1. Ne bis in idem

1.2. Individualised sanctions

Programme of Measures

2. Enforcement of pre-trial orders

2.1. Orders concerning the keeping of evidence and freezing of assets

- 2.1.1. Orders for the purpose of obtaining evidence
- 2.1.2. Interim measures with a view to confiscation or to restitution to victims

2.2. Orders relating to persons

- 2.2.1. Arrest warrants
- 2.2.2. Non-custodial supervision measures

2.3. Taking account of decisions to prosecute taken in other Member States

Programme of Measures

3. Sentencing

3.1. Prison sentences

- 3.1.1. Recognition and immediate enforcement of a final sentence delivered in a Member State in respect of a national of another Member State
- 3.1.2. Transfer of persons intent on fleeing justice after they have been finally sentenced
- 3.1.3. Transfer of sentenced persons in the interests of social rehabilitation.

3.2. Fines

3.3. Confiscation

3.4. Disqualifications and similar sanctions

Programme of Measures

4. Post-sentencing follow-up decisions
5. Peer evaluation



Gözutok/Brügge C-187/01

- The Court said (p 33)

« In those circumstances, whether the *ne bis in idem* principle ... is applied to procedures whereby further prosecution is barred (regardless of whether a court is involved) or to judicial decisions, there is a necessary implication that the Member States have mutual trust in their criminal justice systems and that each of them recognises the criminal law in force in the other Member States even when the outcome would be different if its own national law were applied ».

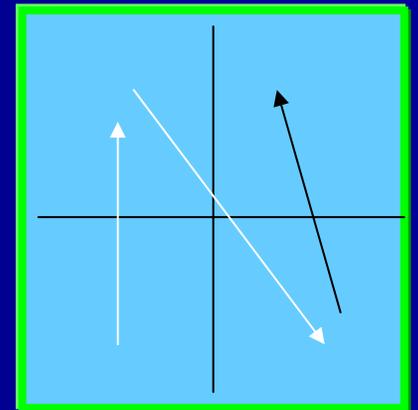
A PARADIGM- SHIFT

SALUT/HELLO



COOPER-
ATION

AREA



Article 29 TEU

THE OBJECTIVE

“to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States....”

Mutual recognition

- **European Arrest Warrant** 2002
- **Freezing of assets** 2003
- **Execution of confiscation orders** 2005
- **Financial penalties** 2005
- **Disqualification decisions**
- **European Evidence Warrant**
- **Child sex offenders**

European arrest warrant

- 9/11
- Depolitisation – « judicial »
- Less grounds for refusal (17)
- No double criminality for 32 categories of crime
- Rapid (60 + 30 + 10 days)
- 1 January 2004

EAW

- FR – 9 days, 22 days, 40 days
- ES – 26 days
- PT - 29
- Average 43 days; 14 if consent
- Previous situation 9 months average

Freezing - 2 August 2005

- Mutual recognition
- Issuing and executing
- Rapid 24 hours
- Judge - judge
- Few grounds for refusal



Mutual Recognition (MR)

Civil and Criminal MR vs Harmonisation

MR:

(Programme of Measures)

- European Arrest Warrant
- Freezing of Assets
- Financial Penalties
- Traffic Fines
- ... etc.

Harmonisation

- Conventions (PIF)
- Joint Actions (Racism & Xenophobia, Confiscation)
- Framework Decisions:
 - Euro
 - Trafficking in Human Beings
 - Drugs
 - Racism & Xenophobia
 - Terrorism
 - Cyber Crime

Harmonisation

- Protection of financial interests of the Community + Protocols 1995
1996/97
- Corruption 1997
- Participation in a criminal organisation 1998
- Private Sector Corruption 1998+2003
- Protection of the Euro 2000
- Money Laundering 2001
- Non Cash Payments 2001
- Smuggling of persons 2002

Harmonisation (cont.)

- Trafficking in human beings 1997+2002
- Sexual exploitation of children 1997+2002
- Terrorism 2002
- Criminal Law Protection of the Environment 2003
- Trafficking in drugs 2005
- Racism and Xenophobia 1996+[200..]
- Attacks against information systems 2005
- Confiscation 2005
- Trafficking in human organs and tissues ?
- Ne bis in idem / double jeopardy ?

Harmonisation (cont.)

- Procedural rights
- Data retention
- Ship source pollution
- Exchange of information

2005

Pupino C – 105/03

« ...the Court considers that the principle of interpretation in conformity with Community law is binding in relation to framework decisions adopted in the context of Title VI of the TEU. When applying national law, the national court that is called upon to interpret it must do so as far as possible in the light of the wording and purpose of the framework decision in order to attain the result which it pursues... »

Pupino - judgment

- “The binding character of framework decisions....places on national authorities, and particularly national courts, an obligation to interpret national law in conformity with Community law”
- “it is perfectly comprehensible that the authors of the Treaty should have considered it useful to make a provision....in order to contribute effectively to the pursuit of the Union’s objectives”

Pupino - judgment

- “It should be noted, however, that the obligation on the national court to refer to the content of a framework decision when interpreting the relevant rules of its national law is limited by general principles of law, particularly those of legal certainty and non-retroactivity”

Actors

- **Europol**
- **OLAF**
- **Eurojust**
- **Task Force Chiefs of Police (PCTF)**
- **Liaison Officers, Liaison Magistrates**
- **Networks (EJN, EUCPN, CEPOL, etc)**
- **Schengen (SIS, SIRENE, Joint Police Offices)**
- **Fundamental Rights Agency/European Border Agency**

Reality?

- Mutual confidence or mutual mistrust?
- Legislator/negotiator/judicial authority/citizen
- What should the EU do?
- European judicial culture »

The Hague Programme – strengthening Freedom, Security and Justice in the EU

- Follow up to Tampere
- Adopted by European Council on 5 November 2004
- Freedom – asylum/immigration
- Security – operational cooperation
- Justice – judicial cooperation in criminal and civil matters

Hague Programme

- Strengthening justice
- European Court of Justice
- Confidence-building and mutual trust
- Judicial cooperation in criminal matters
- Mutual recognition
- Approximation of laws
- Eurojust

Hague Programme

- Judicial cooperation in civil matters
- Facilitation civil law procedure across the borders
- Mutual recognition of decisions
- Enhancing cooperation
- Ensuring coherence and upgrading the quality of EU legislation
- International legal order

Hague Programme

- « the essential role that the setting up of a European Area for Justice will play » when creating a Europe for citizens
- Access to justice and judicial cooperation
- Full employment of mutual recognition

Hague Programme

- Strengthening mutual trust
- « progressive development of a European judicial culture based on diversity of the legal systems of the Member States and unity through European law »
- Access to to a judicial system meeting high standards of quality

What can the EU do?

- System providing for objective and impartial evaluation of EU policies in the field of justice
- Improve mutual understanding among judicial authorities (networks of judicial organisations and institutions)
- Exchange programmes for judicial authorities
- EU component in training

10 Point Action Plan

- Protection of fundamental rights
- Competence and subsidiarity
- Merge the pillars
- Improve decision making
- Commission right of initiative
- Increase democratic control
- Simplify legal instruments
- Increase powers for the ECJ
- Effective implementation
- European standards for procedural rights

The Master Plan?

- 1996-2002 – Improve judicial cooperation (Eurojust, Convention 2000, EJM, EAW...)
- 2000-2004 – improve Asylum/immigration (Directive minimum standards, welcoming asylum seekers, Border Agency)

The Master Plan?

- 2004-2007 – improve police cooperation (exchange of information, PCTF, COSI)
- 2005-2012 – improve justice (procedural law rights, Fundamental Rights Agency, evaluation of justice, access to justice)

THANK
YOU