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INTRODUCTION

In the context of the discussions on mutual recognition held in the Article 36 Committee and the Multidisciplinary Group, the General Secretariat is submitting this paper as a contribution to the delegations' discussions.

A criminal judgment handed down in one State can only be truly effective if the other States agree to give effect to it on their territory, for example by carrying out a sentence imposed abroad, by taking account of any loss of legal capacity or disqualifications attached to the foreign judgment, by refusing to treat a person who has already been sentenced by a foreign court as a first time offender. Moreover, it is in the interest of every State to do so as a State which refuses to accept the criminal judgments of the other States could become a haven for all criminals sentenced abroad. The latter

might, for example, use its territory to carry on activities which would elsewhere be forbidden: a person found guilty of fraud in one country could, for instance, set up a financial establishment in another country because that country refused to accept judgments delivered abroad.

The solidarity among States which is essential to the fight against crime requires that criminal judgments be extra-territorial; that is to say that they have effect outside the territory in which they were delivered.

Efforts have been made to enhance cooperation between States in this area. Conventions have been concluded in various fora.

In the Council of Europe, the problem of the effectiveness of foreign judgments was first dealt with in specific areas by the two European Conventions of 30 November 1964 on Road Traffic Offences and the Supervision of Conditionally Sentenced or Conditionally Released Offenders. It then became necessary to deal with the international validity of foreign criminal judgments in general. That was the aim of the 1970 European Convention on the International Validity of Criminal Judgments. The Convention no longer restricted the question of the international validity of judgments in relation to either the type of offence or the particulars of the judgment delivered. It extended the principles of the two 1964 Conventions in order to make them more widely applicable. The authors of the 1970 Convention on the International Validity of Criminal Judgments drew heavily on the Benelux Treaty on the Enforcement of Judgments in Criminal Matters. But contrary to that Treaty, which regulates only the enforcement of foreign criminal decisions, the 1970 European Convention is divided into two main parts which regulate the two separate aspects of the international effectiveness of a criminal decision: enforcement and the force of *res judicata* of foreign criminal judgments. The overwhelming majority of its Articles – Articles 2 to 52 – regulate the problems of enforcement of a European criminal judgment while only five Articles – Articles 53 to 57 – regulate the other aspect.

In the context of the Council of Europe, we may also mention the 1983 Convention on the Transfer of Sentenced Persons which has links with the problems of recognition of foreign judgments.

The Convention implementing the Schengen Agreement also contains provisions of interest to us here. These are Articles 54 to 58, which deal with the principle of *non bis in idem* and Articles 67 to 69, which are intended to supplement the 1983 European Convention on the Transfer of Sentenced Persons.

Under European Political Cooperation, the Brussels Convention of 13 November 1991 on the Enforcement of Foreign Criminal Sentences was adopted. Like the Benelux Treaty, it is concerned with only one of the two distinct aspects of the international effectiveness of a criminal decision: the enforcement of foreign criminal judgments. In relations between the Member States of the European Union which are also parties to the 1970 Council of Europe Convention, the 1991 Convention will apply only in so far as its provisions are intended to supplement or facilitate the cooperation mechanisms provided for in the 1970 European Convention (Article 20).

Since the entry into force of the Treaty on European Union, the subject has been discussed among the Member States, under the 3rd pillar, in relation only to very specific areas, for example the Convention of 17 June 1998 on Road Traffic or the Joint Action of 3 December 1998 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds from crime.

Following the Cardiff European Summit, at which the European Council asked the Council to identify the scope for greater mutual recognition of decisions in criminal cases, a general discussion on mutual recognition of court decisions in criminal justice was launched in response to an initiative by the United Kingdom delegation.

1. SIGNATURES AND RATIFICATIONS TO DATE

The 1970 European Convention on the International Validity of Criminal Judgments and the Brussels Convention of 13 November 1991 on the Enforcement of Foreign Criminal Sentences have not proved very popular. While the former entered into force on 26 July 1974, i.e. three months after the date of deposit of the third instrument of ratification, as stipulated in Article 58(2) thereof, the latter is not yet in force and is not destined to be in the immediate future since under Article 21(2), its entry into force is subject to ratification by all the Member States.

A. The 1970 European Convention on the International Validity of Criminal Judgments

For the latest report on signatures and ratifications of the European Convention on the International Validity of Criminal Judgments one must refer to 4524/96 JUSTPEN 13 of 14 February 1996, as that Convention is not included in the most recent document, 5438/98 JUSTPEN 11 + ADD 1 of 17 February 1998. It is, however, included in the Annex to 12538/98 CRIMORG 168 of 4 November 1998. It is also worth referring to the Council of Europe's document of 4 January 1999 on signatures and ratifications of Conventions.

Only five Member States have signed and ratified the Convention. They are Austria, Denmark, Spain, the Netherlands and Sweden. All, without exception, have made declarations. All apart from Denmark have made reservations. Two, the Netherlands and Denmark, have made territorial reservations. Belgium, Germany, Greece, Italy, Luxembourg, Portugal and the United Kingdom have signed it. Finland, France and Ireland have neither signed nor ratified it.

With regard to future prospects, reference should be made to 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994, entitled "draft report on the state of signatures and ratifications and on the prospects in the field of judicial cooperation in criminal matters". Unfortunately, that document does not contain any information on the new Member States, namely Austria, Sweden and Finland. The Annex to 12538/98 CRIMORG 168 of 4 November 1998, which contains some information on the three newest Member States, is also worth examining.

These two documents show that only two Member States, Greece and Portugal, intend to ratify the Convention in the near future. Greece envisages doing so in the immediate future [1]. It has refrained from doing so because of the Convention's ineffectiveness, which is a consequence of the small number of countries which have ratified it [2] and because of practical difficulties [3]. It may be in a position to ratify it in 1999 [4]. In the case of Portugal, procedures are under way [5].

France, Belgium, the United Kingdom, Ireland, Germany, Italy and Luxembourg are a lot less certain that they will ratify the Convention, in most cases because of its binding nature or its complexity [6]. However, some of those Member States could be encouraged to ratify it if the other States did so. The reason given by France for its resistance is the binding nature of enforcement of the Convention. Signature and ratification by all the Member States would not persuade it to alter its position. The United Kingdom bases its position on the lack of flexibility imposed by Article 6 (on grounds for refusal). It would prefer to consider cooperation with the other Member States within the framework of the European Political Cooperation Convention on the

1 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
2 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
3 12538/98 CRIMORG 168 of 4 November 1998.
4 12538/98 CRIMORG 168 of 4 November 1998.
5 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
6 On the positions of these countries, see 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.

Enforcement of Foreign Criminal Sentences. For Ireland, the obstacle is constitutional and ratification by the other Member States would not induce it to reconsider its position [1]. Ireland does not intend to ratify the Convention within the forseeable future [2]. Belgium has stated that its position is due to the extent of the changes that would be required to its legislation. The fact that other Member States are ratifying the Convention could lead it to change its position on that point. Germany considers that since the entry into force of the Convention on the Transfer of Sentenced Persons of 21 March 1983, the advantages of ratifying the 1970 Convention are debatable. Italy bases its position on reasons mainly connected with the over-complexity of the Convention and the incompatibility of certain provisions with the Italian system. Luxembourg argues that the European Convention on the Transfer of Sentenced Persons replaces the most useful of the Convention's provisions and that the procedure laid down by the Convention is too complicated. Nevertheless, Luxembourg could consider ratification if the Convention were ratified by all the Union partners.

B. The Brussels Convention of 13 November 1991 on the Enforcement of Foreign Criminal Sentences

With regard to the state of signatures and ratifications of the Brussels Convention of 13 November 1991 on the Enforcement of Foreign Criminal Sentences, reference should be made to 5438/98 JUSTPEN 11 + ADD 1 of 17 February 1998 and the Annex to 12538/98 CRIMORG 168 of 4 November 1998.

Only three States have signed and ratified the Convention. They are Spain, the Netherlands and Germany. All three have made declarations. The Netherlands and Germany have made reservations. Belgium, Greece, Italy, Denmark, France, Portugal, the United Kingdom and Luxembourg have signed it. Austria, Finland, Ireland and Sweden have neither signed nor ratified it.

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1 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
2 12538/98 CRIMORG 168 of 4 November 1998.

With regard to prospects, reference should be made to 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994, entitled "draft report on the state of signatures and ratifications and on the prospects in the field of judicial cooperation in criminal matters". It contains no information on the three Member States Austria, Finland and Sweden. The Annex to 12538/98 CRIMORG 168 of 4 November 1998, which contains some information on the three newest Member States, is also worth examining.

Most of the Member States intend to ratify the Convention except for Ireland, which is prevented by a constitutional hurdle and which has stated that, as in the case of the Council of Europe Convention, it does not intend to ratify the 1991 Convention within the foreseeable future [1].

Procedures are under way in Belgium, Greece and Italy [2]. France intends to ratify the Convention but prior adaptation of domestic legislation is necessary [3]. The question of ratification is currently under discussion [4]. Luxembourg will consider ratification when all the Member States have signed the Convention [5]. The United Kingdom hopes to be able to ratify the Convention but prior legislative changes are necessary [6]. Ratification by Denmark depends on administrative considerations [7]. Finland has stated that is prepared to consider becoming a party to the Convention when other more pressing priorities have been dealt with [8]. For Sweden, this Convention is not a priority because all the Member States are parties to the Council of Europe Convention on the Transfer of Sentenced Persons [9].

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1 12538/98 CRIMORG 168 of 4 November 1998.
2 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
3 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
4 12538/98 CRIMORG 168 of 4 November 1998.
5 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994 and 12538/98 CRIMORG 168 of 4 November 1998.
6 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
7 11562/1/93 JUSTPEN 15 REV 1 of 26 July 1994.
8 12538/98 CRIMORG 168 of 4 November 1998.
9 12538/98 CRIMORG 168 of 4 November 1998. We should mention that other Member States, particularly Germany, have used this Convention to argue against the advantages of ratification of the 1970 Council of Europe Convention (see 11562/1/93 JUSTPEN 15 REV 1 of 22 December 1993).

C. Conclusion

According to the Member States' replies to the various questionnaires on the subject, the Council of Europe Convention does not offer any great prospects for development of mutual recognition between the Fifteen. Only five Member States have ratified it and the number of other Member States likely to become parties to it, even in the long term, seems small [1].

The Member States are more positive about the 1991 EPC Convention. Only three Member States have ratified it. They have made declarations on its advance application. Most Member States have stated their intention to ratify it. Some have said that they are in the process of or on the point of taking steps towards ensuring that they are in a position to ratify it. However, it is still unlikely that the Convention will be ratified by all the Member States in the foreseeable future [2].

2. PRACTICABILITY OF THE 1970 AND 1991 CONVENTIONS

As they relate to the extra-territoriality of the effects of criminal judgments, the matters governed by the 1970 and 1991 Conventions directly affect the sovereignty of States. That is the main reason for the resistance shown by States towards ratifying the two Conventions under discussion. The greater the "damage" to the sovereignty of States, the greater their confidence must be in the quality of the other States' criminal procedures. That is one of the other factors which explain the unpopularity of the two Conventions: States do not seem to be sufficiently confident in the quality of criminal procedure in the other States.

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1 12538/98 CRIMORG 168 of 4 November 1998, p. 3.
2 12538/98 CRIMORG 168 of 4 November 1998, p. 3.

A distinction must be made between the practicability of the provisions in Conventions relating to the enforcement of foreign decisions (A) and that of provisions in Conventions relating to the force of *res judicata* (B). This distinction is justified in particular because the degree of the "damage" inflicted on a State's sovereignty is not the same in the case of enforcement of a foreign criminal decision as where such a decision has the force of *res judicata*. The "damage" to the sovereignty of States is greater in the case of enforcement of a foreign criminal decision than in a case where a decision has the force of *res judicata*. The enforcement of foreign decisions confers an active role on the other States: the recovery of a fine handed down abroad or the enforcement in a prison of a prison sentence delivered abroad makes the State the enforcer of a foreign criminal decision in the place of the foreign State of the judgment, as it presupposes the use of methods of constraint by the police, administrative or judicial authorities. The State of enforcement takes responsibility for concluding a criminal case a previous phase of which has taken place in another country. The force of *res judicata* of foreign criminal judgments confers a more passive role on the other States than that of the judgment and therefore affects their sovereignty less.

A. The enforcement of foreign decisions

The enforcement of foreign decisions is governed by both the 1970 and the 1991 Conventions.

Whether it concerns limits on national sovereignty or confidence-building, cooperation is obviously always easier within a smaller circle of States than in a much larger one of more disparate States. Logically, it should follow that the 1991 Convention, concluded in the small framework of the European Communities, should be easier to implement than the 1970 Convention which was concluded in the wider circle of the Council of Europe. The positions of the Member States set out in JUSTPEN 15 REV 1 seem to imply the 1991 Brussels Convention is "more practicable"

than the 1970 European Convention, as the Member States seem more open to the advantages of signing and ratifying the former than the latter. However, the difference in the frameworks in which the two Conventions were concluded does not alone explain the difference in the "practicability" of the two Conventions. Thus the Benelux Treaty on which the Council of Europe is based has still not entered into force. But that Treaty was concluded in a smaller framework than the European Communities, involving only three extremely close States. As well as the different legal frameworks in which the 1970 and 1991 Conventions were concluded, we must look for other factors to explain the difference in practicability. Two other factors can explain that difference: the "excessively binding" (1) and the "excessively complex" (2) nature of the 1970 Convention. These are the two main criticisms of the 1970 Convention made by the Member States in JUSTPEN 15 REV 1. We must examine the considerations on which these two criticisms are based and see how far the 1991 Convention provides a satisfactory response to them.

(1) On the "binding" nature of the Conventions

Like the Benelux Treaty, the aim of the 1970 Convention on the International Validity of Criminal Judgments is compulsory cooperation, all the conditions for which are laid down in detail, and it proposes unwieldy and inflexible solutions. That is what has put many States off. That is also the reason why the Member States of the European Communities undertook to draw up the Brussels Convention on the same subject, intending to create a more flexible system that relied more on the State' willingness to cooperate than on the mechanical operation of rigid obligations. The 1991 Convention is therefore more considerate of the sovereignty of States than the 1970 Convention.

While the 1970 Convention applied to sentences involving deprivation of liberty, fines or confiscation and disqualifications (Article 2), the 1991 Convention provides that each Member State may, in a declaration, state the offences which it intends to exclude from its scope and that the other Member States may apply the reciprocity rule (Article 1(2)). It is clear from the definition of its scope that the 1991 Convention leaves the States a considerable margin of discretion.

The 1991 Convention is less cut and dried than that of 1970. Whereas the general principle of the 1970 Convention consists, in the circumstances and conditions laid down by the Convention, in conferring upon the requested State – i.e. the State which is being asked by the State which passed the sentence to enforce that sentence – an obligation to enforce the sentence in question, the principle enshrined in the 1991 Convention is more flexible. It consists in the Member States making a commitment to reach mutual agreement on the widest possible cooperation in the matter of enforcement of sentences in accordance with its provisions (Article 2). The 1991 Convention puts the emphasis on consensus. It makes the transfer of enforcement of a sentence subject to certain conditions and to the agreement of the sentencing State and the administering State without listing conclusively the reasons why the administering State may refuse to enforce the sentence in question. The 1970 Convention, on the other hand, makes it compulsory to enforce a sentence passed in the requesting State and gives a definitive list of the reasons why the requested State may refuse to enforce a sentence.

One must not, however, exaggerate the binding nature of the rules contained in the 1970 European Convention. It does not make it compulsory to request enforcement nor to refuse a request (unless enforcement would infringe the principle of *ne bis in idem*). Furthermore, the rules are drafted in such a way as to leave the two States a wide margin of discretion. The list of conditions in which a State may make a request for enforcement leaves it plenty of room for manoeuvre. One need only turn to Article 5(e), which provides that the sentencing State may request another Contracting State to enforce a sanction if it considers that it cannot itself enforce the sanction, even by having recourse to extradition, and that the other State can. The list of grounds on which a request for enforcement may be refused also leaves the requested State plenty of room for manoeuvre. Look no further than Article 6(i) and (j), which provide that the requested State may refuse enforcement "where the request is grounded on Article 5(e) and none of the other conditions mentioned in that article is fulfilled" and "where the requested State considers that the requesting State is itself able to enforce the sanction".

The 1970 Convention is based on the principle that it is for each Contracting State to initiate a procedure for the enforcement of European criminal judgments similar to that for non-European criminal judgments. That procedure is governed by three principles: intervention of a court of the requested State or an administrative authority if the sanction to be enforced is only a fine or a confiscation (Article 37), the right of the sentenced person to a hearing in the enforcement procedure (Article 39(1)) and the possibility of appeal against the decision taken (Article 41). The 1991 Convention, on the other hand, leaves the enforcing State two options: **either** it enforces the penalty imposed in the sentencing State immediately or through a court or administrative order, **or** it converts the sentence into a decision of the administering State through a judicial or administrative procedure, thereby substituting the penalty imposed in the sentencing State by a penalty laid down by the law of the administering State for the same offence (Article 8). The 1991 Convention provides that each Member State may specify in a declaration that it accepts the application of the conversion procedure only for custodial penalties of a specified period of less than six months (first paragraph of Article 8(6)). Other Member States may apply the rule of reciprocity (second paragraph of Article 8(6)). The enforcement procedure under the 1991 Convention is less rigid and less cumbersome than under the 1970 Convention as, unlike the 1970 Convention, the 1991 Convention does not require that matters be conducted through the intermediary of a court or the administrative authorities in the requested State. However, the corollary of that is that the 1991 Convention offers less individual protection than the 1970 Convention. Although the 1970 European Convention offers more individual safeguards during the enforcement procedure, under neither of the two Conventions does the person concerned have the right to express his agreement or disagreement to the transfer of enforcement of the penalty, as under the 1983 European Convention on the Transfer of Sentenced Persons. When a custodial penalty is involved, a person (unless he is an absconder) should be able to express his agreement or disagreement to the transfer of enforcement of the sentence. If he does not agree, enforcement of the sentence should not be transferred. That would avoid forced social rehabilitation or the "export" of prisoners against their will. Taking account of the wishes of the sentenced person would not affect enforcement of the custodial sentence, only its transfer. If the person refused to have enforcement of the sentence transferred, it would still be enforced but in the sentencing State.

It should be noted that certain aspects of the 1991 Convention offer greater balance between the sentencing State and the administering State. The 1970 Convention reserves the right of initiative in the matter to the sentencing State (Article 3). The State in which the sentenced person is ordinarily resident must therefore wait patiently for a request for enforcement to be forwarded to it by the sentencing State or must informally advise that State that it is prepared to enforce the sentence. On that point, the Brussels Convention adequately supplements the European Convention by conferring the right to request transfer of enforcement on either the sentencing State or the administering State (Article 2(2)).

(2) On the complexity of the Conventions

Like the Benelux Treaty, the 1970 European Convention on the International Validity of Criminal Judgments regulates every detail of the conditions under which cooperation must operate, with the result that it is extremely complex. The Brussels Convention, which tries to be more flexible, goes into far less detail. It is less complex. One need only compare the number of provisions of the two Conventions: the 1970 Convention has some fifty Articles on the enforcement of penalties whereas the 1991 Convention has only twenty or so.

One of the factors that render the 1970 Convention so complex is that it has special rules, modelled on the Benelux Treaty, for the enforcement by the requested State of a judgment rendered *in absentia* in the requesting State (Articles 21 to 30). While the absence of any such rule undoubtedly makes the 1991 Convention less cumbersome, it should nevertheless be said that it also has its disadvantages.

The 1970 Convention requires that for there to be enforcement of a foreign criminal judgment it must be irrevocable and enforceable, but it provides for one exception to that condition: judgments rendered *in absentia*. Taking as their basis the Benelux Treaty, the authors of the 1970 Convention understood that as a large number of decisions which cannot be enforced in the sentencing State

fall into the category of judgments rendered *in absentia*, the Convention would have lost much of its practical effect if it excluded judgments *in absentia*. But, as a judgment rendered *in absentia* is more likely to contain errors than a judgment rendered after a hearing of the accused, the authors of the 1970 Convention considered that while judgments rendered *in absentia* could not be excluded from the Convention, nor could they be subject to the same arrangements as judgments rendered after hearing the accused. Like the Benelux Treaty, the 1970 Convention lays down special rules for judgments rendered *in absentia*, independent of national systems, which enable the sentenced person to obtain a hearing in person before a judgment *in absentia* is enforced. The sentenced person may, within thirty days of notification of a judgment rendered *in absentia* in the requesting State, initiate opposition proceedings in the requested State (Articles 23 and 24). That opposition, which is a new European appeal procedure introduced by the Convention itself, is processed either by the courts of the requested State, or by those of the requesting State, at the choice of the sentenced person and in accordance with specific procedures (Articles 25 and 26). If the person does not avail himself of the remedy open to him under the Convention, the original judgment is considered as being enforceable and as having been rendered after the hearing of the accused for the entire purposes of the Convention. By subjecting the transfer of enforcement to the fact that the judgment is final and enforceable without making an exception for judgments rendered *in absentia*, the authors of the 1991 Convention undoubtedly made it less cumbersome but also severely restricted its practical scope.

B. The force of *res judicata*

A distinction should be made between the negative and the positive force of *res judicata*.

The negative force of *res judicata* consists in the principle of *ne bis in idem*. This is enshrined in Articles 53 to 55 of the 1970 Brussels Convention. Note that in the framework of European Political Cooperation, on 25 May 1987 the Member States of the European Communities concluded a Convention on Double Jeopardy. Like the 1991 Brussels Convention, that Convention has still not entered into force. It has been signed and ratified by only five Member States (Denmark, France, Italy, the Netherlands and Portugal). It should be noted that Chapter 3 of Title III of the Convention implementing the Schengen Agreement deals with the principle of double jeopardy [1].

[1] Articles 54 to 58.

The 1970 Convention deals with the positive force of *res judicata* in Articles 56 and 57. To recognise the positive force of *res judicata* of a foreign judgment does not mean attaching to it the legal effects which the foreign law attributes to it, but instead taking it into consideration in order to obtain certain consequences provided for by national criminal law, for example to confirm recidivism, to impose disqualifications or incapacities provided for under national law, or to revoke a conditional suspension of enforcement of a penalty. Regarding the positive force of *res judicata* of a foreign judgment, the wording used in the 1970 Convention is particularly woolly. This can be easily explained by the major differences between European countries. For example, in cases of recidivism, whereas Germany, the United Kingdom and Ireland refuse to take account of foreign criminal judgments, Denmark and Italy allow it. Despite that one cannot help being surprised by the difference in tone compared with the first part of the 1970 Convention on the Enforcement of Foreign Criminal Judgments which is much more comminatory and ambitious and affects the sovereignty of the States far more, and is thus *a priori* much more sensitive. Numerous authors have found the Convention's provisions on this matter very disappointing. They do not make it compulsory to take into consideration a foreign decision. Article 56 only goes as far as to state that each Contracting State shall legislate as it deems appropriate to enable its courts to take into consideration any previous European criminal judgment rendered for another offence after a hearing of the accused with a view to attaching to it all or some of the effects which its law attaches to judgments rendered in its territory. Similarly, under Article 57 each Contracting State must legislate as it deems appropriate to allow the taking into consideration of any European criminal judgment rendered after a hearing of the accused so as to enable application of any disqualifications attached by its law to judgments rendered in its territory. The Contracting States also have the possibility of making a reservation stating that they accept application of the Title on *res judicata* in respect of one of its two aspects only (negative or positive force).

2. LATEST DEVELOPMENTS IN MUTUAL RECOGNITION OF CRIMINAL JUDICIAL DECISIONS BEETWEEN MEMBER STATES OF THE EUROPEAN UNION

The Cardiff European Council asked the Council to identify the scope for greater mutual recognition of decisions of Member States' courts in criminal cases.

The Action Plan on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice contains a number of provisions on mutual recognition of criminal judgments. Amongst other things it states that within two years after the entry into force of the new Treaty, a process should be initiated with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters (point 45(f)).

In response to the Cardiff European Council's request, the Austrian Presidency prepared and presented to the MDG a questionnaire (attached to 10066/98 CRIMORG 115) the purpose of which was to collect information for assessing the prospects for the development of agreements on mutual recognition among the Fifteen. The questions concern principally the two instruments specifically dealing with international recognition of criminal judgments, namely the 1970 European Convention and the 1991 EPC Convention. Part A of the questionnaire was addressed to the Member States which were not parties to the Council of Europe Convention or the EPC Convention or either. Part B was addressed to the Member States which had ratified one or the other or both. The questionnaire was approved and forwarded to the Member States. Their replies were summarised in 12538/98 CRIMORG 168 of 4 November 1998.

The United Kingdom initiated a discussion on the problems of mutual recognition of court decisions in criminal justice. In that context, two documents in particular were produced: 10600/98 CRIMORG 121 CK4 39 JUSTPEN 78 of 27 July 1998 and 7090/99 CRIMORG 35 of 29 March 1999. They emphasise the importance of mutual recognition in improving judicial cooperation in criminal matters and the need to construct a long-term coherent programme designed to achieve full mutual recognition for judicial cooperation. The United Kingdom makes short-term, medium-term and long-term proposals. Without going into them in detail, the thrust of its proposals is as follows:

* The programme should deal with mutual recognition in two stages: first of all, develop arrangements for certain judicial decisions or criminal judgments to be enforced by the judicial authorities of the requested Member State. There would be a presumption in favour of enforcement, combined with limited grounds for refusal. Next, the Union could aim to make such decisions and judgments directly enforceable in all Member States.

* According to the Action Plan on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice, procedural rules should respond to broadly the same guarantees, ensuring that people will not be treated unevenly according to the jurisdiction dealing with their case (point 19). The ECHR does indeed already ensure a comparable level of protection but it could be useful to supplement the ECHR by adopting codes of best practice for transnational issues or matters of common interest.

* The programme should cover both judicial decisions in criminal cases taken before judgment is pronounced, such as, for example, arrest warrants, and the judgment itself. On the latter aspect, the United Kingdom considers that future work must attempt to overcome the obstacles to Member States' ratification of the two main Conventions on the subject.

* Mutual recognition must not be treated in isolation but in parallel with the other elements of the new Action Plan.

CONCLUSION

While the international effectiveness of criminal judgments is essential to the workings of justice, international mutual assistance in criminal matters is very limited in this respect. This is reflected in the small number of ratifications of the 1970 Convention on the International Validity of Criminal Judgments and the 1991 Convention on the Enforcement of Foreign Criminal Sentences. Considering that a criminal judgment is the expression of a State's sovereignty and is delivered in application of the law of the State solely to safeguard its law and order it is the doctrine of territoriality which predominates.

With regard to prospects, the general debate on mutual recognition of criminal decisions which has been initiated in the EU framework is to be welcomed. The discussions in that context reveal that the 1991 Convention seems more practicable than that of 1970 and States seem more inclined to ratify it than the 1970 Convention. However, that greater practicability has its down side. While it comes twenty years after the 1970 European Convention, against a background of growing internationalisation and in a smaller legal framework in which there should be greater confidence all round, the mutual assistance in criminal matters introduced by the 1991 Convention is less highly evolved, less effective and less far-reaching.

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