



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMUNICATION FROM THE COMMISSION
TO THE COUNCIL AND THE EUROPEAN PARLIAMENT**

Mutual Recognition of Final Decisions in Criminal Matters

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INTRODUCTION

Article 31 (a) TEU foresees that common action on judicial cooperation in criminal matters shall include “facilitating and accelerating cooperation between competent ministries and judicial or equivalent authorities of the Member States in relation to [...] the enforcement of decisions.” Traditional judicial cooperation in criminal matters is based on a variety of international legal instruments, which are overwhelmingly characterised by what one might call the “request”-principle: One sovereign state makes a request to another sovereign state, who then determines whether it will or will not comply with this request. Sometimes, the rules on compliance are rather strict, not leaving much of a choice; on other occasions, the requested state is quite free in its decision. In almost all cases, the requesting state must await the reply to its request before it gets what its authorities need in order to pursue a criminal case.

This traditional system is not only slow, but also cumbersome, and sometimes it is quite uncertain what results a judge or prosecutor who makes a request will get. Thus, borrowing from concepts that have worked very well in the creation of the Single Market, the idea was born that judicial cooperation might also benefit from the concept of mutual recognition, which, simply stated, means that once a certain measure, such as a decision taken by a judge in exercising his or her official powers in one Member State, has been taken, that measure — in so far as it has extranational implications - would automatically be accepted in all other Member States, and have the same or at least similar effects there. The Commission is well aware of the fact that what might sound simple is indeed very tricky when one begins to look at the details, and it is a main purpose of this Communication to show how the Commission envisages how the European Union might be able to overcome these difficulties.

It is worth recalling that the Tampere European Council stated that “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.” Mutual recognition should thus ensure not only that sentences are enforced, but also that they will be served in a way that protects individual rights. For example, enforcement in another Member State should also be sought when it permits a better social reintegration of the offender.

The principle of mutual recognition is valuable both with regard to decisions taken before a final decision, in particular a judgment, is taken, and with regard to such final decisions themselves. This Communication concentrates on mutual recognition of final decisions.

The present Communication states the Commission’s thinking on the subject of mutual recognition of final decisions in criminal matters. This is a new and complex subject. In many cases, the Communication does not attempt to give final answers to the questions that arise, but tries to identify possible ways forward.

The second main purpose of the Communication is to make a contribution to the programme of measures to implement the principle of mutual recognition demanded by the October 1999 Tampere European Council on Justice and Home Affairs.

The Commission invites the European Parliament and the Council to take note of this Communication and to let the Commission have their respective views on the points presented.

1. HISTORICAL BACKGROUND

The 15/16 June 1998 **Cardiff** European Council asked the Council to identify the scope for greater mutual recognition of decisions of the Member States' courts¹.

The **Action Plan** of 3 December 1998 of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam on an area of freedom, security and justice² also deals with mutual recognition of criminal decisions. Point 45/f asks for the initiation of a process with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters within two years after the entry into force of the Treaty of Amsterdam.

Work on mutual recognition of decisions in criminal matters started in various subgroups of the Council in 1999, and the 15/16 October **Tampere** Special European Council on Justice and Home Affairs Matters demanded that the principle of mutual recognition should become a cornerstone of judicial co-operation in both civil and criminal matters within the EU³. More specifically, the Council and the Commission were asked to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition. In this programme, work should also be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of the MS⁴.

Over the last months, work in the Council's subgroups has concentrated on two aspects of mutual recognition: 1) a programme of measures to be taken with regard to mutual recognition, and 2) mutual recognition of decisions on freezing of assets. Given that many types of assets in general and in particular money in bank accounts can be moved around very quickly indeed, nationally, within the European Community, and even world-wide, it would seem that in the field of freezing of assets, speed is of the utmost importance if law enforcement agencies are to stand any chance of success. Accordingly, the need for an international regime that would make such speed possible is great, and the principle of mutual recognition very much promises to contribute to satisfying this need.

2. THE COMMISSION'S APPROACH

The Commission very much welcomes that work on the issues outlined above is already underway. However, mutual recognition of decisions dealing with freezing of assets is only

¹ Presidency conclusion no. 39.

² Official Journal (OJ) C 19/1 of 23 January 1999.

³ Presidency conclusion no. 33.

⁴ Presidency conclusion no. 37.

one aspect of the whole field of mutual recognition. Not only should the ongoing work be complemented by establishing rules on the recognition of final decisions that deal with the question of whether the frozen assets should be released or actually confiscated, but the principle of mutual recognition should be generally established with regards to both procedural and material decisions. The present Communication is intended to cover the part of the spectrum dealing with mutual recognition of final material decisions.

This Communication is not intended to cover the field of extradition as such. In the long run, extradition between EU Member States may become unnecessary, if decisions taken in another Member State are simply recognised in all other Member States. Until that is the case, a separate effort may be required. In any event, in line with Tampere conclusion no 35, extradition will have to be the subject of special attention in a separate effort.

In order to prepare this Communication, the Commission Services have held two meetings on the subject, with independent and government experts on 10 and 31 May 2000, respectively. The purpose of these meetings was to provide the Commission with feedback on an outline paper that had been drafted on the matter. This communication is based on the feedback provided by the experts and the thoughts developed within the Commission itself.

3. THE TERM “MUTUAL RECOGNITION OF FINAL DECISIONS IN CRIMINAL MATTERS”

3.1. “Mutual Recognition”

Mutual recognition is a principle that is widely understood as being based on the thought that while another state may not deal with a certain matter in the same or even a similar way as one's own state, the results will be such that they are accepted as equivalent to decisions by one's own state. Mutual trust is an important element, not only trust in the adequacy of one's partners rules, but also trust that these rules are correctly applied.

Based on this idea of equivalence and the trust it is based on, the results the other state has reached are allowed to take effect in one's own sphere of legal influence. On this basis, a decision taken by an authority in one state could be accepted as such in another state, even though a comparable authority may not even exist in that state, or could not take such decisions, or would have taken an entirely different decision in a comparable case.

Recognising a foreign decision in criminal matters could be understood as giving it effect outside of the state in which it has been rendered, be it by according it the legal effects foreseen for it by the foreign criminal law, or be it by taking it into account in order to make it have the effects foreseen by the criminal law of the recognising state.

Not always, but often, the concept of mutual recognition goes hand in hand with a certain degree of standardisation of the way states do things. Such standardisation indeed often makes it easier to accept results reached in another state. On the other hand, mutual recognition can to some degree make standardisation unnecessary.

3.2. “Final Decisions”

The definition of this term, notably of the “final” element, has proven to be difficult. A decision as such is understood here as an act by which a certain matter is resolved in a binding way. As a working definition of a final decision, we suggest to include all decisions that rule on the substance of a criminal case, and against which no more ordinary appeal is possible, or, where such an appeal is still possible, it has no suspensive effect⁵.

This working definition is intended to cover not only decisions by courts, but also any other decisions that fulfils the criteria set out. For example, as the case may be under a Member State’s law, the results of victim-offender mediation, or agreements between a suspect and prosecution services, would also be included, if they have as their effect that no further charges can be brought for the same act.

An important question to be addressed in this context is whether decisions taken by administrative authorities should also be subject to mutual recognition. For example, the 1968 Brussels Convention in its Article 25 limits the scope of its recognition and enforcement provisions to decisions given by a court or tribunal. Regarding “criminal matters” as defined below, however, several Member States of the EU have chosen to also let administrative authorities take certain decisions. Therefore, a mutual recognition regime would not be complete if it did not include such decisions. This is also in line with both the 1970 Convention on the International Validity of Criminal Judgements (Article 1b) and the 1991 Convention on the Enforcement of Foreign Criminal Sentences (Article 1.1.a). Furthermore, operational considerations also support this approach: the liability of legal entities where a criminal offence is committed on their behalf or for their benefit, for instance, is not (yet) of a criminal nature in several Member States. A distinction based on the authority having competence to decide could have a distortive effect.

3.3. “Criminal Matters”

(Material) criminal law is traditionally understood as the rules whereby a state foresees sanctions as a reaction to behaviour that it deems incompatible with its social norms, for the purpose of deterring the offender from repeating his offences and deterring others from committing similar acts. Recently, this understanding has widened to include elements of rehabilitation (for example, drug treatment orders).

Furthermore, measures have been taken, not least at the level of the European Union, that foresee responsibility of legal persons for criminal acts⁶. This responsibility can be of a criminal law nature. It is suggested that also measures of a non-criminal

⁵ Such a definition is somewhat in line with provisions already in force with regard to mutual recognition of decisions in **civil and commercial** matters, in the Convention on jurisdiction and the enforcement of judgements in civil and commercial matters (1968 Brussels Convention) (consolidated text in OJ C 27 of 26 January 1998).

⁶ See for example Article 3 of the Second Protocol to the Convention on the protection of the European Communities’ financial interests, (OJ C 221 of 19 July 1997), Article 3 of the Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union (OJ L 351 of 29 December 1998), and Article 8 of the Framework Decision of 29 May 2000 on increasing protection by criminal penalties and other sanctions against counterfeiting in connection with the introduction of the Euro (OJ L 140 of 14 June 2000).

nature should be understood as dealing with “criminal matters” in so far as they are necessary to ensure that legal persons can be held liable for criminal offences committed for their benefit by natural persons holding leading positions within these legal persons.

4. EXISTING INTERNATIONAL LEGAL INSTRUMENTS

As for recognition of final decisions, several instruments are already in existence. The 1970 The Hague Convention on the International Validity of Criminal Judgements was prepared in the Council of Europe and opened for signature. And the EC Member States adopted, in Brussels, on 13 November 1991, the Convention on the Enforcement of Foreign Criminal Sentences. Both these instruments have been poorly ratified, however. A third example, the 1998 EU Convention on Driving Disqualifications, adopted under the Maastricht Treaty, has so far not been ratified by a single EU Member State. The Convention Implementing the Schengen Agreement of 14 June 1985 on the Gradual Abolition of Checks at their Common Borders (Schengen, 19 June 1990) contains in its Title III, Chapter 3 rules on the application of the *ne bis in idem* principle (Articles 54 – 58). In the Schengen framework was also adopted the Agreement on Cooperation in Proceedings for Road Traffic Offences and the Enforcement of Financial Penalties Imposed in Respect thereof^{7 8}.

At the time being, none of these existing instruments is in force among all the EU Member States. Furthermore, it appears that their content would not be sufficient to establish a full regime of mutual recognition.

5. KNOWLEDGE OF PENDING PROCEDURES AND DECISIONS TAKEN IN OTHER MEMBER STATES

In order to be able to recognise a decision taken in another Member State, one must first of all know that such a decision exists, and what its content is. In some situations, the accused can be expected to inform the authorities of the existence of such a decision, notably where this is to his or her advantage, such as in cases where *ne bis in idem* would apply. But in other cases, no such information can be expected. Even when the person concerned informs the authorities, they need to find out whether the information is correct. In this context, since many decisions originating from another Member State will not have been drafted in the working language of the authority concerned, translation will also be required.

It appears there is no European registry of sentences that could be used for this purpose⁹. It would be very useful to establish such a European registry of criminal sentences passed, but

⁷ Decision dated 28 April 1999 (SCH/Com-ex (99) 11 Rev 2).

⁸ In civil and commercial matters, for instance, the 1968 Brussels Convention on Jurisdiction and the Enforcement of Judgements in Civil and Commercial Matters creates a mechanism which, while implying an exequatur procedure before a decision can be enforced in another Member State, nevertheless provides that the decision itself cannot be challenged on grounds of substance (Article 29) and receives automatic recognition (Article 26).

⁹ In the context of developing an EU Strategy on Prevention and Control of Organised Crime for the Beginning of the New Millennium (OJ C 124 of 3 May 2000), it has been envisaged to recommend the creation of a single database of persons who have committed offences connected with organised crime, while taking full account of data protection requirements. This proposal was built upon previous recommendations in the Action Plan to Combat Organized Crime, adopted by the Council on 28 April 1997 (OJ C 251 of 15 August 1997), which called for the exclusion of persons who have committed

also of procedures pending before authorities that will decide on the substance of the matter¹⁰ is. A two-step-approach could be envisaged: the first step would be limited to developing common European multi-language forms that could be used to request information on existing criminal records. By using such forms, practitioners could send a demand for information to the competent (central, one would hope) authorities of all other EU MS to find out whether a person they are dealing with has a criminal history there.

In a second stage, a true central European Criminal Registry should be created. This would not only allow appropriate reactions to recidivism, but also enable prosecuting authorities to quickly and in a simple way check whether procedures have already commenced with regard to a certain person. This, in turn, would not only allow them to avoid bringing charges which would be struck down due to *ne bis in idem*, but could also provide them with valuable information in the investigations of crimes that the person concerned might be involved in. A central registry would also contribute enormously to the EU-wide enforcement of disqualification decisions. Setting up such a European registry of criminal sentences passed and procedures pending requires addressing a number of practical and legal issues among which prominently figures the question of responsibility for entering and keeping updated the information contained in the registers. Data protection would have to be ensured, requiring provisions to be made for questions such as access to data, the right to have data corrected, etc. Furthermore, funds would have to be made available to cover the running cost of the system. The European registry should be accessible via electronic links in order to increase speed and user-friendliness. The centralised registry would not necessarily require a central computer holding all the relevant data, but it might suffice to create links to national registers¹¹.

National laws on criminal records can be expected to vary considerably. For example, different Member States may have different rules as to what kind of convictions are entered into the registry, how long the entry is kept, who has access to the registry, etc. It does not appear necessary to fully harmonise these rules. However, certain minimum standards may have to be established, notably with regard to what data would have to be entered into the system. Furthermore, it would have to be ensured that those requesting information from another Member State have the same access rights as those requesting from within the Member State concerned. The electronic compatibility of the national registries with the European registry system would of course also have to be ensured.

such offences from participation in tender procedures and from receiving subsidies or governmental licences (recommendation No. 7). Similarly, the Commission's communication of 1997 on a Union policy against corruption was requesting the establishment of some form of comprehensive blacklisting system applicable to areas where Community finances were at risk. However, the idea of a database met strong reservations from some Member States, and the wording was replaced by a reference to "an effective mechanism allowing the early identification" of offenders.

¹⁰ See also Recommendation 49(e) of the Action Plan of the Council and the Commission on how Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice, adopted by the Justice and Home Affairs Council in Vienna on 3 December 1998 (OJ C 19 of 23 January 1999).

¹¹ The initiative Germany has recently launched on creating a unit to facilitate the proper coordination of national prosecuting authorities and of supporting criminal investigations (EUROJUST) foresees a role for EUROJUST with regard to the European criminal registry (draft Article 6).

6. THE VARIOUS ASPECTS OF MUTUAL RECOGNITION

6.1. Enforcing Decisions

Recognising a decision means first and foremost to do what is ordered in the decision, to enforce it.

Some of the existing international legal instruments foresee that this is done indirectly by way of converting the foreign decision into a new national decision, which in turn may be either a formal decision, fully reproducing the original one, or a decision “assimilating”, as it were, the foreign decision, i.e. taking the decision which the authorities could have made if they had dealt with the case originally. Both the 1991 European Political Cooperation Convention on the Enforcement of Foreign Criminal Sentences and the 1998 EU Convention on Driving Disqualifications offer some options in that respect.

It is, however, obvious from the context that the Tampere conclusions indicate a preference for direct enforcement. Indeed, paragraph 34 (regarding civil matters) seeks to abolish intermediate procedures and paragraph 35 (relating to extradition) asks to replace extradition by a simple transfer of persons who are fleeing from justice after having been finally sentenced. It can therefore be reasonably assumed that as far as possible, the general objective of mutual recognition should be to give full and direct effect to a final decision throughout the Union.

From a practical point of view, a distinction has to be drawn between enforcing sanctions which can be carried out in another Member States on the basis of a bilateral request on the one hand (such as imprisonment, pecuniary penalties or alternative sanctions) and disqualifications on the other hand (for a detailed analysis of the questions relevant for the enforcement of various types of sanctions, see chapter 9).

6.2. “Ne bis in idem”

Recognising a judgement means also taking it into account. One aspect of this is the so-called “*ne bis in idem*” principle¹², which demands that once certain persons have been subject to a decision on certain facts and legal norms to be applied, they should not be the subject of further decisions on the same matter.

Current legislation in Member States appears to be aligned with one of the following two forms of this principle: Sometimes, where there has already been a prior conviction for the same act in another country, the sentence having been handed down must be taken into account in a way that leads to a reduction of the second

¹² This principle is the subject of the 1987 Convention on Double Jeopardy signed in Brussels in the context of the European Political Cooperation. This convention, however, has only been ratified by nine Member States. The Council of Europe’s 1970 International Validity of Judgements and 1972 Transfer of Proceedings in Criminal Matters Conventions also contain rules on *ne bis in idem*. There are also EU instruments that contain the *ne bis in idem* principle, such as the 1995 Convention on the Protection of the European Communities’ Financial Interest and the 1997 Convention on the Fight against Corruption. The Schengen Implementation Convention of 14 June 1990 in its Title III, Chapter 3, Articles 54 – 58, also contains provisions on *ne bis in idem*, prohibiting sentencing and even prosecution where a decision has already been taken.

sentence. (“Anrechnungsprinzip” - principle of taking into account)¹³ The “Erledigungsprinzip” (principle of exhaustion of proceedings) forbids a second decision on the same matter (and with regard to the same person[s]) altogether.

Full mutual recognition as envisaged to be achieved among EU Member States would have to be based on the principle that a decision taken by no matter which authority in the EU fully deals with the issue and that no further decision needs to be taken at all, i.e. the principle of exhaustion. In other words, if someone was convicted or acquitted¹⁴ for a criminal offence committed in Member State A, he should not be prosecuted for the same facts, however they may be qualified, in Member State B, even if Member State B has jurisdiction over the facts (because e.g. the person in question is a national of Member State B) and even if in Member State B, a different judgement could have been pronounced (e.g. because the offence in question can be punished by longer deprivation of liberty).

While *ne bis in idem* might appear simple in principle, there are numerous problems in the detail. These questions centre on the definition of what is understood by “idem”, “the same facts” or “the same offence”. With regard to the relations among EU Member States, existing international legal instruments may have to be complemented, possibly replaced by an instrument more clearly regulating *ne bis in idem*.

In any event, the occasions when difficulties associated with *ne bis in idem* arise can be expected to become much fewer once a European registry of pending criminal cases and decisions allows much better coordination of prosecutions among the EU Member States. Furthermore, an EU-wide system of jurisdiction would all but make *ne bis in idem* unnecessary at EU level, given that for each case, only one Member State would be competent to rule.

6.3. Other Effects on Further Decisions

Another way of taking a final decision into consideration is that when at a later point in time, a new decision concerning another offence is taken, the fact that someone has been previously convicted is taken into account, i.e. one considers that the person is a recidivist and that (s)he should be sentenced more severely because of that aggravating factor. There is no convention dealing with this aspect and maybe there is no need for international legal rules on this question since national legal systems may leave the judge free to take into account not only the circumstances surrounding the facts, but also the past criminal record of the prosecuted person. However, there seems to be a need to ensure that authorities will know of previous convictions. The offender him- or herself cannot be expected to draw their attention to previous convictions (see chapter 5).

¹³ For example, a person has been convicted for a certain offence in country A, the sentence being two years imprisonment. Country B also has jurisdiction for the matter and the sentence that would be handed down being five years. If country B follows the principle of taking into account, the actual sentence there would be five minus two, thus three years imprisonment.

¹⁴ Current national laws or even international legal instruments appear to not always foresee *ne bis in idem* effect also for acquitting decisions. Sometimes, a distinction is being made between acquittal for lack of evidence that the alleged act was actually committed (In such cases, *ne bis in idem* is usually accepted.) and cases where the act committed is not considered as an offence by the state having rendered the decision (In such cases, *ne bis in idem* is often not accepted.)

“Taking into account” should not only work to the detriment of the offender: many national criminal laws foresee mechanisms that ensure that for multiple offences, sanctions are not strictly accumulated. For example, a professional car thief who is caught having stolen 15 vehicles in one Member State, the penalty for each theft individually being three years’ imprisonment, would not be sentenced to 45 years. It appears that most or all of the Member States’ laws contain mechanisms that might lead to a more severe penalty than for someone who has just committed a single offence, but that no strict accumulation would take place.

One can imagine the same number of offences taking place, not all in one Member State, but in 15 different Member States. All these Member States might, at the same time, but independently prosecute “their” case, each of them coming to a sentence of three years. Even under the current system, this could lead to the following situation: Once the offender has served his sentence in the Member State where he has first been imprisoned, he might be extradited to another Member State, to serve his sentence there. Once this is done, he would yet be transferred to another Member State, etc. Only flexibility in existing extradition instruments might make it possible to avoid the actual prison term becoming 45 years. However, under a mutual recognition regime, all the sentences would have to be recognised in all other Member States, including the one where the offender is first imprisoned. The overall penalty that the Member State would have to execute on the car thief would thus become 45 years.

It thus seems necessary to consider a mechanism to avoid such results, which appear incompatible with an area of freedom, security and justice. One possibility might be the coordination of prosecutions, not unlike it might be done under national law. As soon as one Member State launches a prosecution, this fact would be recorded in the European criminal registry. Thus, all other Member States would be aware of this development. They could then give up jurisdiction over “their” parts of the case in favour of one Member State. This need not even be the Member State that first launched proceedings. In order for Member States to be able to do this, the rules on jurisdiction would have to foresee the possibility of such a transfer. In the judgment by the court of the Member State thus having become solely responsible, the whole matter could be dealt with. This court could also apply mechanisms to avoid strict accumulation.

7. THE SCOPE OF MUTUAL RECOGNITION WITH REGARD TO THE OFFENDER

Rules on the treatment under criminal law of minors and mentally disabled persons differ very much among the Member States. Given this situation, decisions dealing with such persons would be very difficult to recognise, and one might consider that such decisions be excluded from the scope of mutual recognition, at least for the time being.

As to the question who is to be regarded as a minor, it appears unrealistic to expect that Member States could accept a simple solution such as defining minors as all persons below the age of 18 years. It seems more promising to foresee a flexible solution, such as reserving the right for Member States not to recognise decisions affecting minors, leaving the definition of minor to the Member State thus concerned. A maximum age might nevertheless have to be introduced.

8. THE SCOPE OF MUTUAL RECOGNITION WITH REGARD TO THE OFFENCE

There should be no problems with recognition of final decisions that have been taken in areas where material criminal law has been harmonised or approximated, like corruption, trafficking in human beings or participation in a criminal organisation. Even beyond these areas, there is no a priori reason not to apply mutual recognition. The Tampere conclusions do not exclude that common minimum standards may be necessary, but only with reference to certain aspects of procedural, not substantive, law¹⁵. The trend is to improve judicial cooperation under the form of mutual assistance or of extradition procedures in a horizontal way. When facilitation mechanisms of cooperation have been provided in instruments dealing with particular sectors, it was perceived as anticipating a more global approach.

Current international legal instruments on recognition of foreign decisions often foresee that where there is no dual criminality, recognition can be refused¹⁶. If this requirement for mutual recognition were upheld, each validation procedure carried out would have to establish whether it is fulfilled. Not only would this lead to an additional step for each and every validation procedure, but it would considerably lengthen validation procedures in certain cases. For example, it may have to be re-established what the offender actually did. Some elements of fact may not have been relevant under the criminal law of the issuing Member State, and thus not investigated. Under the law of the executing Member State, they might be essential. In such cases, the need could arise to take steps that would be almost equivalent to reopening the case, examining additional evidence, etc. One way to overcome this difficulty might be to exclude from the scope of mutual recognition, some behaviours, which are criminalised in certain Member States, but not in others. Examples are probably very few and relate to particularly sensitive areas (e.g. abortion, euthanasia, press offences, soft drugs offences). However, such an approach could also lead to considerable difficulties when it is necessary to determine whether a certain case falls under an exception or not.

If, on the other hand, the requirement of dual criminality were given up, and no system of jurisdiction that for each case identifies one Member State as exclusively competent were created, one of the following two situations could arise: A Member State sanctions behaviour, which in another Member State is not an offence. The latter Member State would then be obliged to recognise the former Member State's decision, and under certain circumstances would have to enforce a sentence handed down for an act that is not an offence under its law. The opposite situation, where a Member State that regards a certain act as a criminal offence would have to recognise an acquitting decision from a Member State where such acts are legal, could in principle also arise¹⁷.

¹⁵ Presidency conclusion no. 37.

¹⁶ See Article 5/b of the 1991 Brussels Convention between the EC Member States on the enforcement of foreign criminal sentences, and Article 4/1 of the 1970 Council of Europe Convention on the international validity of criminal judgments (ETS 70).

¹⁷ This could lead to consequences that some might find difficult to accept. For example, in Member State A, euthanasia is a crime, whereas in Member State B, it is legal if the person wishing to die gives his or her consent in a written statement. Both Member States under their national, non-coordinated rules have jurisdiction for the matter. A person having performed euthanasia covered by a written statement wishing to obtain immunity for this act in Member State A could see to it that he or she is prosecuted in Member State B, withholding the fact that the written consent has been obtained. Once the trial has begun, he or she would present the statement, and could be sure of an acquittal, which would then have to be recognised in Member State A.

It would thus appear that by examining which offences should be covered by mutual recognition, there are further strong arguments for establishing an EU-wide system of jurisdiction (see point 13 below).

A different question is whether mutual recognition should not be reserved for more serious forms of crime. The definition of a serious crime is, however, not entirely homogeneous in various instruments¹⁸. Bearing in mind the double purpose of mutual recognition, there is however no reason to limit the application of the principle to serious crime (at least with regard to recognition of final decisions). On the contrary, persons convicted for offences that are not seen as serious crimes certainly should qualify for enforcement in their Member State of origin as well as more “serious” criminals. This could significantly increase their chances of successful reintegration into society. Also, there is no apparent reason why decisions dealing with less serious forms of crime should not be taken into consideration when another decision is taken, be it for aggravating, *ne bis in idem*, or other purposes.

9. THE VARIOUS TYPES OF SANCTIONS

The question as to whether mutual recognition would apply whatever the sanction imposed is more difficult. This is nevertheless one of the core issues¹⁹.

9.1. Custodial Penalties

In this area, two sets of interests have to be accommodated: the interest of the Member State where the sentence was pronounced to have it enforced, and the interest of the person convicted to have a realistic chance of reintegration into society²⁰.

The latter consideration leads to the conclusion that custodial penalties should as a general rule be executed as close to the social environment into which the offender is to be reintegrated as possible. In most cases, this will be in the offender’s Member State of residence.

When a sentence issued in another Member State is executed in a Member State, the question arises which Member State is competent to take decisions relevant for the

¹⁸ Compare the 1996 EU Convention on Extradition, Article 2; the 1998 Joint Action on Money Laundering, Article 1b; and the 1995 Convention on Protection of the Community’s Financial Interests, Article 2.1.

¹⁹ The 1970 The Hague Convention on the International Validity of Criminal Judgements covers deprivation of liberty, fines or confiscation and disqualifications (Article 2), but the requested Member State may refuse enforcement of disqualification. The 1991 Convention on the Enforcement of Foreign Criminal Sentences only covers custodial or pecuniary penalties. The 1998 Convention on Driving Disqualifications by definition only deals with the third category.

²⁰ This is why both the 1970 The Hague Convention on the International Validity of Criminal Judgements and the 1991 Convention on the Enforcement of Foreign Criminal Sentences limit the possibility to enforce a sentence in another country to cases where the person is a national of, or resides within, or is already serving a sentence in that other country. The 1991 Convention on the Enforcement of Foreign Criminal Sentences moreover permits the Member State of residence or nationality itself to ask for the transfer of enforcement. Remarkably enough, none of these instruments provide for the person to be heard on the question as to where the sentence will be served.

execution, such as early release²¹. It would seem that mutual trust should work both ways: while the executing Member State trusts the issuing Member State that the decision it has handed down is correct, the issuing Member State should trust the executing Member State that the way it handles the execution is correct. Thus, it would appear that decisions relevant for the execution, which are based on the behaviour of the prisoner, should fall within the competence of the executing Member State. Practical reasons also speak for this solution: it is the authorities of the executing Member State who are in direct contact with the prisoner and thus best placed to form an opinion on his or her behaviour. It should not be ruled out that the authorities of the issuing Member State be consulted, or at least informed, before a measure is taken. Another option might be that the issuing Member State could impose some limits or conditions at the moment of the transfer (e.g. in order to protect or inform the victim).

Pardons, amnesties and other measures, which are not linked to the behaviour of the sentenced person while in custody, should remain within the responsibility of issuing Member State.

Another question that may have to be addressed is the cost of imprisonment²², which can be considerable. Here, one might be able to base one's thoughts on the principle that, whoever is interested in a certain measure to be taken, ought also to bear the financial burden. When a Member State issues a decision sentencing a person to imprisonment, it does so in the implementation of its criminal law policy. One can safely assume that this measure is thus in that Member State's interest. Certainly, there may be an interest of other Member States or rather of society as a whole that certain offenders are kept in prison for a certain period, notably with regard to prevention, but it appears difficult to charge prison costs to society as a whole. Thus, the basic rule could be that it is the issuing Member State that has to bear the cost of imprisonment.

However, the current system seems to be based on the principle that when a state agrees to execute a prison sentence for another state, it will not seek reimbursement of the costs incurred. Maintaining such a system would appear to be less complicated in practice, as it would avoid the administrative effort for making and receiving the payments.

9.2. Pecuniary Penalties

Generally, mutual recognition of final decisions imposing fines should apply to all such decisions, whether the fine is very high or relatively trivial.

It is in particular with regard to the latter cases, where minor infractions such as small traffic offences are sanctioned, that the simple and quick mutual recognition

²¹ The 1991 Convention on the Enforcement of Foreign Criminal Sentences does not differ fundamentally from the 1970 The Hague Convention on the International Validity of Criminal Judgements with regard to the responsibility regarding enforcement after transfer. It is worth noting in particular that both give competence to the State where the sentence is served to decide on procedures and related measures. Only the Hague Convention however includes explicitly conditional release among these measures.

²² The issue of costs involved in keeping the person in custody is not addressed in the existing conventions, nor does the financial burden give any ground for refusal to enforce the sentence pronounced in the other State.

regime shows its advantages. Conventional international enforcement would incur costs that would in many cases be higher than the fine imposed. However, not enforcing minor fines in other Member States would send the wrong signal: this could lead to the impression that as long as one makes it across the border, fines pronounced for offences committed abroad will not be executed, which would not seem to be in line with the concept of an area of freedom, security and justice. On the other hand, it seems that it would be difficult to accept for a citizen who has committed a minor infraction that just because the offence was committed in another Member State, he or she would have to pay procedural costs far exceeding the fine itself. A fine collection system based on mutual recognition could be simple and thus could be expected to only incur low procedural costs.

Three key issues arise. First, the fine imposed sometimes exceeds the maximum fixed in the enforcing Member State for the same offence – this relates to the fundamental choice between direct, full enforcement and conversion into a new decision in the Member State of enforcement. In most cases, it amounts to deciding whether equal treatment²³ between offenders having committed the acts in the same Member State prevails over equal treatment between offenders of the same nationality or residing in the same Member State.

Secondly, there is a difficulty linked to the possible difference in nature between decisions imposing a fine. It may sometimes be necessary to follow administrative or civil proceedings to recover the amount due. The 1991 Convention on the Enforcement of Foreign Criminal Sentences tries to solve this question when the penalty is imposed on a legal person by offering the requested Member State the possibility to indicate its willingness to recover in accordance with its provisions on civil procedure in enforcement matters (Article 9 (2)).

Thirdly, the question needs to be addressed how the collected fines will be divided between the two states involved. There are three options: either the executing Member State keeps the money collected, or it transfers it to the issuing Member State, or the two Member States share. The first option would incur the least administrative effort, the second considerably more, and the third would be the most complicated to administer in practice. An argument for the second alternative might be that the original decision in most cases foresees that the funds are to be paid to the state whose authorities have issued the decisions. If one wishes to recognise also this aspect of the decision, then the money should be made available to the issuing Member State. No matter which option is chosen, mechanisms may have to be found to compensate the executing Member State for the cost of collecting the fine, and one solution might be that the executing Member State acquires the right to charge the person fined, just as would be the case when collecting a fine levied in a national procedure.

9.3. Confiscation

As regards confiscation, the principles established for the recognition and enforcement of pecuniary penalties should be applicable, at least for confiscation of

²³ The use of the term “equal treatment” in this context is in no way meant to exclude the possibility for the decision to be individualised, e.g. according to the financial means of the offender, his obligations towards other persons, such as alimony, etc.

funds, be it cash or money in bank accounts. For the confiscation of other assets, the principles may have to be adapted, though one should still be able to follow the basic lines.

One aspect that may require particular attention with regard to confiscation is the protection of the rights of crime victims and bona-fide third parties.

9.4. Alternative Sanctions

Some legal systems have developed sanctions other than the “classic” ones, such as orders to provide a service to the community.

Two kinds of difficulties might arise: The first is linked to the fact that alternative sanctions are often characterised by a restorative element. For example, the offender is obliged to take action beneficial to the community as a whole or to do something for the benefit of the victim(s) of the offence. With regard to this, there is a need to balance the potential benefit for the community or individual victim against whom the offence was directed with the benefit of permitting the offender to render the service in the Member State where he or she is socially integrated. Executing a community service in another Member State would not help the community against whose values the offence was directed. On the other hand, having to perform community service far from one’s home would make for a much harsher penalty.

Secondly, some Member States have developed alternative measures to a lesser degree and may not have the appropriate social environment and monitoring bodies: transferring the implementation of the measure there may not achieve the intended educational effect. Given this potential difficulty, it might be preferable to start a comparative analysis with a view possibly at a later stage to put in place a cooperation mechanism, which could facilitate an agreement between the Member States concerned.

Therefore, whereas in principle mutual recognition of alternative sanctions should follow the same guidelines as that of custodial or pecuniary penalties, it seems legitimate, due to the wide range of types and modalities of measures that could fall within that category, to leave more discretion to the Member States concerned. Each of them could ask for the transfer but the requested Member State would not be obliged to consent.

9.5. Disqualifications

If, after having been subject to a decision as foreseen under point 3.2 that has prohibited the exercise of a function or a profession, blacklisted for public expenditure, forbidden to exercise activities which imply contact with children, or otherwise disqualified, the person concerned simply crosses the border and exercises that function, applies for a public contract or receives a grant in the neighbouring Member States, the effect of the sanction would be largely neutralised. The Commission is fully aware that extending the effect of disqualifications beyond the Member State in which they have been pronounced could be seen as an aggravation of the situation of the sentenced person, but this measure appears necessary in order to avoid the effects described above, which would be incompatible with an area of freedom, security, and justice. Therefore, particular efforts should be undertaken to overcome the obstacles to mutual recognition of disqualifications.

Mutual recognition of disqualifications (and of similar measures like prohibition to exercise some activities) raises completely different practical issues than the sanctions discussed above. Many disqualifications and similar sanctions, such as those pronounced with regard to rights to perform certain professional activities, if they are to be effective in the context of the internal market, must be recognised and enforced throughout the Union. Mutual recognition here must be multilateral, indeed Union-wide, and compliance with the decision must be controlled until its expiry. There seems to be no other way of rendering this possible than to create registers, into which decisions would be entered as soon as they are taken (or have become final), in a determined format indicating as a minimum the identification data of the disqualified person or entity, the activities prohibited and the length of the sanction. It is a considerable task entailing the same difficulties as encountered with the database on persons who have committed offences in connection with organised crime, which was included in the recently developed EU Strategy against Organised Crime²⁴. In particular, data protection issues are at the core of the work and access to such a register is a complex issue: how, for instance, would the regulatory bodies responsible for supervising the activities be informed (e.g. in the financial sector or in the educational world, depending on the nature of the disqualification)?

10. PROTECTION OF INDIVIDUAL RIGHTS

In conclusion no 33 of its Tampere meeting, the European Council expresses the opinion that enhanced mutual recognition would also facilitate the judicial protection of individual rights. It must therefore be ensured that the treatment of suspects and the rights of the defence, would not only not suffer from the implementation of the principle, but that the safeguards would even be improved through the process. The cornerstone for any thoughts in this area remains the 1950 European Convention on Human Rights, and in particular its Articles 5, 6 and 7. Some specific aspects of procedural law could nevertheless be spelled out in more detail, for instance the conditions under which legal advice and interpretation are provided. The same can be said for particular types of procedures such as streamline procedures for offenders caught red-handed or procedures in absentia²⁵.

11. ASPECTS OF PROCEDURAL LAW ON WHICH COMMON MINIMUM STANDARDS ARE CONSIDERED NECESSARY

Conclusion no 37 of the Tampere Special European Council asks for work to be launched on those aspects of procedural law on which common minimum standards are considered necessary in order to facilitate the application of the principle of mutual recognition, respecting the fundamental legal principles of Member States. The European Council thus acknowledges that mutual recognition cannot entirely replace approximation of law, but that the two should go hand in hand.

²⁴ The prevention and control of organised crime: a European Union strategy for the beginning of the new millennium (OJ C 124 of 3 May 2000). See also point 5 above.

²⁵ The 1970 Convention on the International Validity of Criminal Judgements contains an entire section devoted to judgements delivered in absentia.

It will therefore be necessary to determine in which fields such common minimum standards are necessary in order to ensure the necessary mutual trust that makes mutual recognition possible, and in a second step to establish these standards themselves.

Areas in which common standards might be considered necessary could be:

- The protection of the accused in the procedure, with regard to rights of the defence such as: access to legal advice and representation, interpretation and translation in cases where the accused does not know the language of the procedure well enough, access to court (in case of administrative procedures at the level of appeal)
- The protection of the victim of the offence, with regard to the possibility of being heard in the criminal procedure, the possibility to present evidence, etc.

12. THE VALIDATION (“EXEQUATUR”) PROCEDURE

Ideally, there should be no need at all for such a procedure: mutual recognition would work directly and automatically, without any additional procedural step. In practice, this seems impossible in most cases. Where the decision is in a language other than the one(s) that the person(s) and authorities concerned understand, it will at least be necessary to translate the text. Furthermore, it would seem necessary that a check be carried out whether the decision actually is a decision as defined under point 3.2 and originates from an authority that is competent to take such decisions.

If one decides to limit the scope of mutual recognition in any way, the validation (authentication) procedure would have to include a step that ensures that the decision taken is within the scope. If one demands respect for certain procedural safeguards as a condition for recognition, checks to that extent may have to be introduced. Indeed, with every additional point that one foresees to be checked before a decision is recognised in the executing Member State, the validation procedure becomes more complicated and lengthier, thereby detracting from mutual recognition’s main advantages, speed and simplicity. Too heavy a validation procedure would have the effect of only allowing a mutual recognition regime that in practice would work very much as the traditional “request” regime.

The practical considerations made with regard to the various types of sanctions indicate that it might be necessary to foresee different validation procedures for different decisions. For example, where the type of sanction imposed does not exist in the executing Member State, a more elaborate conversion procedure might be necessary.

13. PREVENTING CONFLICTS OF JURISDICTION BETWEEN MEMBER STATES

Article 31/d TEU foresees that common action on judicial cooperation in criminal matters shall include preventing conflicts of jurisdiction between Member States.

The current situation is that many criminal laws provide for several grounds of jurisdiction, which is reflected in various EU instruments²⁶. The problem becomes particularly prominent

²⁶ See, for example, Joint Action of 24 February 1997 concerning action to combat trafficking in human beings and sexual exploitation of children, Title II/A/f (OJ L 63 of 4 March 1997); Convention of 26 May 1997 on the fight against corruption involving officials of the European Communities or officials of the Member States of the European Union, Article 7 (OJ C 195 of 25 June 1997), Joint

in cases where universal jurisdiction is applied, as foreseen by several legal instruments²⁷. As a consequence, it is not unusual for several Member States to have competent jurisdiction. There is neither a rule of *lis pendens* nor any ranking between the grounds of jurisdiction, only an incentive sometimes to co-ordinate and, to the extent possible, centralise prosecutions²⁸.

It is already among the tasks of the contact points within the European Judicial Network to facilitate co-ordination in cases of a series of requests from local judicial authorities²⁹. Moreover, the 1998 Vienna Action Plan adopted by the Council and Commission³⁰ envisages an examination, within five years of the entry into force of the Amsterdam Treaty, of the possibility of creating a register of pending cases, precisely as a way of preventing conflicts of jurisdiction. In the absence of a ranking of competent jurisdictions, all one could do would be to foresee a derogation from mutual recognition in cases where the recognising Member State has jurisdiction and does prosecute or had jurisdiction but decided not to take proceedings³¹. This, however, appears like a serious undermining of the principle of mutual recognition.

13.1. Coordination

One way to settle conflicting claims to jurisdiction between Member States and consequently multiple prosecutions might be to develop criteria for ranking claims to jurisdiction, and to charge an existing or yet to be created body with deciding which Member State is competent on a case-by-case basis, taking into account these criteria. This task might be entrusted to Eurojust, the Court of Justice, or another body.

However, if this set of guidelines were to leave a margin of appreciation for the deciding body, the body might be put into a particularly difficult situation when dealing with highly political cases. When using its discretion in filling the margin of appreciation, it can expect to be subject to intense criticism, whichever way it decides. If the body were able show that its decision is based on established rules, it could still expect to draw criticism, notably from those who might think that the rules should have been interpreted differently, but this should be much easier to bear than in the former case.

Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union, Article 4 (OJ L 351 of 29 December 1998), Joint Action of 22 December 1998 on corruption in the private sector, Article 7 (OJ L 358 of 31 December 1998).

²⁷ E.g. 1997 Joint Action Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children.

²⁸ As in Article 6 of the 1995 Convention on the Protection of the European Communities' Financial Interests or in Article 4 of the 1998 Joint Action on Participation in a Criminal Organisation.

²⁹ See Article 4(3) of the Joint Action on the Creation of a European Judicial Network (OJ L 191 of 7 July 1998). The improvement of the operational capacities of the network is currently under discussion.

³⁰ Action Plan of the Council and the Commission on how Best to Implement the Provisions of the Treaty of Amsterdam on an Area of Freedom, Security and Justice (OJ C 19 of 23 January 1999). See the Action Plan's point 49(e).

³¹ Article 6(e) and (f) of the 1970 Convention on the International Validity of Criminal Judgements introduces such motives for not enforcing a decision.

13.2. EU Rules on Exclusive Jurisdiction

With the introduction of mutual recognition, the moment appears to have come for the existing system, by which a number of Member States could have jurisdiction for the same offence, to be complemented by rules clearly designating one Member State. The rules on jurisdiction should not only prevent positive conflicts of jurisdiction (where two or more Member States want to judge a certain matter), but also negative conflicts of jurisdiction (where no Member State wants to judge a certain matter).

Where it is clear according to commonly established rules that the authorities of (only) one Member State are competent to pronounce on a certain case, it will be much easier for the other Member States to recognise and thus accept such a decision than in a situation where it might as well have been their own authorities who would have been competent to decide. This holds true both for differences in material criminal law as well as in procedural criminal law: even in cases where dual criminality is not fulfilled, the Member State required to enforce a decision on an act that under its own law is not an offence should find this easier to accept given that it is based on commonly agreed standards regulating who is responsible for a particular case. Regarding procedural law, there are differences e.g. concerning the so called “*principe d’opportunité des poursuites*” (opportunity principle). Those Member States adhering to this principle leave it up to the prosecution services to decide, when evidence has been gathered that indicates that an offence has taken place, whether to launch a prosecution. Other Member States have a system under which prosecution is obligatory under such circumstances. Again, where a Member State whose prosecution system is based on the opportunity principle has jurisdiction under the commonly established rules, and its prosecution services have decided not to bring charges, the other Member States, who would not have jurisdiction, should find it easier to accept such a decision, and to be excluded from bringing charges themselves.

It could be argued that by creating such a system of mutual recognition linked to rules on jurisdiction, Member States would be compensated for the loss of sovereignty they have to accept when recognising other Member States’ decisions by being given a sphere of competence in which it is up to them to lay down the criminal law rules. This sphere of competence would be extended by the fact that the other Member States would recognise the decisions made within these rules. One could say that the territoriality as a criterion for sovereignty would be replaced by other criteria, which could in many cases be expected to still be based on territoriality. For example, one of the main criteria for jurisdiction could be where the offence has been committed.

Another argument for a clear set of rules on jurisdiction is the need to prevent “forum-shopping”. This should be made impossible no matter which party to the procedure tries to do it, be it the prosecution or the defence.

In most cases, the competent authorities of the Member States (potentially) involved could determine whether the case is for their Member State to take action on or not by interpreting themselves the rules of jurisdiction. Only where the rules are not clear with regard to a specific case or where Member States might – for whatever reason – insist on their competence, could it become necessary to refer the issue to a European body for a decision on the jurisdictional issue. This task could be entrusted to the

European Court of Justice³², to EUROJUST, or to a similar body. No matter what solution is chosen, the ability to speedily decide on jurisdiction questions would be essential.

A disadvantage of establishing a set of rules on the distribution of jurisdiction among the EU Member States is that in order to agree on such a set of rules, a considerable negotiating effort may become necessary. Then again, this could be seen as a “once and for all” effort, as it would eliminate the necessity to deal with the question of jurisdiction in each and every case where two or more Member States’ jurisdictions might be involved. Nevertheless, every validation procedure would have to check whether the issuing Member State was actually competent to take the decision that is to be recognised. This should in most cases not be too much of a burden, especially if the rules on jurisdiction are clear and well-drafted, but one might nevertheless have to expect that sometimes complicated cases would require a considerable effort³³.

There may be cases where Member States will always want to have jurisdiction, no matter where the relevant acts are committed, e.g. with regard to crimes against their national interest, such as attacks against their officials, or breaches of official secrets / national security legislation. Where such exceptions are made to the territoriality principle, they should correspond to a loss of jurisdiction for the Member State on whose territory the act has taken place, in order to avoid the problems arising from the combination of multiple jurisdiction and mutual recognition, as described above. If no such single jurisdiction can be established, it would have to be considered to exempt these issues from mutual recognition.

³² Possibly in a similar way to the one foreseen under the Protocol concerning the interpretation by the Court of Justice of the 1968 Brussels Convention - signed in Luxembourg on 3 June 1971 (OJ L 204 of 2 August 1975. Consolidated version in OJ C 27 of 26 January 1998).

³³ Establishing a system whereby jurisdiction for a certain case is accorded to a certain Member State, and the jurisdiction of all other Member States is thus excluded, could also have consequences with regard to international obligations Member States may have entered into. EU Member States may have agreed towards third countries or international organisations to establish jurisdiction for certain cases. Under an EU system of exclusive jurisdiction, it may be that jurisdiction falls to another Member State, and the first Member State would indeed not have jurisdiction. Whether this would make it necessary to amend existing instruments that create obligations for Member States towards third countries or international organisations appears to depend largely on how they regulate their relationship to other instruments.

**COMMISSION'S CONTRIBUTION TO WORK ON THE PROGRAMME OF MEASURES TO
IMPLEMENT THE PRINCIPLE OF MUTUAL RECOGNITION**

Work on mutual recognition of final decisions in criminal matters could be undertaken in packages dealing with matters that will create a need to answer the same or similar questions. Out of each package, one or several legal instruments could emerge. When discussing the packages, a number of basic questions regarding mutual recognition will have to be borne in mind, notably relating to double criminality, total or only partial recognition, the validation procedure, and the procedural conditions that have to be met in the issuing Member State in order for the decision to be recognisable in the recognising Member State.

The packages are:

- Mutual recognition of decisions imposing monetary fines in general (beyond road traffic offences).
- Measures dealing with the criminal history of a person. In a first stage, European forms should be developed which would allow courts and prosecution services to easily send a demand to the competent (central, one would hope) authorities of all other EU MS to find out whether a person they are dealing with has a criminal history there. In a second stage, a central European Criminal Registry should be created.
- EU rules on exclusive jurisdiction for final decisions in criminal matters
Alternatively, if it were preferred not to embark on the exercise to define common EU jurisdiction rules, questions related to clarification of the *ne bis in idem* principle, as well as the coordination of prosecutions must be addressed. This should be done in parallel with ongoing work on EUROJUST, for which the Tampere European Council has set a deadline of the end of 2001.
- Disqualifications, alternative sanctions, judicial control of individuals
An inventory of existing sanctions may have to be established. Cooperation with the future European Forum on Crime Prevention might be sought.
- Confiscation following freezing of assets
The outcome of work on freezing of assets will have to be taken into account in order to ensure that the two stages are compatible.
- Execution of prison sentences passed in another Member States.
This should be dealt with in the context of measures regarding the transfer of persons (instead of formal extradition). An evaluation of the current extradition situation among the EU MS, including the existing legal instruments, might be called for.

As this Communication only deals with a part of the whole field of mutual recognition, the Commission does not think it useful to establish deadlines for the measures outlined above. It will only be meaningful to set deadlines for individual measures in the preparation of the programme, which will cover all measures to be taken with regard to mutual recognition.

The Commission invites all interested parties to comment (in writing) on this Communication no later than 31 October 2000 to:

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