



Screening Serbia

Analytical examination of the acquis

Chapter 23 Judiciary

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European Commission
Justice

PRINCIPLE of MUTUAL RECOGNITION

History

- **The Tampere European Council (1999) endorsed the principle of mutual recognition as cornerstone of judicial cooperation in both civil and criminal matters within the EU.**
- **On 29 November 2000 the Council, in accordance with the Tampere conclusions, adopted a programme of measures to implement the principle of mutual recognition in criminal matters, giving first priority (measures 6 and 7) to the adoption of an instrument applying the principle of mutual recognition to the freezing of evidence and property.**

Current framework

- **Art. 82 TFEU provides "** Judicial cooperation in criminal matters in the Union shall be based on the principle of mutual recognition of judgments and judicial decisions "
- The EU shall adopt measures to:
- (a) lay down rules and procedures for ensuring recognition throughout the Union of all forms of judgments and judicial decisions;
- (b) prevent and settle conflicts of jurisdiction between Member States;
- (c) support the training of the judiciary and judicial staff;
- (d) facilitate cooperation between judicial or equivalent authorities of the Member States in relation to proceedings in criminal matters and the enforcement of decisions.



Mutual recognition and minimum rules (1/2)

- To the extent necessary to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross-border dimension, the EU may establish minimum rules. They shall concern:
- (a) mutual admissibility of evidence between Member States;
- (b) the rights of individuals in criminal procedure;
- (c) the rights of victims of crime;
- (d) any other specific aspects of criminal procedure [identified by the Council]



Mutual recognition and minimum rules (2/2)

- Articles 83 provides: The EU may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border [...].
- These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime [and other fields identified by the Council].

Context

- **Previously:** Instruments adopted in the framework of the former third pillar:
 - by unanimity
 - no real involvement of the EP
 - no scrutiny of the ECJ
 - no legal means to require a transposition (apart from a general binding obligation)
- **Under Lisbon Treaty:** Ordinary legislative procedure:
 - Qualified majority of the CL
 - Instrument in co-decision (EP and CL)
 - Scrutiny of the ECJ,
 - Infringement procedure by EC and MS,



Mutual recognition

General approach

- Recognition of the accuratness and legality of the decision taken in another MS and enforcing as it was a decision taken by a national judge.
- No harmonised standards.

Direct contacts between authorities

- Issuing and executing state.
- No involvement on substance of the central authority (only pure transmission of requests if necessary).
- Contacts only between competent authorities



Procedure

- Recognition on the basis of the translated certificate (not the decision).
- No possibility to double check the substance of the decision (assumption of trust between different legal orders of the MS).
- Forthwith recognition and immediate execution of the request.
- Information exchange between the issuing and executing state on recognition/execution.

Scope

- Application to all criminal offences.
- Abolition of the dual criminality test with regard to 32 offences, *i.a.*:
 - participation in a criminal organisation,
 - terrorism,
 - trafficking in human beings,
 - sexual exploitation of children and child pornography,
 - illicit trafficking in narcotic drugs and psychotropic substances,
 - illicit trafficking in weapons, munitions and explosives,
 - corruption,
 - computer-related crime,
 - racism and xenophobia,
 - rape ect.



Limited list of grounds for refusal

- In principle all grounds are optional (leaving discretion for the national judge).
- List of grounds is limited (no new grounds should be added).
- Standard grounds, *i.a.* ne bis in idem, territoriality principle, immunity.

Examples of instruments based on the principle of mutual recognition

- Framework Decision 2003/577/JHA on the application of principle of mutual recognition to orders freezing property or evidence
- Framework Decision 2006/783/JHA on the application of principle of mutual recognition to confiscation orders
- Framework Decision 2005/214/JHA on the application of principle of mutual recognition to financial penalties

The way forward

- Monitoring of the national transpositions through, *i.a.* implementation reports.
- Non-legislative measures (soft law):
 - workshops/experts' meetings (forum for discussion, best practices exchange)
 - handbooks
 - awareness raising.
- Reviewing legislation (recasting-lisbonisation).
- Recourse to the Court (action for infringement) after 5 years from the entry into force of the Lisbon Treaty.