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**Informal JHA Ministerial Meeting
Tampere, 20-22 September 2006**

**Follow-up to the mutual recognition programme:
Difficulties in negotiating legislative instruments on the mutual recognition of judicial decisions in criminal matters, and possible solutions**

The concept of mutual recognition

The European Council that was held in Tampere on 15-16 October 1999 endorsed the principle of mutual recognition which, in its view, should become the cornerstone of judicial co-operation in both civil and criminal matters within the Union.

The advantages of mutual recognition over traditional forms of international cooperation are considerable, especially within an area where persons can cross relatively freely from one country to another. As a result of the application of the principle of mutual recognition, judicial decisions can be enforced much more quickly and with greater certainty. The amount of discretion is reduced, as is the scope of grounds for refusal.

In line with the Tampere conclusions, a programme of measures has been established for implementing the principle of mutual recognition in criminal matters. The programme lists a number of instruments that should be enacted. Some of these have already been adopted, such as the framework decision on the European arrest warrant, the framework decision on the freezing of assets and evidence, and the framework decision on financial penalties.¹

Part 3 of the Hague Programme, which followed the Tampere programme, states that the comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters should be completed and further attention should be given to additional proposals in that context. Part 4.2. of the Council and Commission action plan for implementation of the Hague Programme lists measures that should be undertaken in pursuit of the implementation of the mutual recognition principle in criminal matters. These measures are, essentially, new legal instruments that should be adopted.

¹ Council Framework Decision 2002/584/JHA (13 June 2002) on the European arrest warrant and the surrender procedures between Member States, Council Framework Decision 2003/577/JHA (22 July 2003) on the execution in the European Union of orders freezing property or evidence, and Council Framework Decision 2005/214/JHA (24 February 2005) on the application of the principle of mutual recognition to financial penalties. Furthermore, on 8 June 2004, a political agreement was reached on a framework decision on the application of the principle of mutual recognition to confiscation orders. Most recently, on 1-2 June 2006, a political agreement was reached in Council on the text of the Framework Decision on the European Evidence Warrant for obtaining objects, documents and data for use in proceedings in criminal matters.

Increased difficulties in negotiations

During recent times the negotiations on new instruments on mutual recognition have slowed and become more difficult.² In part, this has been due to the fact that instruments on cooperation in criminal matters at times affect constitutionally protected fundamental rights in individual Member States. In addition, instruments on cooperation in criminal matters come up against the limits of mutual trust and confidence between Member States.

The negotiations have also been made more difficult by the requirement of consensus that applies in the third pillar, and by the fact that during 2004, as a result of the enlargement of the EU, the number of negotiating partners grew from 15 to 25.

However, especially as far as the European evidence warrant is concerned, an additional problem is that initiatives for new instruments as well as for instruments that deal with the same subject matter as earlier instruments are being proposed before sufficient practical experience has been received from the application of already existing instruments. This may lead to the impression that there is not yet a real need for new instruments.

In its Communication on "Implementing the Hague Programme: the way forward", the Commission notes that "a study will be presented in 2007 covering the horizontal problems that are encountered in the negotiation and application of mutual recognition principle, and of the gaps in the present system of cooperation in criminal matters that can be addressed by new instruments". The Commission also argues that "mutual confidence needs to be strengthened by laying down EU wide rules on conflicts of jurisdiction, procedural guarantees, presumption of innocence and on minimum standards for gathering of evidence."

Questions for discussion

1. Do the Ministers agree that, following presentation of the study referred to by the Commission, the horizontal problems identified in the study as having been encountered in the negotiation and application of legislative instruments on mutual recognition should be rectified?

2. Do the Ministers agree that, before initiatives are presented for new instruments, an assessment should be made of the practical need for such an instrument and of the relevant legislation of the different Member States?

3. Do the Ministers agree that adoption of common minimum legal standards and more generally measures designed to increase mutual confidence could improve the level of mutual trust and confidence that Member States have in one another's legal systems, and in this way promote the programme of measures on mutual recognition as well as the application of the instruments that have already been adopted?

² Proposals under consideration deal with, among others, prohibitions arising from convictions for sexual offences committed against children, the transfer of sentenced persons between Member States, the exchange of information on criminal records and the taking account of convictions in the Member States in the course of new criminal proceedings.