EUROPEAN JUDICIAL AREA.

JUDICIAL COOPERATION IN CIVIL AND CRIMINAL MATTERS
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PREFACE

Little by little, a European judicial area is becoming a reality. For judicial cooperation in civil and criminal matters, the now famous comment made by Robert Schuman when the European Coal and Steel Community was established over 50 years ago is once more proving true: "Europe will not be made all at once, or according to a single plan. It will be built through successive achievements which first create a de facto solidarity." (Robert Schuman, 9 May 1950).

From the beginning, Europe was an Economic Community. The Maastricht Treaty, signed on February 1992, added cooperation on justice and home affairs. From then on, Member States regarded both civil and criminal judicial cooperation as "matters of common interest."

However, it would be wrong to believe that international or European judicial cooperation did not begin until the Maastricht Treaty. Work undertaken within the European Union has allowed us to draw on a number of instruments negotiated at either the United Nations or the Council of Europe, or in intergovernmental cooperation between Member States by way of European political cooperation (EPC).

Since Maastricht, work has made steady progress; the Treaty of Amsterdam, which came into force on 1 May 1999, improved third-pillar cooperation instruments and transferred judicial cooperation in civil matters to the first pillar; it also brought work carried out under the auspices of the European Union. Lastly, it established the concept of an area of freedom, security and justice.

Since then, driven by the Tampere European Council conclusions (October 1999), civil and criminal judicial cooperation instruments have been coming on stream. Work on criminal justice concerns both alignment of legislation and recognition of judgments given in other Member States.

The Tampere conclusions also call for greater convergence in civil law, particularly in order to remove obstacles to the smooth operation of civil proceedings.

Efforts in the European Union have also shown that judicial cooperation does not work unless we establish cooperation mechanisms enabling the people on the ground, whether civil servants or police officers, to work together. The setting up of Eurojust and the European Judicial Network has thus significantly reduced the gap in judicial cooperation. However, the "nearest common legal provisions and the newly established institutions will not work unless Member States help to make them work, firstly by ratifying cooperation instruments and bringing them into force and secondly by providing bodies such as Eurojust or Eurodac with the information that will enable them to make progress in their investigations. Let us not be under any illusion: faced with the spreading tentacles of transnational organised crime, in its various forms, no State is able to fight it single-handed.

Having fulfilled the various requirements outlined above, (effective instruments ratified by all Member States and practical day-to-day collaboration via the cooperation bodies and communication networks established), we need to motivate those involved on the ground (judges, prosecutors and crime investigators) to take on the difficult task of European judicial cooperation.
INTRODUCTION


I. Preparing a systematic code of the instruments adopted by the European bodies and institutions in the field of civil and criminal justice is no easy task. The European Judicial Area is the result of a long and ongoing process. Its present governing rules were drawn up at different times under different Treaties, each with its specific terminology and legal value. The thirty years between the establishment of the European Communities and the entry into force of the Single Act of 1986, judicial cooperation and the approximation of criminal procedure laws of Member States were very much side issues in European construction, which is why there are no significant instruments to be found in the area of European Union judicial and institutional cooperation during this period. The sole notable exception was in the field of civil cooperation in judicial matters and the Brussels Convention of 29 September 1965, for which preparatory work began shortly after the Treaty of Rome on the basis of Article 220 of the Treaty establishing the European Communities, which provided that Member States should, so far as was necessary, enter into negotiations with each other with a view to securing for the benefit of their nationals, inter alia, «the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts and tribunals and of arbitration awards».

However, outside the Convention, exercising «ius puniendi» remained one of the basic powers of Member States, which had no plans whatsoever to harmonise criminal procedure law, and attempts to improve judicial cooperation within Europe were channelled through another forum: the Council of Europe. The European Communities were a project of an essentially economic nature, focusing on public sectors such as coal and steel production and distribution, atomic energy production and the construction of a Single Market based on common agricultural and customs policies. By contrast, the Council of Europe initially sought to strengthen political links and, in parallel, embarked on high-quality legislative activity in various fields including judicial cooperation and protection of human rights. The need for European countries to improve their action against cor-
However, the dominant view was that the Council of Europe was creating sufficiently international cooperation in judicial matters, that the European Union was primarily a system of economic (and political) integration, and that justice-related matters were the exclusive competence of Member States. At the same time, judicial cooperation in criminal matters was developing significantly within an area of cooperation external to the Union: Europe (the 1985 Agreement and the 1990 Convention).

A. The Maastricht Treaty of 7 February 1992 gave European construction the new dimension of cooperation in justice and home affairs (JHA). Cooperation in the field of JHA, as well until Maastricht had been organised on specific matters and outside the European Union as such, was institutionalised by the TEE, which extended its scope and included the category of Justice and Home Affairs (JHA). Thus, JHA thus remained outside the «Community legal order» and could be no direct impact on national laws.

Title IV of the TEE referred to cooperation in the fields of civil and criminal justice and included provisions on immigration and police and customs cooperation. Under Title IV, cooperation in the field of JHA was to take place through non-binding common positions and actions, as well as Conventions whose enforceability depended on unanimous ratification by the Member States. Article 9 (TEE) provided for the «passage systems» whereby matters subject to cooperation between States other than those of a criminal nature could be transferred included among the policies of the Union with all the resulting consequences (the main implication being that «communalised» matters governed by Directives and Regulations).

Both the Convention of 26 May 1997 on the service of judicial and extrajudicial documents in civil or commercial matters and the Convention of 28 May 1998 on jurisdiction and recognition and enforcement of judgments in matrimonial matters and of judgments relating to parental responsibility over the children of both spouses were adopted on the basis of Article 6 (TEE), whereas the basis for the Convention of 23 November 1995 on insolvency proceedings was Article 220 TEC.

Acts adopted under TEE (Maastricht version) in the area of criminal procedure include not only the Joint Action of 22 April 1996 on a framework for the exchange of liaison