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I

(Information)

COUNCIL

Draft programme of measures for implementation of the principle of mutual recognition of decisions in civil and commercial matters

(2001/C 12/01)

INTRODUCTION

The Treaty of Amsterdam inserted into the Treaty establishing the European Community a new Title IV containing specific provisions on judicial cooperation in civil matters.

In order to lend impetus to this cooperation and to set precise guidelines therefor, the European Council meeting in Tampere on 15 and 16 October 1999 held that 'enhanced mutual recognition of judicial decisions and judgments and the necessary approximation of legislation would facilitate cooperation between authorities and the judicial protection of individual rights'. It approved the principle of mutual recognition, which should become 'the cornerstone of judicial cooperation in both civil and criminal matters within the Union'.

In civil matters, the Tampere European Council advocated 'further reduction of the intermediate measures which are still required to enable the recognition and enforcement of a decision or judgment in the requested State'. 'As a first step these intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgments in the field of family litigation (e.g. on maintenance claims and visiting rights). Such decisions would be automatically recognised throughout the Union without any intermediate proceedings or grounds for refusal of enforcement. This could be accompanied by the setting of minimum standards on specific aspects of civil procedural law'.

It asked the Council and the Commission to adopt, by the end of 2000, a programme of measures to implement the principle of mutual recognition, and added that 'in this programme, work should also be launched on a European Enforcement Order and 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 Brussels Convention of 27 September 1968 lays down rules on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. This Convention has undergone several amendments with the accession of new States to the Community⁽¹⁾ and is now in the process of being converted into a regulation⁽²⁾.

⁽¹⁾ A consolidated version of the Brussels Convention was published in OJ C 27 of 26 January 1998.

⁽²⁾ Usually referred to as the 'Brussels I' Regulation.

The Community has other major achievements to its credit: the 'Brussels II' Regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses, and the Regulation on insolvency proceedings⁽¹⁾.

The principle of mutual recognition of civil and commercial judgments between Member States is therefore not new. However, its implementation has had limited effect to date, for two main reasons. The first relates to the fact that many areas of private law do not come within the ambit of the existing instruments. This applies, for example, to family situations arising through relationships other than marriage, rights in property arising out of a matrimonial relationship, and succession.

The second reason lies with the fact that the existing texts retain certain barriers to the free movement of judicial decisions. The intermediate procedures enabling a ruling handed down in one Member State to be enforced in another are still too restrictive. Thus, despite the changes and simplifications it makes with regard to recognition and enforcement of judgments, the future Brussels I Regulation does not remove all the obstacles to the unhindered movement of judgments within the European Union.

Discussions on the subject were held at the informal meeting of Justice and Home Affairs Ministers in Marseilles on 28 and 29 July 2000.

The current programme of measures establishes objectives and stages for the work to be undertaken within the Union in the coming years to implement the principle of mutual recognition. It advocates the adoption of measures that can facilitate both the activity of economic agents and the everyday lives of citizens.

This programme contains measures that concern the recognition and enforcement in one Member State of a decision taken in another Member State, which implies that harmonised jurisdiction rules should be adopted, as was the case in the Brussels Convention and the Brussels II Regulation. It in no way prejudices work that will be undertaken in other areas under judicial cooperation in civil matters, particularly with regard to conflicts of law. The measures relating to harmonisation of conflict-of-law rules, which may sometimes be incorporated in the same instruments as those relating to jurisdiction, recognition and enforcement of judgments, actually do help facilitate the mutual recognition of judgments.

In the implementation of the measures advocated, account will be taken of the instruments adopted and ongoing work in other international forums.

The approach adopted to establish the programme is threefold:

- identifying the areas in which progress should be made,
- determining the nature, detailed procedures and scope of potential progress,
- fixing the stages for the progress to be made.

I. AREAS OF MUTUAL RECOGNITION

STATE OF PLAY

The 1968 Brussels Convention is the basic instrument. It covers all areas of civil and commercial law except for those which are expressly excluded from its scope, which are listed exhaustively in the text: the status or legal capacity of natural

persons, rights in property arising out of a matrimonial relationship, wills and succession; bankruptcy; social security; and arbitration. The scope will not be changed by the future Brussels I Regulation, which is to replace the Brussels Convention.

Supplementary instruments: the areas excluded from the scope of the Brussels Convention are not yet all covered by instruments supplementing the 1968 provisions.

⁽¹⁾ Council Regulations (EC) No 1347/2000 and (EC) No 1346/2000 of 29 May 2000 (OJ L 160, 30.6.2000).

The Brussels II Regulation of 29 May 2000 applies to civil proceedings relating to divorce, legal separation or marriage annulment and to civil proceedings relating to parental responsibility for the children of both spouses on the occasion of such matrimonial proceedings.

The following are therefore not covered, and remain outside the ambit of any instrument applicable between the Member States:

- certain aspects of divorce litigation or legal separation that are not covered by the Brussels II Regulation (particularly decisions concerning parental responsibility amending decisions taken at the time of the divorce or legal separation),
- family situations arising through relationships other than marriage,
- rights in property arising out of a matrimonial relationship,
- wills and succession.

The Regulation of 29 May 2000 on insolvency proceedings applies to collective proceedings which entail the partial or total divestment of the debtor and the appointment of a liquidator⁽¹⁾.

PROPOSALS

A. IN AREAS NOT YET COVERED BY EXISTING INSTRUMENTS

It is mainly in the area of family law that progress is needed. Legal instruments will be drawn up in both the following areas.

1. **International jurisdiction, recognition and enforcement of judgments relating to the dissolution of rights in property arising out of a matrimonial relationship, to property consequences of the separation of unmarried couples and to succession**

Rights in property arising out of a matrimonial relationship and succession were already featured among the priorities of the Vienna action plan (December 1998). The economic consequences of judgments delivered when matrimonial ties are loosened or dissolved, during the lifetime of the spouses, or on the death of a spouse, are clearly of major interest in the creation of a European Judicial Area. In this context it is possible that, when drawing up instruments, a distinction needs to be drawn between rights in property arising out of a matrimonial relationship and succession. In this respect the

⁽¹⁾ This excludes insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, and collective investment undertakings.

relationship existing in Member States' law between rights in property arising out of a matrimonial relationship and succession will be examined.

The question of property consequences of the separation of unmarried couples will also be dealt with, so that all property aspects of family law can be examined.

2. **International jurisdiction, recognition and enforcement of judgments relating to parental responsibility and other non-property aspects of the separation of couples**

(a) *Family situations arising through relationships other than marriage*

Here it is a matter of supplementing the area covered by the Brussels II Regulation to take account of sociological reality: increasingly, couples are choosing to dispense with any matrimonial formalities, and there is a marked rise in the number of children born out of wedlock.

In order to take this new social reality into consideration, the scope of the Brussels II Regulation should be extended, by means of a separate instrument if necessary, notably to judgments concerning the exercise of parental responsibility with regard to the children of unmarried couples.

(b) *Judgments on parental responsibility other than those taken at the time of the divorce or separation*

The provisions of the Brussels II Regulation relate only to judgments in matrimonial proceedings. In view of the frequency and importance of judgments that are made subsequently and may modify the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation, it is necessary to apply to them the rules governing jurisdiction, recognition and enforcement contained in the Brussels II Regulation. This development must relate both to judgments concerning married couples and to those made in the context of the separation of unmarried couples.

In these new areas, which are not at present covered by any instrument, it will be useful to examine the legal situation in Member States' national law, as well as existing international instruments, in order to gauge the scope that should be given to any instruments that might be drawn up.

B. IN AREAS ALREADY COVERED BY EXISTING INSTRUMENTS

Here, the aim is to make the existing machinery work better by reducing or abolishing obstacles to the free movement of judicial decisions. The Tampere conclusions refer generally to all 'civil matters', but also stress that as a first step these

intermediate procedures should be abolished for titles in respect of small consumer or commercial claims and for certain judgments in the field of family litigation (e.g. on maintenance claims and rights of access).

Thus, two areas are involved: family law on the one hand, more especially rights of access and maintenance claims, and commercial and consumer law on the other. These areas are thus identified as being priorities.

1. Rights of access

France has already tabled an initiative. It is designed to abolish the *exequatur* procedure for the cross-border exercise of rights of access arising from a judgment falling within the scope of the Brussels II Regulation.

2. Maintenance claims

This matter, expressly mentioned in the conclusions of the Tampere European Council, directly concerns the everyday lives of citizens in the same way as the previous matter. Although the guarantee of effective and rapid recovery of maintenance claims is indeed essential to the welfare of very large numbers of people in Europe, this does not necessarily imply that a separate legal instrument has to be drawn up. Maintenance creditors are already covered by provisions of the Brussels Convention and of the future Brussels I Regulation, but it would also be advisable in the long term to abolish the *exequatur* procedure for maintenance creditors, thus boosting the effectiveness of the means by which they safeguard their rights.

3. Uncontested claims

The abolition of *exequatur* for uncontested claims should feature among the Community's priorities.

The substance of the concept of 'uncontested claims' will be specified when the limits of the instruments drawn up in application of the programme are defined. At present, that concept generally covers situations in which a creditor, given the verifiable absence of any dispute by the debtor over the nature or extent of the debt, has obtained an enforcement order against that debtor.

The fact that an *exequatur* procedure can delay the enforcement of judgments concerning uncontested claims is a contradiction in terms. It fully justifies this area being the first in which *exequatur* is abolished. Rapid recovery of outstanding payments is an absolute necessity for business and is a constant concern for the economic sectors whose interest lies in the proper operation of the internal market.

4. Litigation on small claims

The concept of litigation on small claims referred to by the Tampere European Council covers various situations of varying degrees of importance that give rise to different procedures according to the Member State concerned. Discussions on simplifying and speeding up the settlement of cross-border litigation on small claims, in line with the Tampere conclusions, will also, through the establishment of specific common rules of procedure or minimum standards, facilitate the recognition and enforcement of judgments⁽¹⁾.

II. DEGREES OF MUTUAL RECOGNITION

STATE OF PLAY

Current degrees of mutual recognition

In areas not covered by existing instruments, recognition and enforcement of foreign judgments is governed by the law of the requested State and by existing international, bilateral or multilateral agreements on the subject.

In areas already covered, there are two degrees of mutual recognition.

The first degree still features today in the 1968 Brussels Convention and the Brussels II Regulation: recognition is automatic unless contested; a declaration of enforceability (*exequatur*) may be obtained upon application and can be refused on one of the grounds on the exhaustive list in the relevant instrument. This *exequatur* procedure is therefore less complex than would generally result from the application of national law.

The second degree resulted from the review of the Brussels and Lugano Conventions and will be implemented following adoption of the Brussels I Regulation, which is due to replace the 1968 Brussels Convention: the procedure for obtaining a declaration of enforceability is considerably streamlined; it is obtained on completion of certain formalities and can only be contested by the other party at the second stage (system of 'reversing the responsibility for action'). This streamlined *exequatur* will apply to all areas covered by the current 1968 Brussels Convention and to insolvency procedures covered by the Regulation of 29 May 2000.

⁽¹⁾ The Commission is preparing a comparative study of law in the area, based on a questionnaire addressed to the Member States.

PROPOSALS

Achieving further degrees of mutual recognition

A. MEASURES DIRECTLY AFFECTING MUTUAL RECOGNITION

1. Areas not covered by the existing instruments

The approach must be to follow a gradual method to reach the degree of mutual recognition currently achieved by the Brussels II Regulation, before attaining the degree achieved by the future Brussels I Regulation, and then to progress beyond it. However, it will be possible in certain cases to reach new degrees of mutual recognition directly, without any intermediate step.

2. Areas already covered by the existing instruments

In these areas, further progress should be made, with two series of measures.

(a) *First series of measures: further streamlining of intermediate measures and strengthening the effects in the requested State of judgments made in the State of origin*

- (i) Limiting the reasons which can be given for challenging recognition or enforcement of a foreign judgment (for example, removal of the test of public policy, taking account of cases in which this reason is currently used by the Member States' courts).
- (ii) Establishing provisional enforcement: the decision stating enforceability in the requested country would thus be enforceable on a provisional basis, despite the possibility of appeal.

Such a development requires an amendment of Article 47(3) of the draft Brussels I Regulation (Article 39(1) of the Brussels Convention).

- (iii) Establishing protective measures at European level will enable a decision given in one Member State to embrace the authorisation to take protective measures against the debtor's assets in the whole territory of the Union.

This possibility, which is currently not afforded by the draft Brussels I Regulation, would, for example, enable a person who has obtained judgment against a debtor in one Member State, in the event of the latter challenging recovery of his debt, to have

the debtor's property forthwith frozen in another Member State as a protective measure, without recourse to a further procedure. These measures would be without prejudice to the fact that certain types of property may not be seized under domestic law.

- (iv) Improving attachment measures concerning banks, e.g. by establishing a European system for the attachment of bank accounts: with a judgment certified as enforceable in the Member State of origin, measures could be taken in any other Member State, without exequatur and *ipso jure*, for attachment of the debtor's bank accounts. The judgment would become enforceable in the country of attachment, at least for the purposes of the latter, unless contested by the debtor.

(b) *Second series of measures: abolition of intermediate measures*

Abolition, pure and simple, of any checks on the foreign judgment by courts in the requested country allows national judgments to move freely throughout the Community. Each requested State treats these national judgments as if they had been delivered by one of its own courts.

In some areas, abolition of the exequatur might take the form of establishing a true European enforcement order, obtained following a specific, uniform and harmonised procedure⁽¹⁾ laid down within the Community.

B. MEASURES ANCILLARY TO MUTUAL RECOGNITION

1. Minimum standards for certain aspects of civil procedure

It will sometimes be necessary, or even essential, to lay down a number of procedural rules at European level, which will constitute common minimum guarantees intended to strengthen mutual trust between the Member States' legal systems. These guarantees will make it possible, *inter alia*, to ensure that the requirements for a fair trial are strictly observed, in keeping with the European Convention for the Protection of Human Rights and Fundamental Freedoms.

⁽¹⁾ This might be either a uniform procedure laid down in a regulation, or a harmonised procedure set up by each Member State pursuant to a directive.

For each measure under consideration, the question of drawing up some of these minimum guarantees will be examined, in order to determine their usefulness and their role. In certain areas, and particularly where abolition of the *exequatur* is planned, drawing up such minimum guarantees may be a precondition for the desired progress.

If the establishment of minimum guarantees appears to be insufficient, discussions should be directed towards a certain degree of harmonisation of the procedures.

In order to take into account the fundamental principles of law recognised by Member States, measures aiming at the establishment of minimum guarantees or at a certain degree of harmonisation of procedures will be sought most particularly in the case of the mutual recognition of decisions relating to parental responsibility (including those concerning rights of access). Questions relating to the child's best interests and the child's place in the procedure will, *inter alia*, be discussed in this context.

In order to increase the certainty, efficiency and rapidity of service of legal documents, which is clearly one of the foundations of mutual trust between national legal systems, consideration will be given to harmonising the applicable rules or setting minimum standards.

If the parties to proceedings are able to adduce their arguments in a manner recognised as valid by all the Member States, this clearly increases confidence in the proper administration of justice at an early stage in the proceedings, making it easier to dispense with checks later on.

Such a development will take duly into account progress already made on account of the entry into force of Council Regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

2. Efficiency of measures providing for improved enforcement of decisions

Another series of ancillary measures would consist in seeking to make more efficient the enforcement, in the requested State, of judgments delivered in another Member State.

Some of these measures could concern more specifically debtors' assets. It would in fact be much easier to enforce judgments within the European Union if it were possible to obtain accurate information on the debtor's financial position. Measures could therefore be taken to enable precise identification of a debtor's assets in the territory of the Member States.

When devising measures of this kind, account should be taken of the impact they could have on data protection and the confidential nature of certain information as provided for in Member States' domestic law or in international law.

3. Improving judicial cooperation on civil matters in general

These would include measures conducive to implementation of the principle of mutual recognition, i.e. which would make for a climate of improved cooperation between national judicial authorities.

The establishment of the European Judicial Network on civil and commercial matters should accordingly feature in the programme of measures, as an ancillary measure⁽¹⁾.

Mention should also be made of an instrument for enhancing cooperation between Member States' courts on the taking of evidence in civil and commercial matters⁽²⁾.

Similarly, the programme includes the development of measures giving easier access to justice. Here, account will be taken of the follow-up to the Green Paper on legal aid submitted by the Commission in February 2000, with a view to taking initiatives with regard to legal aid in cross-border cases.

Likewise, it would seem particularly useful to make the public better informed on the rules on mutual recognition⁽³⁾.

Lastly, implementation of the mutual recognition principle may be facilitated through harmonisation of conflict-of-law rules.

III. STAGES

METHOD

It is always difficult to set deadlines for work to be achieved in the Community: deadlines which are too short are unrealistic, while those set too far ahead do not provide sufficient incentive for States. Progress should be made in stages, without any precise deadlines, but simply some broad guidelines.

⁽¹⁾ On 25 September 2000, the Commission submitted a proposal for a decision establishing a European Judicial Network in civil and commercial matters.

⁽²⁾ Germany has submitted a draft Regulation in this area.

⁽³⁾ Provisions on information to the public are contained in the Commission's proposal on the establishment of the European Judicial Network in civil and commercial matters.

1. The programme will be put in hand as from adoption of the Brussels I Regulation, which is the basic instrument for mutual recognition.
2. The programme distinguishes between the following four areas of action:
 - areas of civil and commercial law covered by the Brussels I Regulation,
 - areas of family law covered by the Brussels II Regulation, and family situations arising through relationships other than marriage,
 - rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples,
 - wills and succession.
3. In each area stages are established with a view to making gradual progress. A stage is begun when the previous one has ended, at least as regards essentials (for example, Council agreement on an instrument, even if it has not yet been formally adopted for technical reasons); however, this requirement must not prohibit more rapid progress from being made in certain subjects.
4. Several initiatives may be taken at the same time in several areas.
5. Ancillary measures mentioned in the programme are taken whenever they seem necessary, in all areas and at all stages of the programme.

PROPOSALS

A. AREAS COVERED BY THE BRUSSELS I REGULATION

First stage

- European enforcement order for uncontested claims.
- Simplifying and speeding up the settlement of cross-border litigation on small claims.
- Abolition of exequatur for maintenance claims.

Second stage

Revision of the Brussels I Regulation:

- incorporation of previous developments,
- abolition of exequatur in other areas,

- measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement, protective measures, including the attachment of bank accounts).

Third stage

Abolition of exequatur in the areas covered by the Brussels I Regulation.

B. AREA OF FAMILY LAW (BRUSSELS II AND FAMILY SITUATIONS ARISING THROUGH RELATIONSHIPS OTHER THAN MARRIAGE) ⁽¹⁾

First stage

- Abolition of exequatur for judgments on rights of access ⁽²⁾.
- Instrument relating to family situations arising through relationships other than marriage: adoption of the Brussels II Regulation's machinery. This may be a new instrument or a revision of the Brussels II Regulation, through extension of the latter's scope.
- Extending the scope of any instrument(s) adopted earlier to judgments modifying the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation.

Second stage

For every previously adopted instrument:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the Brussels II Regulation and for family situations arising through relationships other than marriage.

⁽¹⁾ It being specified that, with regard to measures concerning judgments on parental responsibility (including judgments on rights of access), the ancillary measures referred to in point II(B)(1) concerning consideration of the child's best interests and the child's place in the procedure should be taken into account.

⁽²⁾ Initiative already presented by France.

C. DISSOLUTION OF RIGHTS IN PROPERTY ARISING OUT OF A MATRIMONIAL RELATIONSHIP AND THE PROPERTY CONSEQUENCES OF THE SEPARATION OF UNMARRIED COUPLES

First stage

Drawing up of one or more instruments on jurisdiction, recognition and enforcement of judgments relating to rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples: adoption of the Brussels II Regulation's machinery.

Second stage

Revision of the instrument(s) drawn up at the first stage:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the instrument(s) drawn up.

D. WILLS AND SUCCESSION

First stage

Drawing up of an instrument on jurisdiction, recognition and enforcement of judgments relating to wills and succession: adoption of the Brussels II Regulation's machinery.

Second stage

Revision of the instrument drawn up at the first stage:

- application of the simplified procedures for recognition and enforcement of the Brussels I Regulation,
- measures to strengthen the effects in the requested State of the judgments made in the State of origin (provisional enforcement and protective measures).

Third stage

Abolition of exequatur for the areas covered by the instrument drawn up.

E. ANCILLARY MEASURES

Two measures have already been proposed: their adoption would seem to be necessary as soon as the programme is launched:

- instrument on the taking of evidence;
- establishment of the European Judicial Network on civil and commercial matters.

Furthermore, for each area of the programme and at each stage, the following ancillary measures could be considered:

- minimum standards for civil procedure;
- harmonisation of rules on, or minimum standards for, the service of judicial documents;
- measures to facilitate the enforcement of judgments, including those allowing identification of a debtor's assets;
- measures for easier access to justice;
- measures for easier provision of information to the public;
- measures relating to harmonisation of conflict-of-law rules.

LAUNCHING, MONITORING AND COMPLETION OF THE PROGRAMME

The programme starts with the launching of work on the first stage in one or more areas. It continues by following the order of stages in each area, on the understanding that progress may be achieved more rapidly in one area than in another.

Five years after adoption of the programme, the Commission will submit to the Council and the Parliament a report on its implementation. The Commission will make any recommendations to the Council that it deems useful for the proper execution of the programme, indicating in particular those areas in which it considers that special efforts should be made.

The monitoring report drawn up by the Commission may also contain recommendations concerning measures which were not initially planned in the programme but which it seemed necessary to adopt subsequently.

The programme of measures is completed by the general abolition of exequatur.

Areas	Brussels I	Brussels II and family situations arising through relationships other than marriage	Rights in property arising out of a matrimonial relationship and the property consequences of the separation of an unmarried couple	Wills and succession	Ancillary measures
Measures	First stage: European enforcement order for uncontested claims Small claims Abolition of exequatur for maintenance claims	First stage: Abolition of exequatur for judgments on rights of access Instrument on family situations arising through relationships other than marriage (separate instrument or revision of Brussels II) Extension of the scope of any instrument(s) adopted to judgments modifying the conditions under which parental responsibility is exercised, as fixed in judgments made at the time of the divorce or separation	First stage: Drafting of one or more instruments on mutual recognition with regard to rights in property arising out of a matrimonial relationship and the property consequences of the separation of unmarried couples: adoption of the Brussels II machinery	First stage: Drafting of an instrument on mutual recognition with regard to wills and succession: adoption of the Brussels II machinery	Instrument on the taking of evidence Establishment of the European Judicial Network on civil and commercial matters Minimum standards of civil procedure Harmonisation of rules on, or minimum standards for, the service of judicial documents Measures to facilitate the enforcement of judgments, including those allowing identification of a debtor's assets Measures for easier access to justice Measures for easier provision of information to the public Measures relating to harmonisation of conflict-of-law rules
	Second stage: Revision of the Brussels I Regulation: — incorporation of previous developments — extension of abolition of exequatur — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement, protective measures, including the attachment of bank accounts)	Second stage: For every previously adopted instrument: — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures)	Second stage: Revision of the instrument(s) drawn up at the first stage: — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures)	Second stage: Revision of the instrument(s) drawn up at the first stage: — application of simplified recognition and enforcement procedures in the Brussels I Regulation — measures to strengthen the effects in the requested State of judgments made in the State of origin (provisional enforcement and protective measures)	
	Third stage: Abolition of exequatur for all the areas covered by the Brussels I Regulation	Third stage: Abolition of exequatur for the areas covered by the Brussels II Regulation and for family situations arising through relationships other than marriage	Third stage: Abolition of exequatur for the areas covered by the instrument(s) drawn up	Third stage: Abolition of exequatur for the areas covered by the instrument drawn up	

Programme of measures to implement the principle of mutual recognition of decisions in criminal matters

(2001/C 12/02)

INTRODUCTION

The issue of mutual recognition in criminal matters was raised at the Cardiff European Council on 15 and 16 June 1998.

Point 45(f) of the action plan of the Council and the Commission on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice, adopted on 3 December 1998, provides that within two years of entry into force of the Treaty a process should be initiated with a view to facilitating mutual recognition of decisions and enforcement of judgments in criminal matters.

The idea was discussed again at the Tampere European Council in October 1999, which concluded that mutual recognition should become the cornerstone of judicial cooperation in both civil and criminal matters within the Union (paragraphs 33 to 37). At Tampere the European Council also explicitly stated that the principle should apply both to judgments and to other decisions of judicial authorities. It asked the Council and the Commission to adopt, by December 2000, a programme of measures to implement the principle of mutual recognition (see point 37 of the conclusions of the Tampere European Council).

Achievement of this programme of measures has been included in the European Commission's scoreboard for reviewing progress towards the creation of an area of freedom, security and justice in the European Union.

Mutual recognition is designed to strengthen cooperation between Member States but also to enhance the protection of individual rights. It can ease the process of rehabilitating offenders. Moreover, by ensuring that a ruling delivered in one Member State is not open to challenge in another, the mutual recognition of decisions contributes to legal certainty in the European Union.

Implementation of the principle of mutual recognition of decisions in criminal matters presupposes that Member States have trust in each others' criminal justice systems. That trust is grounded, in particular, on their shared commitment to the principles of freedom, democracy and respect for human rights, fundamental freedoms and the rule of law.

Some forms of mutual recognition are already embodied in the instruments of judicial cooperation adopted, before the Maastricht Treaty, in various forums, and subsequently in the European Union framework.

As far as the recognition of final decisions is concerned, several instruments have been drawn up. They are: the European Convention on the International Validity of Criminal Judgments of 28 May 1970; the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991, adopted in the framework of political cooperation, and the Convention of the European Union on Driving Disqualifications of 17 June 1998.

In addition, the main purpose of transferring sentenced persons as provided for in the Council of Europe Convention of 21 March 1983 is to help towards their rehabilitation and stems from humanitarian considerations. It necessarily implies recognition by the administering State of the decision taken by the sentencing State's court.

Recognition of a decision also means that other States must take that decision into account, i.e. that a person will not be prosecuted again for the same acts and that a final court decision will not be challenged. This principle is covered by the Convention between the Member States of the European Communities on Double Jeopardy signed in the framework of European political cooperation in Brussels on 25 May 1987. The Convention of the Council of Europe on the Transfer of Proceedings in Criminal Matters of 15 May 1972 also contains *ne bis in idem* rules. The Convention implementing the Schengen Agreement of 14 June 1985 signed on 19 June 1990 also contains rules on the application of the *ne bis in idem* principle.

In the framework of the European Union, the Convention on the Protection of the European Communities' Financial Interests of 26 July 1995 and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union of 26 May 1997 should be mentioned, as should the Convention on Driving Disqualifications adopted on 17 June 1988.

At present, none of these instruments has come into force between all Member States; the instruments adopted or to be adopted in the European Union framework should be ratified by the Member States as soon as possible. At the same time, for the others including the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991 adopted in the framework of political cooperation, more modern mechanisms should be sought, in the form of the most binding of the instruments specified in Article 34 of the Treaty on European Union, and allowing as full as possible a mutual recognition system to be envisaged.

A number of existing instruments offer the States Parties the possibility of choosing either continued enforcement of the decision or its conversion.

The principle of conversion of the decision should be examined to see to what extent it is compatible with the mutual recognition principle enshrined in the Tampere conclusions.

Certain aspects of mutual recognition have not been addressed in an international context, and in particular those concerning pre-trial orders or the taking into account, in producing a court decision, of any foreign criminal judgments, especially in order to assess a person's criminal record and whether he is a persistent offender.

Thus mutual recognition comes in various shapes and must be sought at all stages of criminal proceedings, before, during or after conviction, but it is applied differently depending on the nature of the decision or the penalty imposed.

In each of these areas the extent of the mutual recognition exercise is very much dependent on a number of parameters which determine its effectiveness. These parameters and their content have been identified during discussions in the Council, in particular by the United Kingdom delegation.

They are:

- whether the envisaged measure is of general application or limited to specific offences. A number of measures implementing mutual assistance may be limited to serious crimes,
- whether fulfilment of the double criminality requirement as a condition for recognition is maintained or dropped,
- mechanisms for safeguarding the rights of third parties, victims and suspects,

- the definition of minimum common standards necessary to facilitate application of the principle of mutual recognition, for instance with regard to the competence of the courts,
- whether enforcement of the decision is direct or indirect, and the definition and scope of a validation procedure, if any,
- determination and extent of grounds for refusing recognition, where those grounds are the sovereignty or other essential interests of the requested State or relate to legality,
- whether States have liability arrangements in the event of acquittal.

Depending on the type of decision concerned, how individual parameters are taken into account can vary according to how ambitiously the goal of implementing the principle of mutual recognition of criminal decisions is to be interpreted, unless an autonomous measure has to be taken to arrange for a particular parameter to apply generally.

The programme of measures, which is designed as a package, maps out the different areas in which Member States should focus their efforts in the years ahead in order gradually to achieve mutual recognition of criminal decisions in the European Union.

It should not, however, be seen as a definitive programme, introducing once and for all the mechanisms for mutual recognition of criminal decisions, but rather as a far-reaching, gradual and realistic process. Its aim is to open the way and demonstrate the approach to be used in the areas concerned without setting hard and fast rules concerning the details of future proceedings. By the same token, Member States should not consider that this programme dispenses them from ratifying a number of relevant instruments adopted in other forums. The work under this programme should be based as far as possible, and where appropriate, on the solutions embodied in existing instruments, so as to avoid wasteful duplication of effort.

Lastly, in implementing the programme, measures should be grouped together in a single instrument where it makes sense to do so.

Implementation of this programme, progress with which will need to undergo peer evaluation, is an essential stage of the process.

On 26 July 2000, the Commission submitted a communication to the Council and the European Parliament on mutual recognition of final decisions in criminal matters.

The programme of measures includes the contribution of the Commission and the guidelines evolved at the informal Council of the Ministers for Justice and Home Affairs held in Marseilles on 28 and 29 July 2000.

PROGRAMME OF MEASURES

1. TAKING ACCOUNT OF FINAL CRIMINAL JUDGMENTS ALREADY DELIVERED BY THE COURTS IN ANOTHER MEMBER STATE

1.1. **Ne bis in idem**

Aim: To strengthen legal certainty in the Union by ensuring that a final conviction handed down by a criminal court in one Member State is not challenged in another Member State. The fact that such a decision has been handed down in one Member State must preclude a further prosecution in another Member State for the acts that have already been judged. This aim has been partially realised in Articles 54 to 57 of the Convention implementing the Schengen Agreement.

In this context, the scope for making reservations allowed under Article 55 of that Convention should be reconsidered, particularly the one whereby a State may declare that it will not be bound by the *ne bis in idem* principle if 'the facts which were the subject of the judgment rendered abroad took place ... in part on its own territory'.

Attention should be given to how other types of decision, such as acquittal, can be covered by the *ne bis in idem* principle, possibly subject to certain reservations.

Finally, the question of decisions taken in a State following penal mediation could also be approached.

Measure 1: Reconsideration of Articles 54 to 57 of the Convention implementing the Schengen Agreement, taken from the Convention between the Member States of the European Communities on Double Jeopardy signed in Brussels on 25 May 1987 with a view to full application of the principle of mutual recognition.

Priority rating: 6.

1.2. Individualised sanctions

Aim: To have a court in one Member State take into account a sentence imposed in another Member State in order to assess the offender's criminal record and use that knowledge when sentencing the offender.

Measure 2: Adoption of one or more instruments establishing the principle that a court in one Member State must be able to take account of final criminal judgments rendered by the courts in other Member States for the purposes of assessing the offender's criminal record and establishing whether he has reoffended, and in order to determine the type of sentence applicable and the arrangements for enforcing it.

Priority rating: 4.

Since, to be effective, this principle implies a knowledge of the foreign sentence, the following should be done:

Measure 3: In order to facilitate the exchange of information, a standard form like that drawn up for the Schengen bodies, translated into all the official Union languages, should be introduced for criminal records applications (see point 49(d) of the action plan of 3 December 1998 on how best to implement the provisions of the Treaty of Amsterdam establishing an area of freedom, security and justice).

Priority rating: 2.

Measure 4: A feasibility study should be carried out to determine how best to ensure, while taking full account of requirements relating to personal freedoms and data protection, that the competent authorities in the European Union are informed of an individual's criminal convictions. Such a study should cover, in particular, the types of conviction that should be concerned and consider which of the following would be the best method: (a) to facilitate bilateral information exchanges; (b) to network national criminal records offices; or (c) to establish a genuine European central criminal records office.

Priority rating: 2.

2. ENFORCEMENT OF PRE-TRIAL ORDERS

2.1. Orders concerning the keeping of evidence and freezing of assets

2.1.1. *Orders for the purpose of obtaining evidence*

Aim: To ensure that evidence is admissible, to prevent its disappearance and to facilitate the enforcement of search and seizure orders, so that evidence can be quickly secured in a criminal case (point 36 of the conclusions of the Tampere European Council). Article 26 of the European Convention on the Transfer of Proceedings in Criminal Matters of 15 May 1972 and Article 8 of the Rome Convention of 6 November 1990 on the Transfer of Proceedings in Criminal Matters should be borne in mind.

Measure 5: Seek feasible ways of:

- ensuring that the reservations and declarations provided for in Article 5 of the European Convention on Mutual Assistance of 1959, supplemented by Articles 51 and 52 of the Convention implementing the Schengen Agreements with regard to coercive measures, are not invoked between Member States, in particular in the field of combating organised crime, laundering of proceeds from crime, and financial crime,
- ensuring that the grounds for refusal of mutual aid provided for in Article 2 of the 1959 Convention, supplemented by Article 50 of the Convention implementing the Schengen Agreement, are not invoked between Member States.

Priority rating: 1.

Measure 6: Drawing up of an instrument concerning the recognition of decisions on the freezing of evidence, in order to prevent the loss of evidence located in the territory of another Member State.

Priority rating: 1.

2.1.2. *Interim measures with a view to confiscation or to restitution to victims*

Aim: To enable the recognition and immediate enforcement of orders freezing assets with a view to confiscation or to restitution to victims of criminal offences.

Measure 7: Drawing up of an instrument on the mutual recognition of orders to freeze assets. This instrument should make it possible, in an emergency, to bypass mutual assistance procedures and to have assets temporarily frozen through enforcement of an order issued by a court in another Member State.

A single instrument could be considered for measures 6 and 7.

Priority rating: 1.

2.2. Orders relating to persons

2.2.1. *Arrest warrants*

Aim: To facilitate the enforcement of arrest warrants in connection with criminal proceedings. In this connection it is necessary to bear in mind recommendation No 28 of the European Union's strategy for the beginning of the new millennium that consideration should be given to the long-term possibility of the creation of a single European legal area for extradition.

Measure 8: Seek means of establishing, at least for the most serious offences in Article 29 of the Treaty on European Union, handing-over arrangements based on recognition and immediate enforcement of the arrest warrant issued by the requesting judicial authority. Those arrangements should, *inter alia*, spell out the conditions under which an arrest warrant would be a sufficient basis for the individual to be handed over by the competent requested authorities, with a view to creating a single judicial area for extradition.

Priority rating: 2.

2.2.2. *Non-custodial supervision measures*

Aim: To ensure cooperation when a person is subject to obligations or supervision as part of judicial supervision pending a court decision.

Measure 9: Catalogue the measures potentially concerned, the methods of supervision ensuring compliance by the individuals to whom they apply, and the penalties applicable in the event of non-compliance.

Priority rating: 3.

Measure 10: On the basis of the above catalogue, consider the adoption of an instrument enabling control, supervision or preventive measures ordered by a judicial authority pending the trial court's decision to be recognised and immediately enforced. This instrument should apply to any person against whom criminal proceedings have been brought in one Member State and who may have gone to another Member State and should specify how such measures would be supervised and the penalties applicable in the event of non-compliance with them.

Priority rating: 5.

2.3. **Taking account of decisions to prosecute taken in other Member States**

Aim: The growth of international crime has considerably increased the number of cases in which more than one Member State has jurisdiction, under its domestic rules of procedure, to prosecute and judge the same or related offences. It is therefore necessary to facilitate the settlement of conflicting claims to jurisdiction between Member States and, wherever possible, to avoid multiple prosecutions. To that end, a feasibility study should be carried out on the setting up of a central casebook, which would make it possible to avoid bringing charges that would be rejected under the *ne bis in idem* principle and which would also provide useful information on investigations concerning offences involving the same person.

Measure 11: Drafting of an instrument enabling criminal proceedings to be transferred to other Member States, and encouraging appropriate coordination between the Member States. While taking into account its sphere of competence in this area, one of the tasks of Eurojust is precisely that of 'facilitating the proper coordination of national prosecuting authorities' (point 46 of the conclusions of the Tampere European Council). To facilitate coordination, criteria to help determine jurisdiction could be established by reference, *inter alia*, to the instances of transferred proceedings listed in Article 8 of the European Convention on the Transfer of Proceedings in Criminal Matters, signed in Strasbourg on 15 May 1972.

Priority rating: 4.

Measure 12: Carry out a feasibility study to determine how best to ensure, while taking full account of requirements relating to personal freedoms and data protection, that the competent authorities in the European Union are informed of investigations or prosecutions outstanding in respect of a given individual. Such a study should cover, in particular, the categories of offence potentially concerned and the stage of proceedings at which the information process should start. It should also consider which of the following would be the best method: (a) to facilitate bilateral information exchanges; (b) to network national criminal records offices; or (c) to establish a genuine European central criminal records office.

Priority rating: 2.

3. SENTENCING

3.1. Prison sentences

3.1.1. Recognition and immediate enforcement of a final sentence delivered in a Member State in respect of a national of another Member State if extradition is refused by a State which has declared that it will not extradite its own nationals pursuant to Article 7(2) of the Convention relating to Extradition between the Member States of the European Union of 27 September 1996, on the sole ground that the convicted person is one of its nationals.

Aim: If it is not possible for a Member State to relinquish the principle that it does not extradite its own nationals, to ensure that the sentence for which extradition has been requested is enforced by that Member State in its territory.

Measure 13: Adoption of an additional instrument to the EU Convention relating to Extradition of 27 September 1996 and the European Convention on Extradition of 13 December 1957. Only situations where the transfer of enforcement is requested are covered by Article 3(b) of the Convention between the Member States of the European Communities on the enforcement of foreign criminal sentences signed in Brussels on 13 November 1991. The future instrument could apply a new principle to such situations: 'either extradite or enforce the sentence'. The instrument should include the practical modalities for enforcing the sentence, for example, continued enforcement or conversion of the sentence.

Priority rating: 3.

Aim: It is necessary to assess international instruments on final sentences involving deprivation of liberty and to see whether such instruments allow full arrangements for mutual recognition.

Measure 14: Assess the extent to which more modern mechanisms make it possible to envisage full arrangements for mutual recognition of final sentences involving deprivation of liberty.

Priority rating: 3.

3.1.2. Transfer of persons intent on fleeing justice after they have been finally sentenced

Aim: To simplify the procedures applying where a person who has been finally sentenced tries to flee justice (point 35 of the conclusions of the Tampere European Council).

Measure 15: Adoption of an instrument abolishing the formal extradition procedure and allowing a person attempting to flee justice after final sentencing to be transferred to the sentencing State in accordance with Article 6 of the Treaty on European Union. Cases in which the transfer procedure could be replaced by continued enforcement of the sentence should be considered. This instrument, introducing the principle 'hand over the fugitive or continue the enforcement of the sentence', would be especially aimed at convicted persons who have escaped.

Priority rating: 3.

3.1.4. **Transfer of sentenced persons in the interests of social rehabilitation**

Aim: To enable a Member State's residents to serve their sentences in their State of residence. In this connection, Article 2 of the Agreement on the application between the Member States of the European Communities of the Council of Europe Convention on the Transfer of Sentenced Persons of 25 May 1987 should be borne in mind.

Measure 16: Adoption of an additional instrument to the European Convention on the Transfer of Sentenced Persons of 21 March 1983 extending that Convention, which applies to the nationals of the States concerned, in order to cover their residents.

Priority rating: 4.

3.2. **Fines**

Aim: To enable fines imposed on natural and legal persons in one Member State to be levied in another Member State. The provisions adopted in this connection in the Convention between the Member States of the European Communities on the Enforcement of Foreign Criminal Sentences of 13 November 1991 should be borne in mind.

Measure 17: Union-wide application of the specific Agreement, drawn up in the Schengen framework, on cooperation in proceedings for road traffic offences and the enforcement of financial penalties imposed in respect thereof, approved by Schengen Executive Committee Decision of 28 April 1999. The substance of that Agreement, which forms part of the Schengen *acquis*, should be incorporated into a Council act, based on Article 34(2) of the Treaty on European Union, as a new legal instrument.

Priority rating: 1.

Measure 18: Preparation of an instrument enabling the State of residence to levy fines imposed by final decision on a natural or legal person by another Member State. The instrument could provide for fines imposed for criminal offences to be levied automatically or possibly for a simplified validation procedure. It should as far as possible stipulate the procedure applying in the event of non-payment. The proceedings will take into account the differences between EU Member States on the issue of the liability of legal persons.

Priority rating: 2.

3.3. **Confiscation**

Aim: To improve enforcement in one Member State of a confiscation order, *inter alia* for the purpose of restitution to a victim of a criminal offence, issued in another Member State, taking into account the existence of the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of 8 November 1990.

Measure 19: Examine:

- in particular whether the grounds for refusal of enforcement of a confiscation measure in Article 18 of the 1990 Convention are all compatible with the principle of mutual recognition,

- without prejudice to the Community's powers, how to improve the recognition and immediate enforcement in one Member State of another Member State's decision to protect a victim's interests, where such a decision forms part of a decision imposing a criminal conviction.

Priority rating: 2.

3.4. Disqualifications and similar sanctions

Aim: Gradually to extend the effects of disqualifications throughout the European Union: the effectiveness of certain sanctions in the European context depends on their being recognised and enforced throughout the Union. Account should also be taken of recommendation No 7 of the 1997 action plan on organised crime, which calls on Member States to exclude applicants who have committed offences connected with organised crime from participation in public tender procedures conducted by Member States and by the Community and to reject their applications for subsidies or governmental licences, and of recommendation No 2 of the European Union's strategy for the beginning of the new millennium, which reiterates the suggestion.

Measure 20: Compile a list of the decisions regarding disqualification, prohibition and incapacity common to all Member States, handed down when sentencing a natural or legal person or further thereto.

Priority rating: 2.

Measure 21: Carry out a feasibility study to determine how best to ensure, while taking full account of requirements relating to personal freedoms and data protection, that the competent authorities in the European Union are informed of any disqualification, prohibition or incapacity handed down by the courts in a Member State. The study should also consider which of the following would be the best method: (a) to facilitate bilateral information exchanges; (b) to network national criminal records offices; or (c) to establish a genuine European central criminal records office.

Priority rating: 2.

Measure 22: Draw up one or more instruments enabling the listed disqualifications to be enforced in the sentenced person's Member State of residence and certain disqualifications to be extended to the Union as a whole, at least as regards certain types of offence and disqualification. The question whether a decision to ban a person from entering the territory issued in one Member State should be extended to the entire Union also needs to be dealt with in this context.

Priority rating: 5.

4. POST-SENTENCING FOLLOW-UP DECISIONS

Aim: To ensure that authorities cooperate in dealing with a person who is subject to obligations or undergoing supervision and assistance, in particular persons on probation or parole.

Measure 23: Endeavour to optimise application of the European Convention on the Supervision of Conditionally Sentenced or Conditionally Released Offenders of 30 November 1964. It would be especially useful to determine the extent to which certain reservations and grounds for refusing enforcement could cease to be enforceable as between Member States, if necessary by means of a specific instrument.

Priority rating: 6.

5. PEER EVALUATION

Aim: To establish a mechanism for peer evaluation of the recognition of criminal decisions in order to measure Member States' progress in implementing the proposed measures.

Measure 24: Adopt an instrument enacting the principle of peer evaluation, modelled on the Joint Action of 5 December 1997 establishing a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime. In this connection recommendation No 8 of 'Prevention and control of organised crime — A European Union strategy for the beginning of the new millennium' calls on the Council to consider the possibility of supplementing the existing evaluation mechanism with a further mechanism that could be used for the evaluation of specific areas of implementation.

Priority rating: see recommendation No 8.

EXECUTION OF THE PROGRAMME OF MEASURES

It is a delicate matter to set cut-off dates for work to be completed in the European Union: excessively tight deadlines are unrealistic, while overlong completion dates tend to demotivate the Member States.

Therefore, it has been decided to set priorities which at all events will need to be checked against the Institutions' and Member States' resources as well as other ongoing activities.

The priorities have been fixed taking the following parameters into account:

- some measures have, at the time of development of this plan, already been proposed in certain initiatives. They are thus assigned top priority,
- some have already been described as priority measures, either by the Tampere conclusions or at subsequent meetings of the Council of Ministers,
- some measures are feasibility studies. In this case, it may be thought possible to delegate their execution, which will thus not overburden the Council's resources. On the whole, those measures are assigned high priority. For them, full use will have to be made of programmes funded from the Communities' budget,
- finally, account has been taken of the foreseeable positive impact on achieving the objectives assigned by the Treaties.

In view of the importance of the Tampere European Council's conclusions on mutual recognition, it is desirable that substantial progress be made in implementing level 1 and 2 measures before the end of 2002. It is proposed that the Council review progress then.

A: TABLE BY ORDER OF PRIORITY

No	Description of the measure	Paragraph reference	Priority rating
5	Search for feasible ways of ensuring that the reservations and declarations provided for in Article 5 of the European Convention on Mutual Assistance of 1959 with regard to coercive measures are not invoked between Member States	2.1	1
6	Drawing up of an instrument on recognition of orders to freeze evidence (see measure 7)	2.1.1	1
7	Drawing up of an instrument on the freezing of assets (see measure 6)	2.1.2	1
17	Adoption of an instrument on financial penalties connected to road traffic offences	3.2	1
3	Introduction of a standard form for criminal records applications	1.2	2
4	Feasibility study on the exchange of information on an individual's convictions in a Member State of the European Union	1.2	2
8	Seeking means of establishing handing-over arrangements based on recognition and immediate enforcement of arrest warrants	2.2.1	2
12	Feasibility study on the best method for exchanging information on current criminal proceedings or prosecutions in Member States of the European Union	2.3	2
18	Drawing up of an instrument on the levying of financial penalties	3.2	2
19	Consideration of grounds for refusal in Article 18 of the 1990 Convention	3.3	2
20	Drawing up of a list of disqualification measures common to the Member States	3.4	2
22	Drawing up of one or more instruments to make disqualifications effective throughout the European Union	3.4	2
9	Cataloguing of non-custodial pre-sentencing supervision measures	2.2.2	3
13	Drawing up of an instrument implementing the principle 'either extradite or enforce the sentence'	3.1.1	3
14	Evaluation of the need for more modern mechanisms for mutual recognition of final sentences involving deprivation of liberty	3.1.1	3
15	Drawing up of an instrument implementing the principle 'transfer the fugitive or enforce his sentence' for sentenced persons who attempt to evade justice	3.1.2	3
2	Introduction of the principle that foreign judgments may be taken into account in developing a domestic judgment	1.2	4
11	Drawing up of an instrument promoting the settlement of conflicts of jurisdiction between Member States	2.3	4
16	Extension of transfer of sentenced persons to residents of a Member State.	3.1.4	4
10	Drawing up of an instrument on recognition and immediate enforcement of non-custodial pre-sentencing measures	2.2.2	5

No	Description of the measure	Paragraph reference	Priority rating
21	Feasibility study on the best method for providing information on and applying the measures under measure 20 in the territories of the Member States	3.4	5
1	Reconsideration of Articles 54 to 57 of the Convention implementing the Schengen Agreement (<i>ne bis in idem</i>)	1.1	6
23	Adoption of an instrument strengthening mutual recognition of post-sentencing follow-up decisions	4	6
24	Establish a mechanism for evaluation	5	See recommendation No 8

B: TABLE BY ORDER OF PRESENTATION OF THE MEASURES

No	Description of the measure	Paragraph reference	Priority rating
1	Reconsideration of Articles 54 to 57 of the Convention implementing the Schengen Agreement (<i>ne bis in idem</i>)	1.1	6
2	Introduction of the principle that foreign judgments may be taken into account in developing a domestic judgment	1.2	4
3	Introduction of a standard form for criminal records applications	1.2	2
4	Feasibility study on the exchange of information on an individual's convictions in a Member State of the European Union	1.2	2
5	Search for feasible ways of ensuring that the reservations and declarations provided for in Article 5 of the European Convention on Mutual Assistance of 1959 with regard to coercive measures are not invoked between Member States	2.1	1
6	Drawing up of an instrument on recognition of orders to freeze evidence (see measure 7)	2.1.1	1
7	Drawing up of an instrument on the freezing of assets (see measure 6)	2.1.2	1
8	Seeking means of establishing handing-over arrangements based on recognition and immediate enforcement of arrest warrants	2.2.1	2
9	Cataloguing of non-custodial pre-sentencing supervision measures	2.2.2	3
10	Drawing up of an instrument on recognition and immediate enforcement of non-custodial pre-sentencing measures	2.2.2	5
11	Drawing up of an instrument promoting the settlement of conflicts of jurisdiction between Member States	2.3	4
12	Feasibility study on the best method for exchanging information on current criminal proceedings or prosecutions in Member States of the European Union	2.3	2
13	Drawing up of an instrument implementing the principle 'either extradite or enforce the sentence'	3.1.1	3
14	Evaluation of the need for more modern mechanisms for mutual recognition of final sentences involving deprivation of liberty	3.1.1	3

No	Description of the measure	Paragraph reference	Priority rating
15	Drawing up of an instrument implementing the principle 'transfer the fugitive or enforce his sentence' for sentenced persons who attempt to evade justice	3.1.2	3
16	Extension of transfer of sentenced persons to residents of a Member State	3.1.4	4
17	Adoption of an instrument on financial penalties connected to road traffic offences	3.2	1
18	Drawing up of an instrument on the levying of financial penalties	3.2	2
19	Consideration of grounds for refusal in Article 18 of the 1990 Convention	3.3	2
20	Drawing up of a list of disqualification measures common to the Member States	3.4	2
21	Feasibility study on the best method for providing information on and applying the measures under measure 20 in the territories of the Member States	3.4	5
22	Drawing up of one or more instruments to make disqualifications effective throughout the European Union	3.4	2
23	Adoption of an instrument strengthening mutual recognition of post-sentencing follow-up decisions	4	6
24	Establish a mechanism for evaluation	5	See recommendation No 8