

PRESENTATION OF MODULE IV

MUTUAL RECOGNITION

As we announced in the earlier modules, the European Union, in the context of judicial cooperation, has managed to advance and overcome a significant number of the obstacles inherent in classic cooperation by means of the development of the principle of mutual recognition, declared to be the *cornerstone* of judicial cooperation in civil and criminal matters in the Union (conclusion no. 33 of the Tampere Council).

While cooperation in criminal matters falls under the third pillar, strictly speaking, it was not communitised like civil cooperation until the arrival of the Treaty of Lisbon, and for this reason the development of this principle in relation to criminal matters has taken place via Framework Decisions, the consequence of which means that not only is adaptation to domestic legislation obligatory –unlike in the case of the Regulations that govern cooperation in civil matters–; when the corresponding request for mutual assistance is made, not only must the domestic legislation be weighed up, but the adaptation performed by the state receiving the request must also be taken into account.

Even with its limitations, the principle of mutual recognition has represented a significant advance (also for cooperation in criminal matters) with an expansive dynamics to date, where it is already giving rise to an incipient formulation of the “free movement of judgments” within the scope of a common area of freedom, security and justice.

The concept is a simple one: mutual recognition means that once a decision is adopted by a judge in the performance of his/her duties in a Member State, insofar as it has implications abroad, it will be automatically accepted in all the other Member States, and will have the same or at least similar effects as in the state where it was adopted. Nevertheless, as we will see in the different instruments that implement it, the degree of automaticity of such acceptance varies and is subject to very different conditioning factors.

In order to develop this principle, in 2000, a programme of measures was established that can be traced back to the Tampere Council and which was subsequently taken up by the Hague Council in 2005 and is continued today via the Stockholm programme. These programmes have borne fruit:

a) The first exponent and indeed key element of the common area of freedom, security and justice and paradigm of the instruments based on mutual recognition is the Council

Framework Decision of 13 June 2002 *on the European arrest warrant and surrender procedures between Member States*.

Its content is analysed in Unit 10, the first one in this module, by Judge Clara Peñín Alegre, an expert in cooperation, member of the REJUE, who has been studying this instrument since its inception.

b) The second of the mutual recognition instruments comes in the form of Council Framework Decision 2003/577/JHA of 22 July 2003, on the execution in the EU of *orders freezing property or evidence*.

It has been necessary to develop and complement this instrument with two other documents, which, while they transcend this precedent, will serve to regulate the destination of the assets frozen or secured by this instrument: Council Framework Decision 2006/783/JHA of 6 October 2006 on *the application of the principle of mutual recognition to confiscation orders* on decisions on preventative seizure; and Council Framework Decision 2008/978/JHA of 18 December 2008 on the *European evidence warrant for the purpose of obtaining objects, documents and data for use in proceedings in criminal matters*, in relation to decisions on freezing evidence.

A summary of the above is developed in Unit 11 by Judge Andrés Salcedo Velasco, who you will see cited frequently in the bibliography of this course, and who is devoted to judicial cooperation in the sphere of scientific doctrine, practice and teaching.

c) The third, Council Framework Decision 2005/214/JHA, dated 24 February 2005, *on the application of the principle of mutual recognition to financial penalties*, covers both criminal and administrative penalties in some cases, if the legal system envisages the possibility of appealing imposition of the penalties before a Criminal Judge (such as in the case of the Netherlands or Germany).

Unit 12 has been prepared by Judge Ignacio Pando Echevarría, who has wide-ranging experience in the European judicial systems.

d) We also have Council Framework Decision 2008/909/JHA of 27 November 2008 *on the application of the principle of mutual recognition to judgments in criminal matters imposing custodial sentences or measures involving deprivation of liberty for the purpose of their enforcement in the European Union*; Council Framework Decision 2008/947/JHA of 27 November 2008 *on the application of the principle of mutual recognition to judgments and probation decisions with a view to the supervision of probation measures and alternative sanctions*; or Council Framework Decision 2009/829/JHA of 23 October 2009 *on the*

application, between Member States of the European Union, of the principle of mutual recognition to decisions on supervision measures as an alternative to provisional detention.

The approach to the more recent instruments will therefore be more reflexive than casuistic, and it will be an Italian Judge, Fabio Licata, who will develop Unit 13.

The best of luck to you all and I hope the study proves rewarding; this area is particularly topical and effective while at the same time in need of a critical approach.

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