1. The Traditional Framework of EU Cooperation in Criminal Matters

At first sight, mutual assistance conventions within the European Union seem to belong to the previous phase of international efforts to counter transborder crime, rather than to the current one.

This statement does not refer to the substantial problem considered here: judicial cooperation between Member States, for instance in the field of collection of evidence, interception of communications and execution of pre-trial measures, is destined to increase proportional to augmented inter-State mobility and to the related spread of organised transnational crime. Rather, it is the traditional juridical instrument of the Convention – and its connected inspiring principles governing relationships between States – which appears to be overcome by the new forms of European interaction in criminal matters. Moreover, the following analysis points out that, in the close and foreseeable future, the old instruments will not be abandoned. However, different systems will coexist, giving rise to the risk of inconsistency, gaps and overlapping, which will probably be encountered on a practical and operational level.

Since the enactment of the Treaty on European Union (TEU), signed in Maastricht on 7 February 1992 (title VI and especially Art. K.1), judicial assistance has certainly represented an important sector in the cooperation in the field of justice and home affairs and especially in criminal matters.1

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1 Title VI contains provisions on cooperation in the fields of justice and home affairs. According to Art. K.1: ‘For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest: ... 7. Judicial cooperation in criminal matters; ...’. On the evolution of the police in European judicial cooperation in criminal matters, see, inter alia, M. Jimeno-Bulnes,
The Future of Police and Judicial Cooperation in the European Union

The European Union, keeping to the traditional principles of conventional international law (the so-called intergovernmental method: the right of initiative enjoyed by every Member State and the unanimity rule), dealt with judicial assistance within the framework provided by the Third Pillar, at first rather timidly through its new normative instruments (joint actions before Amsterdam, as the JA 98/427/JHA on good practice in criminal mutual assistance in criminal matters); and then more effectively through the traditional route of conventions (the Convention on Judicial Assistance in Criminal Matters between the Member States in 2000, hereinafter ‘EU Convention 2000’).

And when their contents are examined, we see that the EU initiatives have made no fundamental changes, but instead have developed and deepened key ideas already widely contained in other instruments and international fora: for example, by abolishing the governmental ‘filter’ and introducing forms of direct cooperation between the judiciary authorities of Member States.

This continuity is illustrated by the EU Convention 2000 (see preamble and Art. 1), which is clearly drafted on basis of the Council of Europe (COE) Convention of 1959.

This scenario of judicial assistance, formed in the first decade of advanced judicial cooperation within the EU, appeared to be called into question by the conclusions of the historic Tampere meeting of October 1999. This meeting put forward the notion of creating a common field of ‘freedom, security and justice’, governed by the new principle of mutual recognition of judicial decisions, and linked to the creation of a new unit of coordination between the

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4 Tampere European Council (15-16 October 1999) Presidency Conclusions.