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Meeting Note

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As concerns mutual recognition VM made the following points:

- Mutual recognition does not equal automaticity. Courts should still be considering the question of human rights in this regard. The EIO is a welcome development in that it makes the question of human rights explicit.
- A more holistic view needs to be taken to mutual recognition. The more procedural rights measures are adopted and implemented the less of a potential problem mutual recognition is likely to be.
- The 32 list offences for which a dual criminality check has been abolished have not created problems.
- Nobody wants to see a 'one size fits all' approach in the EU and mutual recognition helps to avoid that, as otherwise more harmonisation would be needed.

As concerns ECJ jurisdiction VM made the following points:

- Concern over ECJ jurisdiction as a result of the UK having a different legal system are a non-argument. Everybody thinks their system is different from everyone else's.
- ECJ jurisdiction is a positive development and will help national judges. In cases such as *Bucnys* it seems clear that the Supreme Court would like to have referred the interpretation of EU law to them, as they were effectively trying to second guess what the ECJ would have done.
- You either have EU law or you don't. If you do have it you need to accept the role the ECJ will play.
- The ECJ is not an activist Court. Thus far, it has shown itself to be quite conservative in its judgments in this area. Member States have nothing to fear.
- Thrilled by the *DRD* judgment as it shows the ECJ will actively uphold human rights. Clear that in this case the court was influenced by national Constitutional courts.
- The next five years will belong to the court as litigation ramps up.
- The recent *CMP* proposals are very interesting. A necessary development as the ECJ needs to be able to review whether or not something genuinely is national security. That will start to define national security.

As concerns the European Parliament VM made the following points:

- The role of EP in co-decision has clear advantages from a democratic perspective.
- Their involvement has not led to drafting being improved. For example, the *Victims Directive* has far too many recitals. The increased number of recitals opens the door to the ECJ becoming involved.

On the UK's opt-in VM made the following points:

- The less you participate, the less influence you will have.
- New legislation is linked to old legislation and non-participation may be untenable. Access to a Lawyer and EAW is one example where this is the case.
- The *PIF Directive* appears to be one example of the Commission trying to circumvent the UK/IE opt-in and DK opt-out.
- Generally the correct test for a title V legal base is the predominant purpose one. That is when the opt-in should apply.
- If the Commission decides to consolidate legislation, as *Strategic Guidelines* require, the UK opt-in position will make things difficult.

On Third Country Agreements VM made the following points:

- There is no easy answer as to whether or not they are needed or useful. The real issue is one of exclusive external competence.
- It may be easier to do this in some areas (e.g. *MLA*) that are less politically charged than others (e.g. extradition)
- In light of *DRD* judgment the *PNR TCAs* and *EU-US TFTP* would need to be reviewed.

- All TCAs should have a review mechanism built into them.

On the EIO VM made the following points:

- It would have been a disaster for the UK not to be in the EIO.
- He is not sure that it will be a big improvement on what we currently have.
- It is the one measure that will cause a large amount of ECJ case law.

On minimum standards VM made the following points:

- It was always a question of raising standards.
- A bit sceptical about the need for harmonisation of criminal law but does not believe the Commission to have ambitions in that regard, nor in terms of creating a European CJS.
- The procedural rights measures have been a necessary counterbalance to the enforcement measures
- The letter of rights measure was important but will end up being litigated.
- There is a risk that minimum standards actually become a minimum and a maximum standard in that this is all that States aim for.
- In any future treaty we are likely to move to 'common standards' in this area.