



**Statewatch annotation - updated**  
**The Hague Programme**  
**Strengthening freedom, security and justice in the EU**

doc no: 13302/2/04, 22 October draft

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## **I. INTRODUCTION**

The European Council reaffirms the priority it attaches to the development of an area of freedom, security and justice, responding to a central concern of the peoples of the States brought together in the Union.

Over the past years the European Union has increased its role in securing police, customs and judicial cooperation and in developing a coordinated policy with regard to asylum, immigration and external border controls. This development will continue with the firmer establishment of a common area of freedom, security and justice by the Treaty establishing a Constitution for Europe, signed in Rome on 29 October 2004. This Treaty and the preceding Treaties of Maastricht, Amsterdam and Nice have progressively established a common legal framework in the field of justice and home affairs, and the integration of this policy area with other policy areas of the Union.

Since the Tampere European Council in 1999, the Union's policy in the area of justice and home affairs has been developed in the framework of a general programme. Even if not all the original aims were achieved, comprehensive and coordinated progress has been made. The European Council welcomes the results that have been achieved in the first five-year period: the foundations for a common asylum and immigration policy have been laid, the harmonisation of border controls has been prepared, police cooperation has been improved, and the groundwork for judicial cooperation on the basis of the principle of mutual recognition of judicial decisions and judgments

has been well advanced.

The security of the European Union and its Member States has acquired a new urgency, especially in the light of the terrorist attacks in the United States on 11 September 2001 and in Madrid on 11 March 2004. The citizens of Europe rightly expect the European Union, while guaranteeing respect for fundamental freedoms and rights, to take a more effective, joint approach to cross-border problems such as illegal migration, trafficking in and smuggling of human beings, terrorism and organised crime, as well as the prevention thereof. Notably in the field of security, the coordination and coherence between the internal and the external dimension has been growing in importance and needs to continue to be vigorously pursued.

Five years after the European Council's meeting in Tampere, it is time for a new agenda to enable the Union to build on the achievements and to effectively meet the new challenges it will face. To this end, it adopted this new multi-annual programme to be known as the Hague Programme. It reflects the ambitions as expressed in the Treaty establishing a Constitution for Europe and contributes to the preparation of the Union for the entering into force. It takes full account of the evaluation by the Commission<sup>1</sup> as welcomed by the European Council in June 2004 as well as the Recommendation adopted by the European Parliament on 14 October 2004<sup>2</sup>, in particular in respect of the passage to qualified majority voting and co-decision as foreseen by Article 67(2) TEC.

*Note: the Commission also carried out a public consultation on the future of JHA policy. It has published the results on its website, but has not published a synthesis of the results of the consultation. The European Council makes no mention at all of the public views. This draft makes specific reference to the EP's recent vote on the planned Hague Programme and the issue of changes to decision-making rules.*

The objective of the Hague programme is the improvement of the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and the access to justice to provide protection in accordance with the Geneva Convention and other international treaties to persons in need, to regulate migration flows and to control the external borders of the Union, to fight organised cross-border crime and repress the threat of terrorism, to realise the potential of Europol and Eurojust, to further realise the mutual recognition of judicial decisions and certificates both in civil and in criminal matters, and to eliminate legal and judicial

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<sup>1</sup> COM (2004) 401.

<sup>2</sup> P6\_TA-PROV (2004) 0022 A6-0010/2004

obstacles in litigation in civil and family matters with cross-border implications. This is an objective that has to be achieved in the interests of our citizens by the development of a Common Asylum System and by improving access to the courts, practical police and judicial cooperation, the approximation of law and the development of common policies.

A key element in the near future will be the prevention and repression of terrorism. A common approach in this area should be based on the principle that preserving national security requires that full account is taken of the security of the Union as a whole. The European Council will endorse in December 2004 the new European Strategy on Drugs 2005-2012 that will be added to this programme.

The European Council considers the common project of strengthening the area of freedom, security and justice quintessential in securing safe communities, mutual trust and the rule of law throughout the Union. Freedom, justice, control at the external borders, internal security and the prevention of terrorism should henceforth be considered indivisible within the Union as a whole. An optimal level of protection of the area of freedom, security and justice requires a multi-disciplinary and concerted action both at EU level and at national level between the competent law enforcement authorities, especially police, customs and border guard.

In the light of this Programme, the European Council invites the Commission to present an Action Plan in 2005 in which the aims and priorities of this programme will be translated into concrete actions, comprising a timetable for their adoption and implementation. The European Council calls on the Council to ensure that the timetable for each of the various measures is observed. The Commission is invited to present to the Council a yearly report on the implementation of the Hague programme ("scoreboard").

*This appears to be similar to the six-monthly JHA scoreboards produced by the previous Commission.*

## **II. GENERAL ORIENTATIONS**

### **1. General principles**

The programme set out below seeks to respond to the challenge and the expectations of our citizens. It is based on a pragmatic approach and builds on ongoing work arising from the Tampere

programme, current action plans and an evaluation of first generation measures. It is also grounded in the general principles of subsidiarity, proportionality, solidarity and respect for the different legal systems and traditions of the Member States.

The Treaty establishing a Constitution of Europe (hereinafter the Constitutional Treaty) served as a guideline for the level of ambition, but the existing Treaties provide the legal basis for Council action until such time as the Constitutional Treaty takes effect. Accordingly, the various policy areas have been examined to determine whether preparatory work or studies could already commence, so that measures provided for in the Constitutional Treaty can be taken as soon as it enters into force.

Fundamental rights, as guaranteed by the European Convention on Human Rights and the Charter of Fundamental Rights in Part II of the Constitutional Treaty and the explanatory notes, as well as the Geneva Convention on Refugees, must be fully observed. At the same time, the programme aims at real and substantial progress towards enhancing mutual confidence and promoting common policies to the benefit of all our citizens.

## 2. Protection of fundamental rights

Incorporating the Charter into the Constitutional Treaty and accession to the European Convention for the protection of human rights and fundamental freedoms will place the Union, including its institutions, under a legal obligation to ensure that in all its areas of activity, fundamental rights are not only respected but also actively promoted.

In this context, the European Council welcomes the Commission's communication on the extension of the mandate of the European Monitoring Centre on Racism and Xenophobia towards a Human Rights Agency.

*The European Council (summit) meeting of December 2003 has already decided in principle to extend this Centre's mandate. Note that there is no deadline for adoption of any proposal to extend the mandate. This draft now refers to the Commission paper on this issue (not yet published), instead of inviting the Commission to make a proposal for legislation in 2005 (as in the previous draft).*

### 3. Implementation and evaluation

The evaluation by the Commission of the Tampere programme showed a clear need for adequate and timely implementation and evaluation of all types of measures in the area of freedom, security and justice.

It is vital for the Council to develop in 2005 practical methods to facilitate timely implementation in all policy areas: measures requiring national authorities' resources should be accompanied by proper plans to ensure more effective implementation, and the length of the implementation period should be more closely related to the complexity of the measure concerned. Regular progress reports by the Commission to the Council during the implementation period should provide an incentive for national action by Member States.

*The European Council has not previously developed a method to ensure implementation of JHA measures. The Commission at present has the task of reporting on implementation of most JHA measures **after** the deadline for implementation, not **during** the implementation period. This draft refers to the Council (EU ministers) adopting measures on implementation; the previous draft referred to the European Council (EU leaders).*

Evaluation of the implementation as well as of the effects of all measures is, in the European Council's opinion, essential for the effectiveness of Union action. The evaluations undertaken as from 1 July 2005 must be systematic, objective, impartial and efficient, while avoiding too heavy an administrative burden on national authorities and the Commission. Their goal should be to address the functioning of the measure and to suggest solutions for problems encountered in its implementation and/or application. The Commission should prepare a yearly evaluation report of measures to be submitted to the Council and to inform the European Parliament and the national parliaments.

*As noted above, the Commission now reports on implementation of most JHA measures by Member States; the Council then adopts reports as regards implementation of third pillar Framework Decisions. It is not clear whether the European Council is asking for a change in this practice, or how the annual report will relate to the overall yearly evaluation referred to above.*

The European Commission is invited to prepare proposals to be tabled as soon as the Constitutional Treaty has entered into force about the role of the European Parliament and the national parliaments in the evaluation of Eurojust's activities and the scrutiny of Europol's activities.

#### 4. Review

Since the programme will run for a period in which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful. To that end, the Commission is invited to report by the entry into force of the Constitutional treaty (1 November 2006) to the European Council on the progress made and to propose the necessary additions to the programme, taking into account the changing legal basis as a consequence of its entry into force.

*The Constitutional Treaty is due to enter into force on 1 November 2006, if ratified by all Member States. The reference to 'legal basis' is a recognition that the decision-making procedure for most JHA legislation would shift to qualified majority voting in the Council (QMV) and co-decision with the European Parliament once (if) the Constitution enters into force. This draft refers to a report by November 2006, whereas the previous draft gave a date of the second half of 2006.*

### **III. SPECIFIC ORIENTATIONS**

#### **1. STRENGTHENING FREEDOM**

##### 1.1 Citizenship of the Union

The right of all EU citizens to move and reside freely in the territory of the Member States is the central right of citizenship of the Union. Practical significance of citizenship of the Union will be enhanced by full implementation of Directive 2004/38, which codifies Community law in this field and brings clarity and simplicity. The Commission is asked to submit in 2008 a report to the Council and the European Parliament, accompanied by proposals if appropriate for allowing EU citizens to move within the European Union on similar terms to nationals of a Member State moving around or changing their place of residence in their own country.

*This is a new initiative but its implications are somewhat ambiguous. Would it cover administrative requirements applied to EU citizens, and also their access to benefits and restrictions (or a ban) on their expulsion? The legal base for such measures is Article 18 EC*

*(QMV and co-decision). The latest draft adds the words 'if appropriate', weakening the invitation to the Commission. Note that there is no commitment to adopt such a proposal.*

The European Council encourages the Union's institutions, within the framework of their competences, to maintain an open, transparent and regular dialogue with representative associations and civil society and to promote and facilitate citizens' participation in public life. In particular, the European Council invites the Council and the Commission to give special attention to the fight against anti-semitism, racism and xenophobia.

## 1.2 Asylum and migration policy

International migration will continue. A comprehensive approach, involving all stages of migration, with respect to the root causes of migration, the entry and admission policies and integration and return policies is needed.

To ensure such an approach, the European Council urges the Council, the Member States and the Commission to pursue coordinated, strong and effective working relations between those responsible for migration and asylum policies and those responsible for other policy fields relevant to these areas.

*Having said that, there is no reference to adoption of a Commission proposal on statistics in the field of migration and asylum, coming in December 2004, according to the Commission's 3-month rolling work programme.*

The ongoing development of the European asylum and migration policy should be based on a common analysis of migratory phenomena in all their aspects. Reinforcing the collection, provision, exchange and efficient use of up-to-date information and data on all relevant migratory developments is of key importance.

The second phase of development of a common policy in the field of asylum, migration and borders started on 1 May 2004. It should be based on solidarity and fair sharing of responsibility including its financial implications and closer practical co-operation between Member States: technical assistance, training, and exchange of information, monitoring of the adequate and timely implementation and application of instruments as well as further harmonisation of legislation.



*This is the first indication that a 'second phase' is already underway.*

The European Council, taking into account the assessment by the Commission and the strong views expressed by the European Parliament in their Recommendation, asks the Council to adopt a decision based on Article 67(2) TEC immediately after formal consultation of the European Parliament and no later than 1 April 2005 to apply the procedure provided for in Article 251 TEC to all Title IV measures to strengthen freedom, subject to the Nice Treaty.

*Article 67(2) states that as of 1 May 2004, the Council 'shall' adopt a decision changing the decision-making procedure in some or all of EC immigration, asylum and civil law to QMV in the Council with co-decision of the European Parliament, and to 'adapt' the restrictive rules applicable to the jurisdiction of the Court of Justice in this area. No such measure was adopted then or since. It is clear from this draft that the proposed Programme appears to be referring to changing decision-making over all EU borders, immigration and asylum issues, but not to family law aspects of civil law. This would leave the Council in continued breach of its obligation to adapt the rules relating to the Court of Justice; the Dutch justice minister has made clear that the Presidency will not propose changes on this issue. The Council's illegal behaviour on this issue could be brought before the Court of Justice if the European Parliament, the Commission or a Member State is willing to bring proceedings against the Council in the Court for its 'failure to act'.*

### 1.3 A Common European Asylum System

The aims of the Common European Asylum System in its second phase will be the establishment of a common asylum procedure and a uniform status for those who are granted asylum or subsidiary protection. It will be based on the full and inclusive application of the Geneva Convention on Refugees and other relevant Treaties, and be built on a thorough and complete evaluation of the legal instruments that have been adopted in the first phase. The European Council urges the Member States to fully implement the first phase without delay. In this regard the Council should adopt in conformity with article 67(5) TEC by unanimity the Asylum Procedures Directive as soon as possible. The Commission is invited to conclude the evaluation of first-phase legal instruments in 2007. The second-phase instruments and measures should be submitted to the Council and the European Parliament with a view to their adoption before the end of 2010. In this framework, the European Council invites the Commission to present a study on the appropriateness as well as the legal and practical implications of joint processing of asylum applications within the Union.

*The Programme fails to repeat the Tampere Conclusions' reference to a status 'valid throughout the Union' and the obligations of non-refoulement (non-return of persons to an unsafe country or to*

any state which could return them to an unsafe country). The Council was under a legal obligation according to the EC Treaty to adopt an asylum procedures Directive by 1 May 2004; although it agreed in principle on a Directive by that date, the Directive has not yet been adopted because the Council has not yet agreed on a list of so-called 'safe countries of origin' to be annexed to the Directive, or reconsulted the European Parliament on the Directive. It should be noted that many NGOs have severely criticized this agreed Directive for its low standards and there are grave doubts about its validity in light of human rights law. The latest draft of the Programme drops a reference to adoption of the Directive by 'spring 2005' and also makes clear that it should be adopted by unanimity.

*The reference to deadlines for evaluation of asylum legislation and adoption of second-phase legislation is new. It is not clear what 'joint processing' inside the EU would entail.*

Furthermore a separate study should look into the merits, appropriateness and feasibility of the joint processing of asylum applications outside EU territory, in complementarity with the Common European Asylum System and in compliance with the relevant international standards.

*It is not clear what this would entail. This issue has been on the EU agenda already for over a year without any agreement yet. The latest draft of the programme refers to a separate study of this issue.*

The European Council invites the Council and the Commission to establish in 2005 appropriate structures involving the national asylum services of the Member States with a view to facilitating practical co-operation. Thus Member States will be assisted, inter alia, in achieving a single procedure for the assessment of applications for international protection, and in jointly compiling, assessing and applying information on countries of origin, as well as in addressing particular pressures on the asylum systems and reception capacities resulting, inter alia, from their geographical location. When a common asylum procedure has been established by the end of 2010, these structures should be transformed, on the basis of an evaluation, into a European office to assist all forms of co-operation between Member States relating to the Common European Asylum System.

*These objectives are both new, although there is presently limited coordination between national services through a body established by the Commission (Eurasil) and there are obligations in EC*

*asylum legislation to establish contact points for coordination of implementation. It is not clear what 'assisting cooperation' would entail. There would be obvious questions of accountability at both stages.*

The European Council welcomes the establishment of the new European Refugee Fund for the period 2005-2010 and stresses the urgent need for Member States to maintain adequate asylum systems and reception facilities in the run-up to the establishment of a common asylum procedure. It invites the Commission to designate existing Community funds to assist Member States in the processing of asylum applications and in the reception of categories of third-country nationals. It invites the Council to designate these categories on the basis of a proposal to be submitted by the Commission in 2005.

*It is not clear how these funds would relate to the Refugee Fund. Note that there is no deadline for the Council to act.*

#### 1.4 Legal migration and the fight against illegal employment

Legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development, and thus contribute to the implementation of the Lisbon strategy. It could also play a role in partnerships with third countries.

*The Tampere principles concerning legal migration (fair treatment comparable to nationals; equal treatment of long-term residents as near as possible to treatment of nationals) are not mentioned at all.*

The European Council underlines that the determination of volumes of admission of labour migrants is a competence of the Member States. The European Council, taking into account the outcome of discussions on the Green Paper on labour migration, best practices in Member States and its relevance for implementation of the Lisbon strategy, invites the Commission to present a policy plan on legal migration including admission procedures capable of responding promptly to fluctuating demands for migrant labour in the labour market before the end of 2005.

*The Tampere conclusions asked for swift adoption of legislation from the Council based on Commission proposals. The Council slowly agreed legislation on family reunion and long-term*

*residents (Directives adopted in 2003). It failed to agree on a proposal on admission of employed and self-employed persons proposed in July 2001. The reference to a policy plan in 2005 is new; but note that there is no request to the Commission to propose legislation on this issue, or legislation to revise the low standards in the 2003 Directives (the family reunion directive is being challenged in the Court of Justice by the European Parliament for breach of human rights), for example to extend their scope to include fully refugees and persons with subsidiary protection. Still less is there any deadline for the Council to adopt legislation. The Commission's Green Paper is coming in October 2004, according to the 3-month rolling work programme of the Commission.*

As the informal economy and illegal employment can act as a pull factor for illegal immigration and can lead to exploitation, the European Council calls on Member States to reach the targets for reducing the informal economy set out in the European employment strategy.

#### 1.5 Integration of third-country nationals

Stability and cohesion within our societies benefit from the successful integration of legally residing third-country nationals and their descendants. To achieve this objective, it is essential to develop effective policies, and to prevent the isolation of certain groups. A comprehensive approach involving stakeholders at the local, regional, national, and EU level is therefore essential.

While recognising the progress that has already been made in respect of the fair treatment of those third-country nationals in the EU, the European Council calls for the creation of equal opportunities to fully participate in society. Obstacles to integration need to be actively eliminated.

The European Council underlines the need for greater co-ordination of national integration policies and EU initiatives in this field. In this respect, the common basic principles underlying a coherent European framework on integration should be established.

*The JHA Council of 25/26 October 2004 is due to adopt conclusions on these 'common principles'.*

These principles, connecting all policy areas related to integration, should include at least the following aspects. Integration:

- is a continuous, two-way process involving both legally residing third-country nationals and the host society;

includes, but goes beyond, anti-discrimination policy;

- implies respect for the basic values of the European Union and fundamental human rights;
- requires basic skills for participation in society;
- relies on frequent interaction and intercultural dialogue between all members of society within common forums and activities in order to improve mutual understanding;
- extends to a variety of policy areas, including employment and education.

*The latest draft adds the word 'intercultural'.*

A framework, based on these common basic principles, will form the foundation for future initiatives in the EU, relying on clear goals and means of evaluation. The European Council invites Member States, the Council, and the Commission to promote the structural exchange of experience and information on integration, supported by the development of a broadly accessible website on the Internet.

## 1.6 The external dimension of asylum and migration

### 1.6.1 Partnership with third countries

Asylum and migration are by their very nature international issues. EU policy should aim at assisting third countries, in full partnership, using existing Community funds where appropriate, in their efforts to improve their capacity for migration management and refugee protection, prevent and combat illegal immigration, inform on legal channels for migration, resolve refugee situations by providing better access to durable solutions, build border-control capacity, enhance document security and tackle the problem of return.

The European Council recognises that insufficiently managed migration flows can result in humanitarian disasters. It wishes to express its utmost concern about the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally. It calls upon all States to intensify the co-operation in preventing further loss of life.

The European Council calls upon the Council and the Commission to continue the process of fully integrating migration in the EU's existing and future relations with third countries. It invites the Commission to complete the integration of migration into the Country and Regional Strategy Papers for all relevant third countries by the spring of 2005.

The European Council acknowledges the need for the EU to contribute to a more accessible, equitable and effective international protection system in partnership with third countries, to provide access to protection and durable solutions at the earliest possible stage. Countries in regions of origin and transit will be encouraged in their efforts to strengthen capacity for the protection of refugees. In this regard the European Council calls upon all third countries to accede and adhere to the Geneva Convention on Refugees.

#### 1.6.2 Partnership with countries and regions of origin

The European Council welcomes the Commission Communication on improving access to durable solutions <sup>1</sup> and invites the Commission to develop EU-Regional Protection Programmes in partnership with the third countries concerned and in close consultation and co-operation with UNHCR. These programmes will build on experience gained in pilot protection programmes to be launched before the end of 2005. These programmes will incorporate a variety of relevant instruments, primarily focused on capacity building, and include a joint resettlement programme for Member States willing to participate in such a programme.

*This appears to endorse the gist of the Commission's summer 2004 Communication.*

Policies which link migration, development co-operation and humanitarian assistance should be coherent and be developed in partnership and dialogue with countries and regions of origin. The European Council welcomes the progress already made, invites the Council to develop these policies, with particular emphasis on root causes, push factors and poverty alleviation, and urges the Commission to present concrete and carefully worked out proposals by the spring of 2005.

*There are already Council conclusions of 2003 on the development/migration link, which the Commission is due to report upon.*

#### 1.6.3. Partnership with countries and regions of transit

As regards countries of transit, the European Council emphasises the need for intensified co-operation and capacity building, both on the southern and the eastern borders of the EU, to enable these countries to better manage migration and to provide adequate protection for refugees. Support for capacity-building in national asylum systems, border control and wider co-operation on

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<sup>1</sup> COM (2004) 410 def.

migration issues will be provided to those countries that demonstrate a genuine commitment to fulfil the obligations under the Geneva Convention on Refugees.

The proposal for a Regulation establishing a European Neighbourhood and Partnership Instrument<sup>1</sup> provides the strategic framework for intensifying co-operation and dialogue on asylum and migration with neighbouring countries amongst others around the Mediterranean basin, and for initiating new measures. The European Council requests a report on progress and achievements before the end of 2005.

*This report would be a new measure. The neighbourhood countries are all countries of the Middle East and North Africa, and the 'European' former Soviet states.*

#### 1.6.4 Return and re-admission policy

Migrants who do not or no longer have the right to stay legally in the EU must return on a voluntary or, if necessary, involuntary basis. The European Council calls for the establishment of an effective removal and repatriation policy based on common standards for persons to be returned in a humane manner and in full respect for their human rights and dignity.

*The Council adopted a 'Return' policy in 2002. It is not clear if this would be a new policy.*

The European Council considers it essential that the Council start discussions in early 2005 on minimum standards for return procedures including minimum standards to support effective national removal efforts. The proposal should also take into account special concerns as regards safeguarding public order and security. A coherent approach between return policy and all other aspects of the external relations of the Community with third countries is necessary as is special emphasis on the issue of lack of travel and identification documents.

*The Commission is due to propose a Directive on such minimum standards in December 2004, according to its 3-month rolling work programme.*

The European Council calls for:

- closer co-operation and mutual technical assistance;

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<sup>1</sup> COM (2004) 628 final

- the launch of the preparatory phase of a European return fund;
- common integrated country and region specific return programmes;
- the establishment of a European Return Fund by 2007 taking into account the evaluation of the preparatory phase;
- the timely conclusion of Community readmission agreements;
- the prompt appointment by the Commission of a Special Representative for a common readmission policy.

*The Return Fund is already operating on a limited basis as a preparatory measure. The idea of a Special Representative for readmission is new.*

## 1.7 Management of migration flows

### 1.7.1 Border checks and the fight against illegal immigration

The European Council stresses the importance of a swift abolition of internal border controls, the further gradual establishment of the integrated management system for external borders and the strengthening of controls at and surveillance of the external borders of the Union. In this respect the need for solidarity and fair sharing of responsibility including its financial implications between the Member States is underlined.

The European Council urges the Council, the Commission and Member States to take all necessary measures to allow the abolition of controls at internal borders as soon as possible , provided all requirements to apply the Schengen acquis have been fulfilled and after the Schengen Information System (SIS II) has become operational in 2007. In order to reach this goal, the evaluation of the implementation of the non SIS II related acquis should start in the first half of 2006.

*This is the first time the European Council has referred to dates for abolition of internal border controls for new Member States and for the operational effect of SIS II. A proposal to set out the rules of SIS II in detail is still forthcoming (the Commission's rolling work programme lists Dec. 2004 as the date for the proposal), although the basic decisions on what the SIS II will include and its management appear in Council conclusions adopted in spring 2004. The latest draft sets a deadline for beginning the related Schengen evaluations.*



The European Council welcomes the establishment of the European Agency for the Management of Operational Co-operation at the External Borders, on 1 May 2005. It requests the Commission to submit an evaluation of the Agency to the Council before the end of 2007. The evaluation should contain a review of the tasks of the Agency and an assessment of whether the Agency should concern itself with other aspects of border management, including an enhanced co-operation with customs services and other competent authorities for goods-related security matters.

*The Regulation establishing the Border Agency is due to be adopted officially by the JHA Council on October 25/26 2004. The prospect of a great widening of its powers is new.*

The control and surveillance of external borders falls within the sphere of national border authorities. However, in order to support Member States with specific requirements for control and surveillance of long or difficult stretches of external borders, and where Member States are confronted with special and unforeseen circumstances due to exceptional migratory pressures on these borders, the European Council:

- invites the Council to establish teams of national experts that can provide rapid technical and operational assistance to Member States requesting it, following proper risk analysis by and acting within the framework of the Border Management Agency, on the basis of a proposal by the Commission on the appropriate powers and funding for such teams, to be submitted in 2005;
- invites the Council and the Commission to establish a Community border management fund by the end of 2006 at the latest;
- invites the Commission as soon as the abolition of controls at internal borders has been completed, to submit a proposal to supplement the existing Schengen evaluation mechanism with a supervisory mechanism, ensuring full involvement of Member States experts, including unannounced inspections.

*The idea of specialist border assistance has been discussed before, but this is the first time the European Council has committed itself to the idea so firmly. Note there is no deadline for the Council to adopt the Commission proposal. The implication is that these teams will intercept asylum-seekers on the high seas (this was more bluntly stated in earlier Presidency documents).*

*A border fund has been discussed before, but the commitment and deadline to establish one is new.*

*The idea of Schengen supervisory mechanisms, including surprise inspections, is new.*

The question of whether the teams of national experts can ultimately be converted into a European corps of border guards should be examined as part of the review of the tasks of the Agency envisaged above.

*The idea of a European border guard has been discussed but deferred before. Notice there is no commitment to establish the border guard, just to examine it. In the latest draft, the date for the review of this issue is now linked to the review of the Agency in 2007, not the review of this Programme in 2006.*

The European Council invites Member States to improve their joint analyses of migratory routes and smuggling and trafficking practices and of criminal networks active in this area, inter alia within the framework of the Border Management Agency and in close co-operation with Europol and Eurojust. It also calls on the Council and the Commission to ensure the firm establishment of immigration liaison networks in relevant third countries. Particular attention should be paid to co-operation between Member States and with third countries in rescuing immigrants at sea in conformity with international law.

*A Council Regulation on an ILO network was adopted early in 2004.*

With a view to the development of common standards, best practices and mechanisms to prevent and combat trafficking in human beings, the European Council invites the Council and the Commission to develop a plan in 2005.

*An Action Plan on illegal immigration and trafficking was adopted in 2002; a Framework Decision on trafficking was adopted in 2002; and a Directive on victims of trafficking was adopted in 2004. The Council of Europe (distinct from the EU) is working on a Convention on trafficking.*

#### 1.7.2 Biometrics and information systems

The management of migration flows, including the fight against illegal immigration is strengthened by establishing a continuum of security measures that effectively links visa application procedures and entry and exit procedures at external border crossings. Such measures are also of importance for the prevention and control of crime, in particular terrorism. In order to achieve this, a coherent

approach and harmonised solutions in the EU on biometric identifiers and data are necessary.

The European Council requests the Council to examine maximising the effectiveness and interoperability of EU information systems in tackling illegal immigration and improving border controls as well as the management of these systems on the basis of a communication by the Commission on the interoperability between the Schengen Information System (SIS II), the Visa Information System (VIS) and EURODAC to be released in 2005, taking into account the need to strike the right balance between law enforcement purposes and safeguarding the fundamental rights of individuals.

*The Commission communication is due in December 2004, according to the Commission's 3-month rolling work programme. The Council has already agreed to link the SIS and VIS, but linking Eurodac would be a radical change because this database was established for the limited purpose of establishing which Member State is responsible for an asylum-seeker.*

The European Council invites the Council, the Commission and Member States to continue their efforts to integrate biometric identifiers in travel documents, visa, residence permits, EU citizens' passports and information systems without delay and to prepare for the development of minimum standards for national identity cards, taking into account ICAO standards.

*The idea of common standards for ID cards (presumably set out in EU measures) is new. The EU does not have the power to adopt measures on ID cards at present (see Article 18(3) EC), although it would gain such powers if the Constitution is ratified. There are proposals for including fingerprint and digital photo data in visas, residence permits and EU citizens' passports currently under discussion in the Council and European Parliament.*

### 1.7.3 Visa policy

The European Council underlines the need for further development of the common visa policy as part of a multi-layered system aimed at facilitating legitimate travel and tackling illegal immigration through further harmonisation of national legislation and handling practices at local consular missions. Common visa offices should be established in the long term, taking into account discussions on the establishment of an European External Action Service. The European Council welcomes initiatives by individual Member States which, on a voluntary basis, co-operate at pooling of staff and means for visa issuance.

*The Tampere conclusions called for common visa offices, but there was no implementation of this objective in practice. The latest draft adds references to bilateral agreements by Member States.*

The European Council:

- invites the Commission, as a first step, to propose necessary amendments to further enhance visa policies and to submit in 2005 a proposal on the establishment of common application centres focusing inter alia on possible synergies linked with the development of the VIS, to review the Common Consular Instructions and table the appropriate proposal by early 2006 at the latest;
- stresses the importance of the swift implementation of the VIS starting with the incorporation of among others alphanumeric data and photographs by the end of 2006 and biometrics by the end of 2007 at the latest;
- invites the Commission to submit with out delay the necessary proposal in order to respect the agreed time frame for implementation of the VIS;
- calls on the Commission to continue its efforts to ensure that the citizens of all Member States can travel without a short-stay visa to all third countries whose nationals can travel to the EU without a visa as soon as possible;
- invites the Council and the Commission to examine, with a view to developing a common approach, whether in the context of the EC readmission policy it would be opportune to facilitate, on a case by case basis, the issuance of short-stay visas to third-country nationals, where possible and on a basis of reciprocity, as part of a real partnership in external relations, including migration-related issues.

*The idea of common application centres, and the commitment and deadline to revise the consular instructions, is new. Note there is no deadline for the Council to adopt such proposals. The dates for planned implementation of the VIS are new. The VIS was established by a Council decision of June 2004 although a proposal to set out the rules of its operation in detail is still forthcoming (the Commission's rolling work programme lists Dec. 2004 as the date for the proposal). The issue of visa reciprocity is presently dealt with in the EC's visa list regulation, and a proposal to amend the reciprocity rules is currently under discussion. The 'trade-off' between visa facilitation and readmission agreements has already been made in principle with Russia, although the relevant agreements are still under negotiation. Note that the Programme does not explicitly refer to readmission agreements. The latest draft adds a request for the Commission to propose legislation establishing the VIS.*

## 2. STRENGTHENING SECURITY

### 2.1 Improving the exchange of information

The European Council is convinced that strengthening freedom, security and justice requires an innovative approach to the cross-border exchange of law-enforcement information. The mere fact that information crosses borders should no longer be relevant.

With effect from 1 January 2008 the exchange of such information should be governed under conditions set out below by the principle of availability, which means that, throughout the Union, a law enforcement officer in one Member State who needs information in order to perform his duties can obtain this from another Member State and that the law enforcement agency in the other Member State which holds this information will make it available for the stated purpose, taking into account the requirement of ongoing investigations in that State.

*This appears to endorse elements of a Commission communication of June 2004. The deadline for application of the principle is new.*

Without prejudice to work in progress<sup>1</sup> the Commission is invited to submit proposals by the end of 2005 at the latest for the implementation of the principle of availability, in which the following key conditions should be strictly observed:

- the exchange may only take place in order that legal tasks may be performed;
- the integrity of the data to be exchanged must be guaranteed;
- the need to protect the sources of information and to secure the confidentiality of the data at all stages of and after the exchange;
- common standards for access to the data and common technical standards must be applied;
- supervision of respect for data protection must be ensured;
- individuals must be protected from abuse of data and have the right to seek correction of incorrect data.

*The deadline for making proposals is new. Note there is no deadline to adopt them.*

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<sup>1</sup> The Draft framework decision on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union, in particular as regards serious offences including terrorist acts.

The methods of exchange of information should make full use of new technology and must be adapted to each type of information, where appropriate through mutual access to or interoperability of national databases, or direct (on-line) access, including for Europol, to existing central EU databases such as the SIS. New centralised European databases should only be created on the basis of studies that have shown their added value.

## 2.2 Terrorism

The European Council underlines that effective prevention and combating of terrorism in full respect of fundamental rights requires Member States not to confine their activities to maintaining their own security, but to focus also on the security of the Union as a whole.

As a goal this means that Member States :

- use the powers of their intelligence and security services not only to counter threats to their own security , but also, as the case may be, to protect the internal security of the other Member States;
- bring immediately to the attention of the competent authorities of other Member States any information available to their services which concerns threats to the internal security of these other Member State;
- in cases where persons or goods are under surveillance by security services in connection with terrorist threats, ensure no gaps occur in their surveillance as a result of their crossing a border.

In the short term all the elements of the European Council's declaration of 25 March 2004 and the EU action plan on combating terrorism must continue to be implemented in full, notably that enhanced use of Europol and Eurojust should be made and the EU Counter Terrorism Coordinator is encouraged to promote progress.

In this context the European Council recalls its invitation to the Commission to bring forward a proposal for a common EU approach to the use of passengers data for border and aviation security and other law enforcement purposes<sup>1</sup>.

*This paragraph was added in the latest draft.*

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<sup>1</sup> Declaration on Combating terrorism adopted on 25 March 2004, doc. 7906/04, point 6

The high level of exchange of information between security services shall be maintained. Nevertheless it should be improved, taking into account the overall principle of availability as described above in paragraph 2.1 and giving particular consideration to the special circumstances that apply to the working methods of security services, e.g. the need to secure the sources of information and the continued confidentiality of the data after the exchange.

*The latest draft omits the deadline of 1 July 2005 for this to take place.*

With effect from 1 January 2005, SitCen will provide the Council with strategic analysis of the terrorist threat based on intelligence from Member States' intelligence and security services and, where appropriate, on information provided by Europol.

The European Council stresses the importance of measures to combat financing of terrorism. It looks forward to examining the coherent overall approach that will be submitted to it by the Secretary General/High Representative and the Commission at its meeting in December 2004. This strategy should suggest ways to improve the efficiency of existing instruments such as the monitoring of suspicious financial flows and the freezing of assets and propose new tools in respect of cash transactions and the institutions involved in them.

*The previous draft only briefly mentioned financing of terrorism; all the details are added in the latest draft.*

The Commission is invited to make proposals aimed at improving the security of the storage and the transport of explosives as well as ensuring traceability of industrial and chemical precursors.

*The latest draft added the paragraph above.*

The European Council also stresses the need to ensure adequate protection and assistance to victims of terrorism.

The Council with the assistance of the EU Counter-Terrorism Coordinator should, by the end of 2005, together with the Commission and experts of the Member States, develop a long term strategy to address the factors which contribute to radicalisation and recruitment for terrorist activities.

*This deadline is new. It might of course be argued (without justifying terrorist acts) that one factor of radicalisation and recruitment is the foreign or domestic policy pursued by some EU and non-EU States.*

All the instruments available to the EU should be used in a consistent manner so that the key concern – the fight against terrorism – is fully addressed. To that end the JHA ministers within the Council should have the leading role, taking into account the task of the General Affairs and External Relations Council. The Commission should review Community legislation in sufficient time to be able to adapt it in parallel with measures to be adopted in order to combat terrorism.

*A reference to the role of foreign ministers was added in the latest draft.*

The European Union will further strengthen its efforts in the external dimension of the area of freedom, security and justice towards the fight against terrorism. In this context, the Council is invited to set up in conjunction with Europol and the European Border Agency a network of national experts on preventing and combating terrorism and on border control, who will be available to respond to requests from third countries for technical assistance in the training and instruction of their authorities.

The European Council urges the Commission to increase the funding for counter-terrorism related capacity building projects in third countries and to ensure it has the necessary expertise to implement such projects effectively. The Council also calls on the Commission to ensure that, in the proposed revision of the existing instruments governing external assistance, appropriate provisions are made to enable rapid, flexible and targeted counter-terrorist assistance.

### 2.3 Police cooperation

The effective combating of cross-border organised and other serious crime and terrorism requires intensified practical cooperation of police and customs authorities of Member States and with Europol and better use of existing instruments in this field.

The European Council urges the Member States to enable Europol in cooperation with Eurojust to play a key role in the fight against serious cross-border (organised) crime and terrorism by:



- ratifying and effectively implementing the necessary legal instruments by the end of 2004 <sup>1</sup>;
- providing all necessary good quality information to Europol in good time;
- encouraging good cooperation between their competent national authorities and Europol.

With effect from 1 January 2006, Europol must have replaced its "crime situation reports" by yearly "threat assessments" on serious forms of organised crime, based on information provided by the Member States and input from Eurojust and the Chiefs Police Task Force. The Council should use these analyses to establish yearly strategic priorities, which will serve as guidelines for further action. This should be the next step towards the goal of setting up and implementing a methodology for intelligence-led law enforcement at EU level.

*This is a new development.*

Europol should be designated by Member States as central office of the Union for euro counterfeits within the meaning of the Geneva Convention of 1929.

The Council should adopt the European law on Europol, provided for in Article III-276 of the Constitutional Treaty, as soon as possible after the entry into force of the Constitutional Treaty and no later than 1 January 2008, taking account of all tasks referred to Europol.

*This leaves only 14 months to adopt this law after the Constitution enters into force (if it does).*

Until that time, Europol must improve its functioning by making full use of the cooperation agreement with Eurojust. Europol and Eurojust should report annually to the Council on their common experiences and about specific results. Furthermore Europol and Eurojust should encourage the use of and its participation in Member States' joint investigation teams.

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<sup>1</sup> Europol Protocols: the Protocol amending Article 2 and the Annex to the Europol Convention of 30 November 2000, OJ C 358 13.12.00, p. 1, the Protocol on the privileges and immunities of Europol, the members of its organs, its Deputy Directors and its members of 28 November 2002 OJ C 312 16.12.2002, p.1 and the Protocol amending the Europol Convention of 27 November 2003, OJ C 2 6.1.2004. The Convention of 29 May 2000 on mutual assistance in criminal matters between the Member States, OJ C 197, 12.7.00, p. 1 and its accompanying Protocol of 16 October 2001 OJ C 326, 21.11.01, p. 2 and Framework Decision 2002/465/JHA of 13 June 2002 on Joint Investigation Teams, OJ L 162, 20.6.02, p. 1.

*Until the 2002 Protocol to the Europol Convention is ratified, Europol has no legal authority to participate in such teams.*

Experience in the Member States with the use of joint investigation teams is limited. With a view to encouraging the use of such teams and exchanging experiences on best practices, each Member State should designate a national expert.

The Council should develop cross-border police and customs cooperation on the bases of common principles. It invites the Commission to come with proposals to further develop the Schengen-acquis in respect of cross border operational police cooperation.

*The latest draft adds the invitation to make these proposals. A proposal is due in Dec. 2004, according to the Commission's 3-month rolling work programme. Note there is no deadline to adopt the proposals.*

Member States should engage in improving the quality of their law enforcement data with the assistance of Europol. Furthermore, Europol should advise the Council on methods to improve the data. The Europol information system should be up and running without delay.

The Council is invited to encourage the exchange of best practices on investigative techniques as a first step to the development of common investigative techniques, envisaged in Article III-257 of the Constitutional Treaty, in particular in the areas of forensic investigations and information technology security.

*This is a new objective. Note there is no deadline.*

Police cooperation between Member States is in a number of cases made more efficient and effective by facilitating cooperation on specified themes between Member States concerned, where appropriate by establishing joint investigation teams and, where necessary, supported by Europol and Eurojust. In specific border areas, closer cooperation and better coordination is the only way to deal with crime and threats to public security and national safety.

Strengthening police cooperation requires focused attention on mutual trust and confidence-building. In an enlarged European Union, an explicit effort should be made to improve

the understanding of the working of Member States' legal systems and organisations. The Council and the Member States should develop by the end of 2005 in cooperation with CEPOL standards and modules for training courses for national police officers with regard to practical aspects of EU law enforcement cooperation.

*This is a new objective, but is referred to in the Commission's recent proposal concerning CEPOL.*

The Commission is invited to develop in close cooperation with CEPOL by the end of 2005 systematic exchange programmes for police authorities aimed at a better understanding of the working of Member States' legal systems and organisations.

*This is a new objective.*

Finally experiences of external police operations should also be taken into account with a view to improve internal security of the European Union.

*This paragraph was added in the latest draft.*

#### 2.4 Management of crises within the European Union with cross border effects

The European Council adopted on 12 December 2003 the European security strategy, which outlines global challenges, key threats, strategic objectives and policy implications for a secure Europe in a better world. An essential complement thereof is providing internal security within the European Union, especially in the event of major internal crises with cross border effects affecting our citizens, our vital infrastructure and our public order and security. Only then can optimum protection be provided to European citizens and our vital infrastructure in the case of, for example, a CBRN accident.

Effective management of cross border crises within the EU requires not only the strengthening of the current actions on civil protection and vital infrastructure but also addressing effectively the public order and security aspects of such crises and the coordination between these areas.

Therefore the European Council calls for the Council and the Commission to set up within the existing structures, whilst fully respecting national competences, an integrated EU crisis management arrangement for crises with cross border effects within the EU addressing this

coordination, to be implemented at the latest by 1 July 2006. This arrangement should at least address the following issues: further assessment of member states' capabilities, stockpiling, training, joint exercises and operational plans for civil crisis management

*This is a new commitment.*

## 2.5 Operational cooperation

Coordination of operational activities by law enforcement agencies and other agencies in all segments of the area of freedom, security and justice as well as the monitoring of the strategic priorities set by the Council must be ensured.

To that end, the Council is invited to prepare for the setting up of the committee on internal security, envisaged in Article III-261 of the Constitutional Treaty, in particular by determining its field of activity, tasks, competences and composition, with a view to its establishment as soon as possible after the Constitutional Treaty has entered into force.

To gain practical experience with coordination in the meantime, the Council is invited to organise a joint meeting every six months between the chairpersons of the Strategic Committee on Immigration, Frontiers and Asylum (SCIFA) and the Article 36 Committee (CATS) and representatives of the Commission, Europol, Eurojust, the EBA, the Police Chiefs' Task Force, the SitCEN .

*The advance implementation of the new Committee is a new commitment.*

## 2.6 Crime Prevention

Crime prevention is an indispensable part of the work to create an area of freedom and justice. Therefore the Union needs an effective tool to support the efforts of Member States in preventing crime. To that end, the European Crime Prevention Network should be professionalised and strengthened. Since the scope of prevention is very wide, it is essential to focus on measures and priorities that are most beneficial to Member States. The European Crime Prevention Network should provide expertise and knowledge to the Council and the Commission in developing effective crime prevention policies.

*This appears to endorse a Commission communication on crime prevention of spring 2004. It would presumably entail legislation to amend the decision establishing this Network.*

In this respect the European Council welcomes the initiative of the Commission to establish European instruments for collecting, analysing and comparing information on crime and victimisation and their respective trends in Member States, using national statistics and other sources of information as agreed indicators. Eurostat should include the designing and collecting of these data amongst Member States.

*This would presumably require statistics legislation. The EC's statistics powers do not currently apply to the 'third pillar', although they would if the Constitutional Treaty is ratified.*

It is important to protect public organisations and private companies from organised crime through administrative and other measures. Particular attention should be given to systematic investigations of property holdings as a tool in the fight against organised crime. Private/public partnership is an essential tool. The Commission is invited to present proposals to this effect in 2006.

*This is a new initiative. Note there is no deadline for adoption.*

#### 2.7. Organised crime and corruption

The European Council welcomes the development of a strategic concept with regard to tackling cross-border organised crime at EU-level and asks the Council and the Commission to develop this concept further and make it operational, in conjunction with other partners such as Europol, Eurojust, the Police Chiefs Task Force, EUCPN and CEPOL. In that context, issues relating to corruption and its links with organised crime should be examined.

*This paragraph was added in the latest draft.*

#### 2.8 European strategy on drugs

The European Council underlines the importance of addressing the drugs problem in a comprehensive, balanced and multidisciplinary approach between the policy of prevention, assistance and rehabilitation of drug dependence, the policy of combating illegal drug trafficking and precursors and money laundering, including the strengthening of international cooperation.

The European Strategy on Drugs 2005-2012 will be added to the programme after its adoption by the European Council in December 2004.

### **3. STRENGTHENING JUSTICE**

The European Council underlines the need to further enhance work on the creation of a Europe for citizens and the essential role that the setting up of a European Area for Justice will play in this respect. A number of measures have already been carried out. Further efforts should be made to facilitate access to justice and judicial cooperation as well as the full employment of mutual recognition. It is of particular importance that borders between countries in Europe no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.

#### **3.1 European Court of Justice**

The European Council underlines the importance of the European Court of Justice in the relatively new area of freedom, security and justice and is satisfied that the Constitutional Treaty greatly increases the powers of the European Court of Justice in that area.

To ensure, both for European citizens and for the functioning of the area of freedom, security and justice, that questions on points of law brought before the Court are answered quickly it is necessary to enable the Court to respond quickly as demanded by Article III-369 of the Constitutional Treaty.

In this context and in the perspective of the future Constitutional Treaty, thought should be given to setting up a more formal solution to handle requests for preliminary rulings concerning the area of freedom, security and justice, in particular by amending the Statute of the Court. The Commission is invited to come forward - after consultation of the Court of Justice - with a proposal to that effect.

*The Statute can already be amended by the Council and many possibilities to restructure the EU judicial system are already available. There is no excuse for not implementing the Council's legal obligations to amend the rules concerning jurisdiction over immigration, asylum and civil law.*

### 3.2 Confidence-building and mutual trust

Judicial cooperation both in criminal and civil matters could be further enhanced by strengthening mutual trust and by progressive development of a European judicial culture. In an enlarged European Union, mutual confidence shall be based on the certainty that all European citizens have access to a judicial system meeting high standards of quality. In order to facilitate full implementation of the principle of mutual recognition, a system providing for objective and impartial evaluation of the implementation of EU policies in the field of justice, whilst fully respecting the independence of the judiciary and consistent with all the existing European mechanisms, shall be established.

*The latest draft refers only to reviewing implementation of EU measures, not to reviewing the quality of justice systems generally.*

Strengthening mutual confidence requires an explicit effort to improve mutual understanding among judicial authorities and different legal systems. In this regard, networks of judicial organisations and institutions, such as the network of the Councils for the Judiciary, the European Network of Supreme Courts and the European Judicial Training Network, should be supported by the Union.

*Does this entail financial support?*

Exchange programmes for judicial authorities will facilitate cooperation and help develop mutual trust. An EU component should be systematically included in the training of judicial authorities. The Commission is invited to prepare as soon as possible a proposal aimed at creating, from the existing structures, an effective European training network for judicial authorities for both civil and criminal matters, as envisaged by Articles III-269 and III-270 of the Constitutional Treaty.

*An earlier initiative from France on judicial training was rejected by the Council.*

### 3.3 Judicial cooperation in criminal matters

Improvement should be sought through reducing existing legal obstacles and strengthening the coordination of investigations. With a view to increasing the efficiency of prosecutions, while guaranteeing the proper administration of justice, particular attention should be given to possibilities of concentrating the prosecution in cross border multilateral cases in one Member

State. Further development of judicial cooperation in criminal matters is essential to provide for an adequate follow up to investigations of law enforcement authorities of the Member States and Europol.

The European Council recalls in this context the need to ratify and implement effectively - without delay - the legal instruments to improve judicial cooperation in criminal matters, as referred to already in the paragraph on police cooperation.

### 3.3.1 Mutual recognition

The comprehensive programme of measures to implement the principle of mutual recognition of judicial decisions in criminal matters, which encompasses judicial decisions in all phases of criminal procedures or otherwise relevant to such procedures, such as the gathering and admissibility of evidence, conflicts of jurisdiction and the ne bis in idem principle and the execution of final sentences of imprisonment or other (alternative) sanctions<sup>1</sup>, should be completed and further attention should be given to additional proposals in that context. The further realisation of mutual recognition as the cornerstone of judicial cooperation must be accompanied by the development of common standards for procedural rights in criminal proceedings with due respect for the legal traditions of Member States. In this context, the draft Framework Decision on certain procedural rights in criminal proceedings throughout the European Union should be adopted by end 2005. The Council should adopt by the end of 2005 the Framework Decision on the European Evidence Warrant<sup>2</sup>. The Commission is invited to present its proposals on enhancing the exchange of information from national records of convictions and disqualifications, in particular of sex offenders, by December 2004 with a view to adoption by the Council by the end of 2005. This should be followed in March 2005 by a further proposal on a computerised system of exchange of information.

*There is no reference to some specific issues subject to discussion (a forthcoming Commission on criminal jurisdiction/ne bis in idem; the issue of taking account of prior convictions, where the Commission is due to propose measures in December 2004). The latest draft adds a deadline to adopt the proposal on procedural rights. This is the first reference to deadlines on the arrest warrant and criminal records issues. There is no reference to deadlines to adopt measures on pre-trial supervision (where the Commission issued a Green Paper in August 2004).*

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<sup>1</sup> OJ C 12, 15.1.2001, pages 10-22.

<sup>2</sup> COM(2003) 688.



### 3.3.2 Approximation of law

The European Council recalls that the establishment of minimum rules concerning aspects of procedural law is envisaged by the existing and future treaties in order to facilitate mutual recognition of judgments and judicial decisions and police and judicial cooperation in criminal matters having a cross border dimension. The approximation of substantive criminal law serves the same purposes and concerns areas of particular serious crime with cross border dimensions. Priority should be given to areas of crime that are specifically mentioned in those treaties.

To ensure more effective implementation within national systems, JHA ministers should be responsible within the Council for defining criminal offences and determining penalties in general.

*This paragraph is content-free. There is no reference to specific measures already proposed by (racism and xenophobia) or forthcoming from the Commission (counterfeiting and organised crime).*

### 3.3.3 Eurojust

Effective combating of cross-border organised and other serious crime and terrorism requires the cooperation and coordination of investigations and, where possible, concentrated prosecutions by Eurojust, in cooperation with Europol.

The European Council urges the Member States to enable Eurojust to perform its tasks by:

- effectively implementing the Council Decision on Eurojust by the end of 2004<sup>1</sup> with special attention to the judicial powers to be conferred upon their national members; and
- ensuring full cooperation of their competent national authorities with Eurojust.

The Council should adopt on the basis of a proposal of the Commission the European law on Eurojust, provided for in Article III-273 of the Constitutional Treaty, after the entry into force of the Constitutional Treaty but no later than 1 January 2008, taking account of all tasks referred to Eurojust.

*This leaves only 14 months to adopt the legislation, if the Constitutional Treaty enters into force.*

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<sup>1</sup> OJ L 63, 6.3.2002, pages 1-3.

Until that time, Eurojust will improve its functioning by focusing on coordination of multilateral, serious and complex cases. Eurojust should include in its annual report to the Council the results and the quality of its cooperation with the Member States. Eurojust should make maximum use of the cooperation agreement with Europol and should continue cooperation with the European Judicial Network and other relevant partners.

The European Council invites the Council to consider on the basis of a proposal from the Commission based on the evaluation of Eurojust, the possible establishment of a European Public Prosecutors' Office from Eurojust, after the entry into force of the Constitutional Treaty.

*This is the first reference to the possibility of establishing this office. Note that there is no deadline. The latest draft contains much weaker language on this issue.*

### 3.4 Judicial cooperation in civil matters

#### 3.4.1 Facilitating civil law procedure across borders

Civil law, including family law, concerns citizens in their everyday lives. Therefore the European Council attaches great importance to the continued development of judicial cooperation in civil matters and full completion of the programme of mutual recognition adopted in 2000. The main policy objective in this area is that borders between countries in Europe should no longer constitute an obstacle to the settlement of civil law matters or to the bringing of court proceedings and the enforcement of decisions in civil matters.

#### 3.4.2 Mutual recognition of decisions

Mutual recognition of decisions is an effective means of protecting citizens' rights and securing the enforcement of such rights across European borders.

Continued implementation of the programme of measures on mutual recognition <sup>1</sup> must therefore be a main priority in the coming years to ensure its completion by 2011. Work concerning the following projects should be carried on with energy: the conflict of laws regarding non-contractual obligations ("Rome II") and contractual obligations ("Rome I"), a European Payment Order and instruments concerning alternative dispute resolution and concerning small claims. In timing the completion of these projects, due regard should be given to current work in related areas.

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<sup>1</sup> OJ C 12, 15.1.2001, page 1-9.

*The Rome II proposal dates from July 2003; the payment order proposal from spring 2004; the ADR proposal from Oct. 2004; the Rome I proposal has not yet been made (there is an existing Rome Convention and a Green Paper of 2003 on its possible 'conversion' into EC legislation); and the small claims proposal is forthcoming in Dec. 2004, according to the Commission's 3-month rolling work programme.*

The effectiveness of existing instruments on mutual recognition should be increased by standardising procedures and documents and developing minimum standards for aspects of procedural law, such as the service of judicial and extra-judicial documents, the commencement of proceedings, enforcement of judgments and transparency of costs.

*There are no commitments to anything concrete here.*

Regarding family and succession law, the Commission is invited to submit the following proposals:

- a draft regulation on the recognition and enforcement of decisions on maintenance, including precautionary measures and provisional enforcement in 2005;
- a green paper on the conflict of laws in matters of succession, including the question of jurisdiction, mutual recognition and enforcement of decisions in this area, a European certificate of inheritance and a mechanism allowing precise knowledge of the existence of last wills and testaments of residents of European Union in 2005; and
- a green paper on the conflict of laws in matters concerning matrimonial property regimes in 2006;
- a green paper on the conflict of laws in matters relating to divorce (Rome III) in 2005.

*A Green Paper on the issue of maintenance was submitted in spring 2004. Note the lengthy time period given to discuss and negotiate these measures. The latest draft adds the final point (conflict of laws in divorce).*

Instruments in these areas should be completed by 2011. Such instruments should cover matters of private international law and should not be based on harmonised concepts of "family", "marriage", etc. Rules of uniform substantive law should be introduced only as an accompanying measure, whenever necessary to effect mutual recognition of decisions or to improve judicial cooperation in civil matters.

Implementation of the programme of mutual recognition should be accompanied by a careful review of the operation of instruments that have recently been adopted. The outcome of such review should provide the necessary input for the preparation of new measures.

#### 3.4.3 Enhancing cooperation

With a view to achieving smooth operation of instruments involving cooperation of judicial or other bodies, Member States should be required to designate liaison judges or other competent authorities based in their own country. Where appropriate they could use their national contact point within the European judicial network in civil matters. The Commission is invited to organise EU workshops on the application of EU law and promote cooperation between members of the legal professions (such as bailiffs and notaries public) with a view to establishing best practices.

#### 3.4.4 Ensuring coherence and upgrading the quality of EU legislation

In matters of contract law, the quality of existing and future Community law should be improved by measures of consolidation, codification and rationalisation of legal instruments in force and by developing a common frame of reference. A framework should be set up to explore the possibilities to develop EU-wide standard terms and conditions of contract law which could be used by companies and trade associations in the Union.

Measures should be taken to enable the Council to effect a more systematic scrutiny of the quality and coherence of all Community law instruments relating to cooperation on civil law matters.

*This appears to endorse the gist of an October 2004 Commission communication on contract law.*

#### 3.4.5 International legal order

The Commission and the Council are urged to ensure coherence between the EU and the international legal order and continue to engage in closer relations and cooperation with international organisations such as the Hague Conference on Private International Law and the Council of Europe, particularly in order to coordinate initiatives and to maximise synergies between these organisations' activities and instruments and the EU instruments. Accession of the Community to the Hague Conference should be concluded as soon as possible.

*The Commission already has a mandate to negotiate EC accession to the Hague Conference.*

#### 4. EXTERNAL RELATIONS

The European Council considers the development of a coherent external dimension of the Union policy of freedom, security and justice as a growing priority.

In addition to the aspects already addressed in the previous chapters, the European Council calls on the Commission and the Secretary-General / High Representative to present, by the end of 2005, a strategy of all external aspects of the Union policy on freedom, security and justice, based on the measures developed in this programme to the Council. The strategy should reflect the Union's special relations with third countries, groups of countries and regions, and focus on the specific needs for JHA cooperation with them.

All powers available to the Union, including external relations, should be used in an integrated and consistent way to establish the area of freedom, security and justice. The following guidelines<sup>1</sup> should be taken into account: the existence of internal policies as the major parameter justifying external action; need for value added in relation to projects carried out by the Member States; contribution to the general political objectives of the foreign policies of the Union; possibility of achieving the goals during a period of reasonable time; the possibility of long-term action.

*The latest draft expands the external relations section considerably, moving forward the date of the report on this issue to end 2005 from the first half of 2006, removing references to specific countries (US, Russia, W Balkans), fleshing out the guidelines for external relations/JHA and linking the external policies to the Hague programme*

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<sup>1</sup> established at the European Council meeting in Feira in 2000.