



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 9 July 2004

11122/04

JAI 258

NOTE

from :	the Presidency
to :	Coreper/Council
Subject :	Preparation of the political orientations for the multiannual programme building the area of freedom, security and justice

INTRODUCTION

The Presidency recalls that the European Council, at its meeting on 17-18 June, agreed on the Treaty establishing a Constitution for Europe (referred to hereinafter as the Constitutional Treaty) and invited the Council and the Commission to draw up proposals for a new programme for the coming years, with a view to resolutely pursuing the objective of further developing a common area of freedom, security and justice.

The work programme should be practical, building on work in progress that arose from the Tampere programme and an evaluation of first-generation measures. The proposals should help to make substantial progress in enhancing mutual confidence and promoting common policies for the benefit of all our citizens.

The Presidency, acknowledging the importance of this task, foresees that a substantial part of the meetings of the Council on 19 July and 25-26 October, as well as the informal meeting of Justice and Home Affairs ministers on 30 September-1 October, will be devoted to this subject. The work will range from exploration of common ground for the outlines to an in-depth discussion of outstanding issues and finalisation of the draft conclusions for the European Council. The Council will adopt the conclusions at its meeting on 5 November.

This document is intended as a starting point for the initial discussions at the Council meeting of 19 July on all relevant policy areas with a view to exploring common ground. It describes the various policy areas that require attention and the main items for discussion within those areas. The focus should be on collecting Member States' views on the themes and topics set out in this document, as well as their proposals for additional items. The document takes account of the Constitutional Treaty, the Commission's Communication of 2 June 2004 on the assessment of the Tampere programme and future orientations¹ and the EU Plan of Action on combating terrorism, dated 8 June 2004,² as well as views expressed by members of the Council during consultations by the Presidency as well as in writing.

Since the European Council has decided that future policies on drugs will be dealt with in the new drug strategy to be drawn up in December 2004, it does not seem appropriate to include this item in the discussion in the July meeting. It goes without saying that the new 2005-2012 drugs strategy should be considered an integral part of the multiannual programme.

MAIN QUESTION

The Presidency is interested in the Member States' views on the general direction and the perspectives of the outline presented in this document and in specific remarks on the various policy areas.

¹ COM (2004) 401 final.

² 10010/2/04 REV 2.

I GENERAL ORIENTATIONS

Much has been achieved since the adoption of the Tampere programme in 1999. The evaluation of the programme shows that in the past few years a good deal of attention has been devoted to creating a legal framework for the various aspects of the area of freedom, security and justice. However, even more will have to be done in the coming years. The legal framework will have to be implemented and put into practice, there will have to be closer practical and operational cooperation, the accession to the Union of ten new Member States will have to be accommodated, and possible new challenges will have to be faced. In particular, the threat of terrorist action will continue to be a priority item. The next phase of asylum and immigration policy (as outlined in the Constitutional Treaty) should be initiated.

In the past five years, important steps have been taken towards strengthening the area of freedom, security and justice. Further details of this area will have to be worked out in the coming five-year period. Although the Constitutional Treaty stipulates that it will only enter into force on 1 November 2006 if all the instruments of ratification have been deposited, the political momentum and the firmer legal basis it creates for the various policy areas should already be taken into account. The prevention and repression of terrorism will remain a major political objective in the next years, and one that will require specific measures. Finally, the integration of ten new Member States, with their own challenges and legal and judicial traditions, into the existing institutional and policy network of cooperation will be a major challenge for the further development of an area of freedom, security and justice in the coming years. In all policy areas, attention should be given to stronger and better coordinated external action.

There is little point in trying to indicate what the area of freedom, security and justice will ultimately look like. Like national legal and judicial systems, this will continue to be 'work in progress'. Nevertheless, in the coming years substantial steps will have to be taken towards creating a European legal and judicial system based on the rule of law, the protection of fundamental rights and respect for the diversity of legal and judicial traditions in Europe, in which the following needs are met:

- adequate access to justice and protection of rights;
- a coordinated, cohesive judicial system for civil and commercial matters that ensures effective jurisdiction and execution of judgements;
- effective capacity to regulate cross-border movement of persons and international order;
- the power to protect against external and internal threats to security and to public and legal order;
- integrated capacity to fight organised crime and cross-border crime despite jurisdictional limitations and procedural obstacles, as well as closer cooperation and more effective coordination.

In all policy areas, the need for (a) adequate and timely implementation and (b) greater practical cooperation should be emphasised. The Treaty establishing the European Community provides for measures to address inadequate implementation in the areas falling within the scope of Title IV of the Treaty, border controls, asylum and immigration and cooperation on civil law matters, but Title VI of the Treaty on European Union, which covers police and judicial cooperation on criminal matters, does not include a similar system of checks and penalties.

It would seem vital in the short term to develop practical methods that will facilitate timely implementation of measures based on the Treaty on the European Union. Measures requiring national authorities' resources could be accompanied by proper plans to ensure more effective implementation. Consideration could also be given to letting the length of the implementation period be more closely related to the complexity of the measure concerned. Regular progress reports during the implementation period could serve as an incentive for national action by Member States. In particular, a monitoring system enabling the Commission to systematically assess the extent to which national implementing measures conform to the framework decisions could be developed.

As regards the need for closer practical or operational cooperation in all JHA policy areas, the measures required vary.

II SPECIFIC ORIENTATIONS

1 Adequate access to justice and protection of rights

1.1 Access to justice and fundamental rights

In developing the area of freedom, security and justice, due account will be taken of the Charter as incorporated in the Constitutional Treaty and the Explanatory Notes to it, as well as the European Convention on Human Rights, to which the EU should accede.

Due attention should be given to the collection and analysis of human rights data with a view to monitoring EU policy in this field. In this connection, the existing European Monitoring Centre on Racism and Xenophobia should be transformed into a human rights agency.

Thought could be given to the need for a single overall framework which would take account of specific features and requirements concerning protection of public order and public security and the fight against crime, as well as the need to ensure a high level of protection of privacy. With specific regard to criminal procedure, the development of a shared set of procedural safeguards could help strike the necessary balance between the need to fight crime effectively and the need to protect individuals' fundamental rights.

1.2 The European judicial system

In the continuing discussions on the reform of the European judicial system, urgent attention should be given to how the development of an area of freedom, security and justice and of the Constitutional Treaty will affect the case load and functioning of the European Court of Justice.

2. A coordinated, cohesive judicial system for civil and commercial matters that ensures effective jurisdiction and execution of judgements

Much has been achieved through the Tampere programme. The primary goal for the coming years should be to examine how the new instruments are being used in practice. An evaluation of this would provide the necessary input for the preparation of new measures.

2.1 Practical solutions to practical problems

More effective, simpler cooperation on civil matters can be achieved by seeking practical solutions to practical problems.

EU workshops on the practical application of legal instruments for practitioners in the Member States would provide appropriate fora for developing such practical solutions. The exchange of liaison judges between Member States would facilitate the implementation of the new European instruments adopted since the Tampere European Council. Promotion of cooperation between members of the legal professions (such as bailiffs and notaries public) could encourage the emergence of best practices. The Union should create a forum for drawing up EU-wide standard terms and conditions of contract law to be used by companies and trade associations in the Union.

2.2 Unequivocal jurisdiction and mutual recognition

Mutual recognition remains an effective means of empowering citizens and enabling them to enforce their rights across European borders, including in matters of family law. Continued implementation of the working programme on mutual recognition will be a main priority in the coming years. Measures to facilitate mutual recognition, such as standardisation of procedures and documents, should be developed.

Minimum standards could be drawn up for aspects of procedural law such as commencement of proceedings, default, execution of judgements and transparency of costs. The use of modern technology for alternative dispute resolution and in cross-border cases could be encouraged by developing an electronic justice programme.

The development of a common frame of reference on contract law would improve the quality of Community law. The quality and coherence of all Community law instruments relating to cooperation on civil law matters could be ensured through more systematic scrutiny by the JHA Council.

2.3 Coordination of the European and international legal order

There needs to be greater coherence between the EU and international legal order. There could be closer relations and cooperation with international organisations such as the Hague Conference on Private International Law, particularly in order to coordinate initiatives for legal instruments. The EU should take an active part in these fora so as to maximise synergies between these organisations' activities and instruments.

3. Effective capacity to regulate cross-border movement of persons and international order

The Presidency believes that the next phase in the area of border control, asylum and migration includes closer practical cooperation, adequate and timely implementation of measures and further harmonisation of legislation. The general orientations set out in Section 1 are equally applicable to these policy areas. Within the EU there needs to be greater coordination on integration matters.

Five years ago the Tampere conclusions set the stage for the development of a common EU policy on asylum and migration by identifying four key elements of such a common policy. The Presidency believes that these four elements – partnerships with third countries, a Common European Asylum System, fair treatment of third-country nationals and management of migration flows – will remain highly relevant in the coming years.

In this connection, particular attention should be given to finalising existing action plans – including the action plan to combat illegal immigration and trafficking in human beings in the EU¹ as well as the action plans for management of external borders (June 2002) and return (November 2002) – and to tackling other outstanding priorities as reiterated in various European Council conclusions concerning asylum, migration, integration and border control following proposals by the Commission.²

¹ OJ C 142, 14 June 2002.

² For example, Conclusion 9 of the European Council of 17-18 June 2004 refers to the new European Border Management Agency, the Plan for the Management of the Maritime Borders, a financial instrument for return management and the Commission's Communications on entry to the Union of persons in need of international protection [access to durable solutions] as well as the Communication on the links between legal and illegal immigration. Other relevant proposals include the Communications presented on 19 July on the establishment of a single procedure for the processing of applications for protection in the Member States, the Annual report on Migration and Integration in Europe and the Communication on a common readmission/return policy.

The Presidency also feels there is a need to consider whether to take the decision mentioned in Article 67, Paragraph 2 of the Treaty establishing the European Community in order to eliminate the constraints of the present decision-making process.

3.1 Next phase

The aim should be to deal with asylum and migration issues in a common and integrated manner that encompasses all stages of migration. What this means within the EU is a comprehensive approach that takes account of all the phases of the process, i.e. not only entry and admission but also the integration or return of migrants. At the same time, the external aspects of the migration process should be dealt with in all the Union's external relations.

(a) Development of an integrated border management system and visa policy

One of the aims of the Constitutional Treaty is to draw up policies that ensure there are no checks on persons crossing internal borders, regardless of nationality, while ensuring checks on persons and efficient monitoring when external borders are crossed. Border management has an important role to play in averting threats to security and to public and legal order.

In this connection, several issues mentioned in the Commission's Communication on the assessment of the Tampere programme and future orientations could usefully be addressed. In particular, the operational role of the External Borders Agency should be expanded, with further developments in the field of external border management: coordination mechanisms between Member States should be further developed with the long-term goal of establishing a European corps of border guards to complement national border guards. Possible synergies with other agencies operating at the border should be explored, as should increased cooperation within the new European Neighbourhood Policy. In this connection, the principle of solidarity and burden-sharing (including sharing of financial burdens) between Member States should be fully applied. Priority should be given in the coming years to creating conditions in which internal border checks between the 'old' and 'new' Member States can be abolished.

As regards the common visa policy, the security of documents and visa stickers, as well as ways to improve consular cooperation, should be addressed. This includes opportunities for common consular activities and further harmonisation of practices. Priority should be given to operationalising the VIS and reviewing the Common Consular Instructions, as well as defining a common approach to the visa facilitation policy in respect of third countries.

(b) Promotion of a genuine common policy for the management of migratory flows

The Constitutional Treaty also aims to draw up a common immigration policy that will ensure, at all stages, the efficient management of migratory flows, fair treatment of third-country nationals residing legally in Member States and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings.

The Thessaloniki European Council noted that EU policy should contribute as effectively as possible to the new demographic and economic challenges the Union is now facing, and in this connection stressed the need to explore legal means for third-country nationals to migrate to the Union – taking account of Member States’ reception capacity - within the framework of an enhanced cooperation with countries of origin, which will prove beneficial to both sides.

In pursuance of the Lisbon Strategy, and taking account of economic and demographic needs, the EU should therefore take further measures to facilitate the admission of third-country nationals who could play an important part in the further development of the Union’s ‘knowledge-based economy’, while respecting the right of Member States to determine the actual numbers of admissions, as indicated in the Constitutional Treaty. At the same time, the Union could endeavour to draw up common rules for the admission of third-country nationals. In this connection, the exchange of information between Member States needs to be considerably improved.

Furthermore, in order to develop a truly effective common policy that will ensure orderly migration, the following issues should be addressed as a matter of priority: stricter control of illegal immigration into the Union through measures such as preventive checks in closer partnership with third countries, stricter monitoring of illegal employment within the Union and practical cooperation on the return and readmission of illegally resident third-country nationals through all available instruments at EU level.

(c) Development of a fair common European asylum policy

Another aim of the Constitutional Treaty is to draw up a common policy on asylum, subsidiary protection and temporary protection based on the non-refoulement principle, in accordance with the Geneva Convention and other relevant treaties, so as to ensure that all third-country nationals in need of international protection are granted appropriate status.

To achieve that goal within the Union, a set of common legal standards along the lines of the Constitutional Treaty should be part of the next phase of the Common European Asylum System. The time frame and the need for a gradual approach in drawing up these common standards should be discussed. Partnerships and cooperation with third countries will be an essential part of the external dimension of a common European asylum policy.

(d) Greater coordination on integration

Integration of immigrants should become an essential component of a comprehensive EU policy on migration. Cooperation between EU Member States in this field is necessary in order to ensure the fair treatment of third-country nationals and will be a key aspect of the creation of the area of freedom, security and justice. Coordination of national integration policies should lead to participation by all members of society, greater social cohesion and ultimately a sense of European citizenship.

In order to achieve these goals, several steps need to be taken. A comprehensive European framework on integration, linking up several policy areas related to integration, will need to be established. It will therefore be necessary to agree on a common view of future aims for integration policy, as well as on the basic principles underlying such a comprehensive framework. Respect for these basic principles of integration will ensure that initiatives in the various policy fields concerned do not conflict with the general aims of integration, whether at national or at EU level.

Although harmonisation of integration policy is clearly neither possible nor desirable, the Constitutional Treaty mentions the possibility of incentives and support for action by Member States to promote the integration of third-country nationals residing legally within their territories. At the moment, the support required by most Member States is an opportunity to exchange experience in the field of integration and so learn from each other. It will therefore be necessary to set up a platform for discussion at various levels. The National Contact Points on Integration constitute such a platform at administrative level, and could be strengthened. At ministerial level, an annual conference of ministers responsible for integration could be envisaged.

3.2 Practical cooperation between Member States

Practical cooperation (including technical assistance) between Member States will be of key importance in all aspects of border control, asylum, immigration and integration. Cooperation between the national authorities responsible for asylum, border control and immigration should be increased in order to develop common analyses and practices. Exchange of information on the practical application of Community legislation will facilitate the application of relevant instruments. Special attention should be paid to data exchange, especially VIS and SIS-II.

3.3 More vigorous external action

In the EU's external relations, all powers and instruments must be used in an integrated and consistent manner to strengthen equal and effective partnerships and cooperation between the Union and third countries. This should be done with a view to preventing illegal immigration, resolving refugee situations, providing better access to durable solutions in the regions of origin, building capacity in migration and refugee management and tackling the problem of return. At the same time, officials in the EU and the Member States responsible for migration and asylum policy should actively pursue strong and effective working relations with their colleagues responsible for Foreign Affairs and Development Cooperation.

4. Protection against external and internal threats to security and to public and legal order

Prevention of and fight against terrorism will continue to be a major issue over the coming years. As the EU action plan shows, this will require specific measures. In addition, the EU should take account of terrorism concerns in all its policies. On the basis of the action plan, the Counter-Terrorism Coordinator and the Commission could bring more structure into terrorism policy over the coming years.

The key issues for the next few years are exchange and analysis of information, operational cooperation, civil protection and crisis management, including the protection and surveillance of cross-border infrastructure.

4.1 Exchange of information

One of the key issues over the coming years will be to improve and simplify the exchange and analysis of information, especially on terrorism but also with regard to serious cross-border crime. Information available to a Member State concerning a threat to another Member State should be exchanged automatically. The various initiatives already on the JHA agenda, and the Commission's Communication on enhancing access to information by law enforcement agencies should be taken into account.¹

Issues to be addressed in pursuing this objective are:

- the kind of information that should be exchanged: criminal data and intelligence;
- the method of exchanging information: simplification of channels of exchange, linkage or centralisation of data bases, the role of Europol and Eurojust, and multidisciplinary exchange of data;
- the national authorities to be involved;
- possible ways of using the information or intelligence obtained, and limitations on their use;
- development within the Council of capacity to assess terrorist threats (SitCen).

¹ COM(2004)429/4.

4.2 Operational cooperation

Coordination of operational cooperation is of utmost importance. National authorities in the Member States should inform each other of preparatory acts with cross-border implications. In this connection, the concept of national security and public order needs to be given a European dimension, so that Member States treat a threat to any other Member State's national security or public order as a threat to their own national security or public order.

4.3 Civil protection and crisis management

Another important issue is greater effectiveness of national measures for preventing and protecting EU citizens against natural and man-made disasters within the EU, especially in the case of cross-border threats affecting the safety and security of EU citizens .

In this connection, consideration could be given to further strengthening the EU civil protection mechanism and existing structures within the Council and the Commission. The ultimate goal is to further develop an overall EU response to internal crises and disasters under the responsibility of the JHA Council and supported by an EU crisis unit, based on existing structures such as the European Commission's Monitoring and Information Centre.

The focus of this EU response is twofold: (1) preparation of the necessary operational coordination measures to tackle internal disasters and crises, on the basis of scenarios and threat assessments; (2) an effective decision-making structure that enables the Council to reach quick decisions about adopting and implementing operational coordination measures, as well as the implications for Member States.

The essential response capabilities that Member States could make available for civil protection should be identified on the basis of scenarios. Other steps could include the development of an EU response to external threats to public safety, such as SARS.

The relation between the European Union and other international organisations, such as the UN and NATO, will be further developed in order to enhance the assistance provided by the Union. There also needs to be more dialogue with the UN, NATO and other relevant organisations.

5. Improved capacity to fight organised crime and cross-border crime

If the fight against cross-border crime is to be effective, cooperation between national law enforcement authorities must not be hampered by jurisdictional limitations and procedural obstacles. Much progress has been made in developing new instruments and setting up EU agencies for this purpose. The main challenge over the coming years will be to improve the way in which these instruments operate, and to strengthen the operational capacities of enforcement authorities in the Member States and the relevant EU organisations.

The exchange of information on criminal activities is the basis for cooperation on law enforcement. Improving and simplifying the exchange of information and improving the analysis of information at EU level is therefore an issue that will need to be addressed in the next few years.

5.1 Improving the exchange and analysis of information

Timely access to accurate, up-to-date information is essential if law enforcement agencies are to detect, prevent and investigate crime effectively. In the coming years, substantial progress will have to be made in improving and simplifying the exchange of information between enforcement authorities. Issues to be addressed in this connection are the simplification of channels of exchange, linkage or centralisation of data bases and the role of Europol. A number of specific initiatives in this area are already on the JHA agenda, but additional measures will probably be necessary.

A related issue is the improvement of Europol's crime situation reports. Consideration could be given to the development of a 'threat assessment' by Europol in order to identify threats from organised crime and other cross-border crime. Such a threat assessment could form the basis for further operational actions by the competent authorities in the Member States. In this connection, the development of 'intelligence-led policing' could be another way of improving the collection, analysis and operational use of information.

5.2 Police cooperation

Europol should become a more central and effective player in the fight against serious cross-border crime. In this connection, speedy ratification of the three Protocols to the Europol Convention is of the utmost importance. Europol could function more effectively if the JHA Council defined more specific aims for it (focus on specific areas, quantity and quality of cases handled and analyses produced, etc.). Closer, more systematic cooperation between Eurojust and Europol must be achieved and monitored on the basis of the agreement between the two organisations. Before extending Europol's powers as set out in the Constitutional treaty, further thought should be given to the possibility of broadening the types of information to be forwarded to Europol by Member States, particularly information on current investigations.

Police cooperation could be made even more efficient and effective by facilitating cooperation on specified themes between the Member States concerned, where appropriate by establishing joint investigation teams. Problems encountered by a group of Member States only could lead to a joint approach under the provisions of the Treaty, by the member States concerned, where necessary supported by Europol and Eurojust. In specific border areas, closer cooperation and greater coordination may be necessary to deal with crime and threats to public security and national safety.

The solutions found should be shared with all Member States as best practices. In this connection, the role of the Police Chiefs' Task Force should be further defined and clarified.

5.3 Judicial cooperation

Cross-border judicial cooperation can be simplified and facilitated by reducing existing legal obstacles and by increasing coordination of investigations and prosecutions in multilateral cases.

The gradual development of a system of mutual recognition of judicial decisions in criminal cases, as described in the programme of measures drawn up by the Council in 2000¹ and as foreseen by the Constitutional Treaty, will therefore be a major priority over the coming years. The obtaining of evidence and the exchange of information on criminal records are important issues in this connection. When developing other instruments, the lessons learned should be taken into account by a thorough evaluation of existing instruments such as the European Arrest Warrant.

¹ OJ C 12, 15 January 2001.

Harmonisation of legislation could also facilitate practical cooperation, as long as its main aim is to remove obstacles to mutual recognition or fill up gaps in national legislation that hamper cooperation.

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.

Eurojust should be allowed to play a more central part in supporting and coordinating the investigation and prosecution of cross-border organised crime involving several Member States. Like Europol, Eurojust could function more effectively if the JHA Council defined more specific aims for it (focus on specific types of crime, quantity and quality of cases handled and analyses produced, etc.). Closer cooperation with Europol should be achieved on the basis of the agreement mentioned above.

Incentives for cooperation between law enforcement authorities in the Member States and Eurojust should be developed to ensure that the fullest use is made of the latter organisation. Progress in this field should be monitored closely by the Council.

For the longer term, the discussion could focus on what specific form the extension of powers proposed in the Constitutional Treaty should take. The creation of the European Public Prosecutor from Eurojust could be part of this discussion.

5.4 Mutual trust and confidence building

Police and judicial cooperation could be further enhanced by strengthening mutual trust and confidence building. In an enlarged European Union, an explicit effort should be made to improve national law enforcement authorities' understanding of the working of Member States' legal systems and organisations and of developments at EU level. Exchange programmes for such authorities will facilitate cooperation, particularly in recognising each other's decisions.

Consideration should be given to the development of an EU component for use in the training of national law enforcement officers and to the creation of a European training network.

5.5 More vigorous external action

Cooperation between the EU and third countries should be continued and strengthened, particularly where there is a well-defined need for cooperation or assistance. Specific attention should be given to the development of more closely integrated policies between the present second and third pillars, particularly with regard to drugs, terrorism and organised crime, as indicated in the European Security Strategy adopted by the European Council in December 2003.¹ More generally, there is a need to improve coordination between EU Member States with regard to international organisations.

¹ “A secure Europe in a secure world”, 12 December 2003