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Informal Meeting of the Justice and Home Affairs Ministers

Brdo pri Kranju, 24 – 26 January 2008

Agenda item: **Future Group in Justice;**
working lunch (only Ministers/Heads of Delegations)

Time for discussion: **Friday, 25 January 2008, 13.45-15.15**

I. AN AREA OF FREEDOM, SECURITY AND JUSTICE - THE WAY FORWARD

Man is the measure of all things – πάντων χρημάτων μέτρον ἄνθρωπος ἐστίν (pánton chremáton métron ánthropos estin), said Protagoras, a Pre-Socratic philosopher, in one of the few preserved fragments of his work. Unfortunately the context underlying the quoted sentence is unknown, and therefore already in Antiquity its meaning was subject to different interpretations. However, when it comes to the future of Europe, Protagoras' idea can have but one meaning: When it comes to planning the future of the common European area of freedom, security and justice, European citizens should be the fundamental measure and goal.

In this sense, the statement about man being the measure of all things can be understood as the early Greeks' recognition of the exceptionality of man as a creature with inalienable dignity. It is true that this dignity can in no way be alienated, but nevertheless it needs to be protected. Law is an asset of civilisation, the ethical purpose of which is the very protection of fragile human dignity. As Europeans, with the 20th century experience of war, totalitarian political regimes and lawless rule, we know the relevance of security and freedom. This awareness is at the very core of the European Union, ever since its beginnings in the middle of the previous century.

May we repeat the thesis of Hans Gert Pöttering from his lecture on the occasion of his visit to Ljubljana in January 2008, that the extension of the European Union to Eastern Bloc countries does not merely represent a political change, but also the victory of our belief in human beings being responsible for themselves and their society. Indeed, by joining the European area of security, freedom and justice, the democratic understanding of humanity has won over totalitarianism.

Therefore, the values of a free democratic political community must be the basic guideline of our work. We are convinced that the EU is not solely based on pragmatism and that its purpose cannot be merely coping with everyday problems of a technical nature. At the core of the European area of freedom, security and justice are the common values of human dignity, respect for human rights, democracy, rule of law and solidarity.

This is why the citizens of the European Union, and everyone seeking a good life and opportunity for success, demand that Europe be a Common Space. They expect the advantages offered by a Europe without borders. Such a Europe must be secured – this is our main political objective. The Tampere Programme of 1999 and the Hague Programme of 2004 undoubtedly contributed to the promotion of a common European area of freedom, security and justice. Nevertheless, we still face numerous challenges.

The programme that has been prepared by the Future Group should bring about benefits for citizens of the European Union, and our citizens should come to know European democratic ideals better, while their lives should get better as well.

The objective of this discussion paper is to open the discussion on the challenges for the future.

II. MAIN CHALLENGES

The Future group on justice has so far identified the following challenges:

a. Legislation: The *acquis* should be fully implemented taking due consideration of the new implementation control mechanisms introduced by the Lisbon Treaty. A horizontal review of the instruments adopted should be considered in order to emphasise legislation consistency.

Consolidation should be promoted. We have to achieve a conceptual and legal coherence. In order to avoid 'overlegislating' it is essential to define the areas, in which further legislation is really needed. Ex-post impact assessments should be carried in order to evaluate and fine tune legislative adequacy.

b. Access to justice: Enhancing mutual trust among Member States is one of the crucial points. This can also be achieved through better access to justice. Modern means of Information Technology can facilitate access to justice. Therefore the work should focus on E-justice, e.g. creating a common European portal on justice, providing access to legal information, judicial and administrative authorities, registers, databases etc. National registers on criminal records can be interconnected and an EU-wide register on third country nationals, convicted in the EU can ensure fast information exchange. Further possibilities are: electronic access to courts for the implementation of the European payment order and, if feasible, the European small claims order; networking of national registries of wills and of registries of insolvency, on-line mediation schemes.

c. Judicial cooperation: Judicial cooperation can be strengthened through practical measures. It is necessary to improve knowledge of, and to enhance trust in other judicial systems in the EU. Eurojust and European Judicial Networks in civil and criminal justice matters need to be used in full.

d. External dimension of the European justice area: The rule of law and fundamental rights will continue to be crucial issues in JHA external relations. Concrete steps need to be taken to ensure the citizens' perspective such as review of priority of legislative acts such as trafficking in human beings, the rights of the child and data protection. An issue of special concern is support to vulnerable groups.

In the field of private international law concrete measures to simplify cross-border family law issues should be taken, especially with regard to maintenance obligations.

Judicial cooperation with international organisations and neighbouring countries should be reinforced in the area of the fight against organised crime and terrorism, as well as against trafficking of drugs and human beings, by efficient and coordinated use of existing structures. In the judicial area, mutual legal assistance in criminal and civil matters and extradition will be the main focus, as well as promotion of training of magistrates and technical assistance.

e. Child protection: requires a horizontal, all-round approach.

In family law a decision handed down by a court in one Member State should be recognised and enforced without hindrance in another Member State. To this end, suppression of the exequatur should be enhanced where appropriate in the light of the standards set by Community law. The fast ratification procedure of the Hague Children Protection Convention (1996) should be promoted.

Greater security through common cooperation tools like informal regional and cross-border mechanisms securing the exchange of information to find a kidnapped child in the closest neighbouring countries should be set on. Eurojust's role could be strengthened in order to combat pedophile criminal networks effectively, in particular those operating online.

The exchange of experiences in fighting habitual sexual offenders should be set on. An inventory of the various measures implemented by Member States to deal with the problem of re-offending sexual offenders can be drawn up.

Children should be helped to understand what an area of security, freedom and justice means. Hence, a child friendly website should be set up and linked to the "E-Justice" portal.

f. Citizens' rights: In the field of judicial cooperation in criminal matters mere application of the principle of mutual recognition is not sufficient to create a true area of freedom, security and justice. There is no canon of procedural rights determined by the European Union, which should be granted to every citizen of Europe as a minimum. We have not been successful in reaching an agreement on the Framework Decision on minimum rights in criminal proceedings. Concrete steps to strengthen citizens' rights at the European level for 2010 and the following years – particularly following the adoption of the Lisbon Treaty - should be determined. This should not involve full harmonisation of national criminal procedural rights. The goal should be to provide all citizens of the European Union with a basic canon of rights as minimum guarantees if they are subjected to a criminal investigation. Creating mutual trust as a pre-condition for facilitating judicial cooperation in criminal matters also means continually reflecting on the principle of mutual recognition and how it is put into practice. In the field of civil law cooperation substantial progress has been achieved.

g. Financial instruments: Achieving the common goal of a European Area of Justice requires a stable financial framework. Besides the existing Framework programmes aiming at strengthening the European area of Justice, Freedom and Security, further funding opportunities should be explored in the 7th Framework Programme for Research. Also the

ICT Policy Support Programme could play a major role. Access to justice, better public services and quality of life are worthwhile objectives for the justice area. Programmes or actions which require a specific infrastructure could also be integrated into or aligned to the structural funds and/or research programmes.

III. WAY FORWARD

The Future Group on Justice will put forward a draft paper on the main issues for the Post Hague Programme in the area of Justice. Within the time left it is necessary to put together a list of core issues to be part of the Programme while keeping the list short and concise. Another topic of the Programme may be "Protection of citizens' rights and the fight against terrorism", "family law" or the involvement of the JHA Council when it comes up to criminal sanctions in Community instruments which are in the competence of other Council configurations.

IV. QUESTIONS

Ministers are invited to:

- comment on the challenges identified by the Future Group so far,**
- submit ideas on additional future topics.**