

Brussels, 28 June 2006

Implementing The Hague Programme: the way forward

The area of Freedom, Security and Justice is placed high among the Union's priorities, not only because it is one of the Union's fundamental objectives, but also, and above all, because it is at the heart of EU citizens' interests. The Commission Communication to the European Council on "A Citizens' Agenda for Europe" of 10 May 2006 strongly reaffirmed this priority.

The European Council stated in December 2004 that "since the Programme (*The Hague Programme- the multi-annual programme strengthening Freedom, Security and Justice in the European Union*) will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful. To that end, it invited the Commission to report in 2006 "to the European Council on the progress made and to propose the necessary additions to the Programme".

In the absence of the entry into force of the Constitutional Treaty, it is still necessary to draw up a first political assessment of progress made in implementing the Hague Programme and to propose the necessary adjustments. The present Communication and the parallel Communications on "Strengthening Freedom, Security and Justice in the European Union: report on the implementation of the Hague Programme for the year 2005" (hereafter "the Scoreboard plus") and on "The Evaluation of EU Policies on Freedom, Security and Justice" constitute the answer to the call made by the European Council.

The aim of this comprehensive package is thus not to identify new priorities compared to those set out by the Hague Programme but mainly

- (1) to take stock of the progress made and to reiterate the commitment of the Commission to the achievement of the goals set out in the Hague Programme;
- (2) to assess the level of implementation at EU and national level, allowing for a better definition of specific objectives; and
- (3) to propose a thorough evaluation of results.

On that basis, the Commission has identified those areas in which it believes it is necessary to take forward the political agenda of the Union on the basis of the Hague Programme.

The Commission acknowledges the urgent need to find a new impetus in the area of Freedom, Security and Justice as part of an ambitious, policy - driven agenda for citizens. In presenting this package of measures, the Commission wishes to stimulate and structure the discussion with the Member States and the other Institutions during the Finnish Council Presidency (July- December 2006) on the following two areas:

(1) New policy initiatives it considers necessary other than those already in course of implementation under The Hague Programme; and

(2) As requested by the June 2006 European Council on exploring possible ways to improve the functioning of Freedom, Security and Justice policies by using the mechanisms provided for in the current Treaties, without pre-empting the Constitutional Treaty.

A new impetus to strengthen the area of freedom, security and justice

A first assessment of the implementation of The Hague Programme through the Scoreboard plus enables the Commission to identify those areas needing attention in the Union's work and where further efforts are needed.

On this basis, the Commission makes a number of proposals for action and implementation before the expiry of The Hague Programme (2009) in the following areas:

1. Fundamental rights and citizenship

At the core of the European Union's values, the Commission will focus its action on the respect and promotion of fundamental rights for all people and to develop the concept of EU citizenship. Citizenship of the Union entails a number of crucial rights, including free movement within the Union and diplomatic and consular protection. The Commission envisages the following action: in response to requests for actions against alleged violations of fundamental rights by Member States, to continue to monitor and promote fundamental rights in accordance with the EU Treaty and its 2002 Communication on Article 7 TUE; to give utmost priority to the correct implementation by Member States of the Council Directive 2004/38/EC on the right of free movement and residence within the EU; in recognition of the importance of developing a common EU knowledge and common standards on how to protect EU citizens who need help in a third country in which their homeland is not represented, the Commission is willing to contribute to training activities in favour of EU Member States officials; to continue with its information and communications campaign on EU citizens' rights to diplomatic and consular EU protection and to consider how to develop further the creation of 'Euro-Consulates' to share common consular functions and to establish a European consular code.

2. Development of a second phase of asylum

Working towards the establishment of a Common European Asylum system, the Commission envisages the following action: evaluation of the existing legislative framework-the Dublin Regulation and Receptions Conditions Directive (end of 2006) and the Qualification Directive (2008), a Green paper on asylum policy followed by a Policy Plan on Asylum policy in 2007 and further action in the area of practical cooperation between administrations with a view to achieving a convergence in the asylum systems of Member States, notably by the creation of an EU-wide database on country of origin information.

3. Migration Management

Taking a global approach to migration management, a common immigration policy on legal migrants to the European Union is developed in parallel with measures to enhance the fight against illegal migration, migrant smuggling and trafficking in human beings-particularly women and children. The Commission envisages the following action: further to the policy plan on legal migration, the presentation of proposals for a framework EP and Council Directive and four EP and Council Directives for specific types of migrant worker (highly skilled workers, seasonal workers, intra-corporate transferees and paid trainees); following the growth in illegal immigration from West and North Africa affecting in the first instance, Italy, Malta, Greece, Spain and the Mediterranean region coordinating with Member States, EUROPOL, FRONTEX and the Joint Research Centre the priority actions as identified by the Hampton Court Informal Meeting of Heads of State and Governments and December 2005 European Councils, a progress report envisaged for 2006-end; strengthening action on the external dimension of migration by developing relations with countries of origin and transit and discussing issues such as how to mitigate the impact of drain brain on countries of origin and how to instead promote brain circulation; presentation in July this year of a communication on illegal immigration and increase exchange of information between Member States on regularisation of illegal immigrants and combating employment of illegally residing third-country nationals;

4. Integrated management of external frontiers and interoperability of information systems

An area of free movement necessitates controls on access to the Union's territory by an integrated management system of external borders, a common visa policy and judicious use of new technologies including biometric identifiers. The Commission envisages the following action: consideration of the role of FRONTEX in coordinating liaison operations in the field of migration between existing liaison networks in the third countries of departure and transit; presenting a proposal for an EP and Council Regulation on the establishment, the powers and the financing of "Rapid Reaction Teams" of national experts which, under the aegis of FRONTEX, will provide technical and operational assistance to Member States in the control and surveillance of external borders; use of biometric data to collect and store information on the entry/exit of third country nationals into/from the Schengen area-the results of a study on the feasibility of an EU entry/exit information system as well as the implementation of a 'Trusted Traveller Programme' making it easier for bona fide travellers to cross the border will be available in July 2007; the development of a European register for travel documents and identity cards issued to EU citizens, making it possible to check identities and the authenticity of documents and the presentation of an action plan in 2007 following a communication on improved effectiveness, enhanced interoperability and synergies among European databases.

5. Mutual Recognition (in civil and criminal matters)

The principle of mutual recognition in the field of civil and criminal law will continue to be the cornerstone for the Union's policies. Mutual recognition relies on mutual trust in each other's legal and judicial systems. The Commission envisages the following action: the adoption and implementation of the Commission's legislative proposals to enhance the implementation of the principle of mutual recognition both in the pre-trial and in the post-trial phases-laying down EU wide rules on jurisdiction, procedural guarantees, presumption of innocence and on minimum standards for gathering of evidence and by concrete measures to improve judicial training and the efficiency of justice systems; a study to be presented in 2007 on the horizontal problems that are encountered in the negotiation and application of the mutual recognition principle and the gaps in the present system of cooperation in criminal matters that can be addressed by new instruments; in the medium term, consideration given to a gradual process of consolidation in single mutual recognition instruments of current mutual legal assistance mechanisms, in particular in relation to obtaining evidence in the criminal law area; and the establishment of a single area of justice in civil matters - essential for business as well as citizens-providing a new political impetus to the civil mutual recognition programme 2000;

6. Access to information needed to combat terrorism and organised crime.

Information needed to fight terrorism and serious crime should be accessible across the internal borders of the EU without obstacles. The processing of relevant information across the EU by competent authorities will support action at national and at Union level to improve the capacity of the EU as a whole to prevent and combat terrorism and serious crime. In this regard the Hague Programme invited the Commission to present legislation by the end of 2005 to implement the "principle of availability", to be operational on 1 January 2008. The Commission submitted a proposal for a Council Framework Decision on the principle of availability in October 2005. In the field of criminal justice, exchange of information between Member States must extend to criminal records. The current system based on the European Convention on Mutual Assistance in Criminal Matters of 1959 presents serious shortcomings. The Commission has already presented legislative proposals aimed at establishing a computerised system of exchange of information on criminal records, which would improve mutual understanding and facilitate the mutual knowledge of existing convictions within the EU. Financial support will be provided to the Member States to facilitate the networking of national criminal records. New initiatives are at this stage not necessary however the Commission's existing and in-coming proposals in this area should be adopted and implemented with a view to ensuring a full application of the principle of availability and effective development and implementation of the EU-wide criminal record system.

Terrorism and organised crime will remain a constant threat in the coming years. The Union will have to remain particularly vigilant in demonstrating its unique capacity to drive forward policies at European level, by building up knowledge and close contacts with all stakeholders, and by helping Member States and law enforcement and judicial authorities in their daily fight to meet this challenge. As the operational cooperation and mutual trust between Member States grows, the Commission believes that it is time to develop an agreed Internal Security Strategy, which should build upon the ongoing inter-institutional work in the area of counter-terrorism and protection of critical infrastructures.

The Commission envisages the following action: a proposal on critical infrastructure protection and following the results of a study on the feasibility of the critical infrastructure warning information network, the Commission will submit a proposal for a Council Decision on this matter; consideration of the amendment of the Council Framework Decision on Terrorism to improve the definition of incitement to terrorism and to make punishable the circulation of bomb-making expertise; and a Communication by the end of the year on bio-terrorism.

7. Future of Europol.

Europol exists to improve the effectiveness and co-operation of Member States' law enforcement authorities in combating terrorism and organised crime by facilitating the exchange of information between Member States and by collecting and analysing this information. Europol's added value continues to lie in its ability to support investigations by providing high quality analysis of criminal intelligence.

The Commission believes that the Europol needs a more flexible legal basis, since this will ensure that political decisions taken to improve its functioning can be implemented without undue delay. It will also be necessary to improve oversight and control of the European Parliament over Europol's activities, in order to increase transparency and democratic accountability, whilst ensuring the confidentiality of operational information and procedures. The Commission envisages the following action: presentation of a proposal for a Council Decision replacing the existing Europol Convention, with a view to improving its operational efficiency.

The Commission also believes that one of the essential pre-conditions for achieving the policy objectives fixed by The Hague Programme is to match these objectives with adequate financial resources. The recent agreement on the Financial Perspectives has recognised this need by providing more funding for Freedom, Security and Justice policies. In 2007 the new financial Framework Programmes will be operational. They will play a strategic role in assisting the Union and the Member States.

Improving the decision making process in the area of freedom, security and justice

Freedom, Security and Justice policies are of real concern and relevance for our fellow citizens, as recently shown by the debates under Plan D (for democracy, dialogue and debate) and supported by opinion polls. European citizens want the EU to be more effective in particular in the fight against organised crime and terrorism, but also in management of migration flows and control of external borders.

Despite this strong interest, progress is slow and the development of JLS policies at EU level faces recurrent difficulties leading to numerous blockages. For instance, discussions did not progress on a **text intended to authorise cross-border investigation and prosecution** and despite the ambitious adoption of the emblematic European arrest warrant a few months after the 11 September attacks in the US, allowing the warrant of a suspect or a sentenced person with minimum formalism from one Member State to another, it has been impossible to maintain agreed high level standards when reaching to an agreement on a **text applying the same principle of mutual recognition to pieces of evidence** (European evidence warrant). No progress was possible either on **minimum standards for procedural rights** applicable throughout the EU, such as the right for an interpreter when arrested. Discussions on a text providing for the definition and criminalisation of offences of **racism and xenophobia** on a uniform basis throughout Europe have been blocked for almost two years. In contrast agreement on a Commission proposal for a **Directive on data retention** (first pillar) was achieved in only 3 months at the end of last year- this was again in sharp contrast to when discussions were totally blocked on a similar initiative for a Framework Decision (third-pillar).

The first annual follow-up to The Hague Programme, presented in the parallel Communication, has shown that these difficulties are mainly due to the particularity of the decision making process.

The Commission believes that the timing of the first review of implementation of The Hague Programme is an opportune moment to reactivate and stimulate consideration on how to better shape the decision-making in the EU and ensure better evaluation and implementation of JLS legislation. This needs to be done by making the best use of the possibilities offered by the current Treaties.

The Commission considers that fully implementing the current Treaties would allow for further **efficiency** and **coherence** in areas where the **added value** of action at EU level is widely recognised and expressly requested by our citizens that, as recently confirmed by the results of the last Euro barometer, ask for **more protection and security**.

Moreover, in the Commission's view the maximum use of the current Treaties will set in place the conditions necessary for reaching the **ambitious goals** contained in The Hague Programme and allow its **full implementation**. The current Treaties provide for the possibility to overcome the difficulties mentioned in chapter 3.1 by the use of the so-called "**bridging clauses**" contained in Articles 42 TEU and 67(2), second indent, TEC.

The Commission believes that the **bridging clauses** represent the appropriate tool at the disposal of the Union and the Member States to reach the ambitious goal of better shaping the decision-making in the area of Freedom, Security and Justice.

The real added value of the application of the bridging clauses would be to apply the "**Community**" method to all policies in this area, which has proven to ensure **more efficiency, more transparency and more accountability**. The best example of the benefits of the "Community" method is the recent adoption by the European Parliament and Council of the Commission proposal for a Directive on retention of communication data, agreed upon only three months after the Commission proposal.

By applying the "Community" method, the following advantages would be obtained:

- Generalising the **Community legislative instruments** (Regulations, Directives, Decision under the current Treaties);
- Acknowledging the legislative **co-decision** power to the democratically elected representatives of EU citizens through the European Parliament;
- Favouring both consensus and high standard achievements through the **qualified majority vote**;

Ensuring a proper judicial dialogue with national jurisdiction through the **preliminary ruling mechanism** and monitoring of implementation by the Member States through the **infringement procedure**. Moreover, use of the bridging clauses for police and judicial cooperation matters would certainly be critical in addressing the question of the delimitation between first and third pillars, which is far from being hypothetical as **recent rulings** of the Court of Justice (on the **environmental crime** and the **Passenger Name Record** cases) clearly show. Dealing with these matters under a **single legal framework** would certainly lead to more legal certainty and efficiency.

The Commission intends, on the basis of its assessment of the state of implementation of the Hague Programme and in full collaboration with the incoming Finnish Council Presidency, to launch a discussion in partnership with the other EU Institutions and the Member States on how to bring forward the policy agenda in JLS in a way to address the expectations of EU citizens and to improve the functioning of the area of FSJ.

On the basis of the outcome of reflection and discussion during the incoming Finnish Council Presidency about the benefits of using the current Treaties, the Commission is ready to take initiatives under Article 42 TEU and 67(2), second indent TCE.