

The Future of Justice and Home Affairs

General introduction

The European Institute for Freedom, Security and Justice welcomed the public invitation of the European Commission, June 2nd 2004, to contribute to a new programme regarding the future of Justice and Home Affairs.

This consultation allows the European society to witness its commitment.

"Civil society should participate in the debate about the current and future developments in the AFSJ to help to disseminate information, to promote a broad consensus amongst citizens about measures in JHA and to strengthen the social legitimacy of AFSJ".

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

With the focus on a prosperously developing Europe, aware of what is at stake and based on experiences we suggest a dual concept. Reinforced impetus based on what above all Amsterdam and Tampere have brought so far, and new impetus based on unorthodox thinking and acting to boost output and quality.

In terms of organisation, a complete overhaul is not advocated: reality claims a faster orchestrated response. Moreover, the information being the basis for such a reorganisation is already sufficiently available.

Headache here is reconstruction versus proliferation.

The reinforced input is to improve current implementation capacities.

The new input regards an under-valued killer assumption namely (socio) cultural aspects in -international- co-operation. Institutions, structures, legal systems, all are very important; behaviour however is key. Required are guts, thinking and acting altruistically, investments preceeding harvests, visionary leadership and true co-operative international conduct. As freedom, security and justice are everybody's interest.

The call for the public consultation seems a clear sign: current progress is running in circles. From a theoretical viewpoint, security cannot be organised on every acre.

A totalitarian police state would come free of charge, implying people not feeling free with that.

From the same theoretical viewpoint, freedom cannot be organised on every acre.

A perverted, depraved society would come free of charge, implying people not feeling secure with that.

Justice is to bring the balance between freedom and security.

Balanced legislation, policy, management, operations, society, freedom and security.

EULEC

EULEC is a civil society-oriented association. Its mission is to initiate, facilitate and work out concrete, efficient and effective contributions to the creation of an area of freedom, security and justice, where human rights and the right to an own identity are respected, where the principles of democracy, the constitutional state, good governance and the rule of law are acknowledged, where standards of ethics are recognised and practiced and where sustainable prosperity and peace for all are tangible. It aims at stimulating integrated co-operation within the criminal justice system, including prevention, detection, law enforcement, prosecution, criminal justice, rehabilitation, etc. In the realisation of its objectives the association has no political or commercial bonds, without losing track of the political and commercial landscapes and, where possible, engages them in the realisation of its objectives on the basis of their respective responsibilities with regard to freedom, security and justice.

EULEC's core quality is its "multi-origin" network of experts in the domain of Justice and Home Affairs, its knowledge of both strategic issues as well as operational work and its experiences with various working cultures.

EULEC's core competence is the effective and efficient use of its expert network, its mobilisation and its upgrading, its timely provision of relevant expertise, where needed.

The overall objective of EULEC is to have all EULEC customers and partners completely satisfied and regard EULEC as a reliable, dedicated partner for all professionals in the European Union Member States, the EU Candidate Countries, other countries of the Council of Europe, and beyond, in the Justice and Home Affairs domains related to the complete Chain of Justice and any newly developed relevant domain, which will contribute to the Area of Freedom, Security and Justice in the greater Europe.

EULEC is striving to be a recognised JHA Centre of Excellence, adding unique value; being a EULEC staff member will be considered a privileged position, being at the core of JHA and being registered in the EULEC JHA-Expert-Database is seen as a certificate of excellence.

EULEC is based in Brussels, which is at the heart of developments in European Justice and Home Affairs issues. Upon request and also on its own initiative, EULEC provides consultancy; programme- and project co-ordination and management support; intermediates and facilitates in exchange of best practice and knowledge; develops and carries out conferences and implements international management development programmes; delivers information services, conducts research and analysis and provides any other new type of quality service, in Justice and Home Affairs related issues, contributing to freedom, security and justice.

Programmes, projects and activities further materialise the objectives. The Logical Framework, the model of the European Foundation for Quality Management (EFQM) and our Justice and Home Affairs Management Development Programme are leading organisational tools.

EULEC, The European Institute for Law Enforcement Co-operation: –a contribution to freedom, security and justice- (1996), found itself not in the most appropriate organisational position to achieve its objectives, as also EULEC is widening its professional scope and more and more integrating the domains complementary to Justice and Home Affairs which allows the creation of the Area of Freedom, Security and Justice.

With a view on this next phase in the creation of the Area, the dimensional changes in Europe, both on policy and practical level and in the course of meeting all external and internal demands, a natural reorganisation process came into bloom.

As a result,

The European Institute for Freedom, Security and Justice

emerged officially as a first milestone event on June 23rd 2004 and will embody our true colours.

However in the midst of this process of enlargement, EULEC is ready for action.

Reflections

How to proceed with the creation of the Area of Freedom, Security and Justice?

In a historical perspective, progress has been made steadily, and at times accelerated by new phenomena, events or presidencies. From this point of view it would not be an exception that sheer incidents tend to set rules.

Freedom, security and justice are in all veins of the European Union and if not, they should be. Initially, the Justice and Home Affairs domain was the dominating factor. In line with recent history, the first and second pillar also became energetic in terms of realising freedom, security and justice.

It is easy to conclude that this content does not fit anymore in the too tight politically determined main structure as this fastidious and laborious framework affects the diligence of many. Perhaps, in the framework of defining the outlines of the years ahead of the Area, one feels invited to focus on content and structure.

For defining the guidelines for the years ahead, The European Institute for Freedom, Security and Justice prefers to take an unconventional course, which appeals on open minds. As only open minds allow creative solutions and as we strongly believe that only applied creativity, innovation, will make the difference. In doing so we use no uncertain terms, as means to stimulate the creative and constructive thinking towards strategies and solutions for the challenges to be faced.

This does not decrease our appreciation of the JHA and FSJ achievements realised over the last decade. We are fully aware of being in the midst of a policy area with unparalleled dynamics, in which both quantity and quality have developed to extents which were not foreseeable 10 years ago. Reasons to be satisfied, yet not to lean back. An essential and unequivocal repositioning of strategy is needed.

A similar repositioning of the financial framework, despite the recent increase of budget, is also indispensable. Current ratio between freedom, security and justice on the one hand and other budget headings on the other hand, is still hard to explain, let alone justifiable.

"The particularly striking point that recurred throughout this research was the high proportion of respondents conferring their absolute agreement for cooperation and common action at a European level. It is unusual to have such high rates at the extreme positive end of an answer scale, a fact that demonstrates the strong convictions of European Union citizens when it comes to matters of justice as well as immigration and asylum, and their belief in a common approach."

Flash Eurobarometer 155, Fieldwork: December 2003 Publication: March 2004

Before coming to our point, we would like to share some views on content and structure, in order to get familiarised with the wording.

Content

A. Information Exchange

Desired situation

Instead of the non orchestrated (joint) processing of criminal information / records and criminal intelligence, the too time consuming execution of information-processes and the absence of a EU-wide implemented reliable evaluation mechanism of criminal intelligence:

Swift, smooth and reliable analysis on operational and strategic level in the domains of terrorism, organised crime, cross border crime and (volume) crime in general.

Well positioned vertically and horizontally integrated position for analysis in strategic platforms managing crime and criminal justice.

Proposals

Provision of funds to develop reliable and independently constituted crime analysis on a European scale, through the creation of the ENCARA, the European Network for Crime Analysis and Risk Assessment, being a specialised network of experts from existing bodies and the academic world within the domain.

Provision of an effective and efficient legal framework for the procurement of basic criminal information and criminal intelligence.

Provision of an adequate and transparent, yet secured, accountability framework.

B. Integrated Border Management

Desired situation

Instead of unequal pre-positioning of strategic and operational staff, due to differing training systems, incompatibility of communication and information systems, the lack of a comprehensive Integrated Border Management Framework and the deep rooted thwarting effects of corruption due to deprived basic economical situations:

Adequately prepared and set-up integrated border management, free of competition and corruption; developed from the New Neighbourhood perspective, adopted in regional perspectives and implemented locally.

Proposals

Joint development of a cross cultural Integrated Border Management framework.

Step by step concretisation of this framework, linked to the New Neighbourhood policy.

C. Terrorism

Desired situation

Instead of miscommunicating information and intelligence structures, nationally and internationally and the non existence of staff exchange programmes, facilitating effective and efficient cross institutional co-operation:

EU counter-terrorism efforts function as a role model.

Proposals

Make information and intelligence systems match.

Adequate cross-cultural co-operation education and training for staff and hierarchies, including exchange programmes.

D. Drugs

Desired situation

Instead of unreliable information provision through incomparable and unreliable input, the too strong division of drugs projects on EU level, resulting in open spots and duplications of efforts and the non orchestration of demand reduction, supply reduction and harm reduction efforts on various policy levels:

Justifiable ratio and relationship between input and output in the fight against drugs.

Proposals

Transposition Programme for economic reasons for production of narcotics.

Cost-Benefit Review of international structures and institutions active in the drugs domain and improve accordingly.

E. Financial Crimes

Desired situation

Instead of fraud, including social security fraud, a topic not being on the political / JHA agenda, whilst damaging people and disrupting the community, incomplete harmonisation of financial offences, caused by doubtful financial interests and/or failing legal frameworks and the never ending ineffective time consuming and costly pre-process phases:

Adequate EU wide legal and institutional framework to manage and tackle financial crime effectively and promptly.

Proposals

EU wide research on volume and impact (pro-activeness)

Needs-Gaps Analysis and accordingly the creation of a responsive programme.

F. Asylum and Migration

Desired situation

Instead of policies based on national data, procedures, legislations and interests, being inhuman from those involved perspectives as well as inefficient, lacking area-wide effectiveness and thereby hampering adequate solutions for objectively verifiable urgent problems, and instead of facilitating asylum shopping, trafficking in human beings and illegal employment:

A comprehensive common EU immigration-, visa- and asylum policy based on common definitions and shared comparable information and accompanied by procedures stimulating co-operation, co-ordination, trust and transparency and embracing all the international protection grounds.

Facilitation of integration and mobility of third nationals within the EU. An implemented legal migration quota system allowing burden sharing by the individual member states, including respect for the principle of subsidiarity allowing the implementation of tailor-made solutions to specific problems. Development of a community return strategy, including a common approach to regulation and simplified negotiations with third countries.

Proposals

Development of sustainable comprehensive and co-ordinated approaches on migration management on a European level.

Through harmonised training curricula, the creation of a European Border Guard, working on basis of an Integrated Border Management. The establishment of an orchestrated relationship through synergising intelligent data exchange between this EU asylum and migration policy, the EU Criminal Policy and the EU Development Policy.

The provision of an appropriate legal basis for the European Migration Network and simultaneously establishing the European Integration Network with a specific programme for victims of traffickers in human beings.

Structure

European structures have grown the last decade in number and not necessarily have been put in a most effective and / or efficient position to contribute to freedom, security and justice.

Based on the overarching tools of the European (pre-federal) Criminal Law and the European (pre-federal) Criminal Procedural Law, the redesigned structure might include:

- European Crime Prevention Service
- Europol
- European Victim Care Council
- European Public Prosecution Service
- European Criminal Court
- European Bar
- European Probation Services.

However, one should take into account that:

- The further re-enforcement of Europol, functioning as European Police Service for the range of genuine cross border crime and organised crime, working subordinate to the European Public Prosecution Service, its pilots on Cross Analysis and Joint Multi Disciplinary Operational Task Forces, establishing the ENCARA, will only work step by step, top down initiated and bottom up developed.
- An integrated Euro Bar as basic partner in the chain of justice, to get the best provisions possible, may not be considered as a priority on the agenda.
- The inclusion of the European Criminal Court in the European Convention will also take some 3 to 5 years, let alone its actual materialisation, such for the purpose of independent scrutinisation on a EU level from a locally rooted EU perspective.
- And rather basically, the creation of those overarching tools through the (currently developed EULEC-) multi annual programme "The Criminal Law School in Rotation", for the similarly initiated and developed harmonisation of existing laws and legal regulations and the subsequent design of the EU Criminal Law and EU Criminal Procedural Law will be taking so much time, that we should not stop this development, but initiate a parallel track to proceed.

The unconventional course of culture, more specifically the socio / organisational cultural aspects of the creation of the Area of Freedom, Security and Justice can boost the quality of freedom, security and justice through its innovative co-operation improvement character.

Without the capacity of providing an exhaustive enumeration, we draw attention to the following topics, containing culture.

Culture

1. Culture of co-operation

1.1. Current situation

Too widespread absence of trust.

Indication:

- Specific paragraph on mutual trust and confidence building.
JAI 258, July 9th 2004, 11122/04, from the Council of the European Union.

- "Measures to ensure mutual trust between national judicial authorities"

"Further progress with mutual recognition depends on greater mutual trust between Member States, including the adoption of certain minimum procedural standards".

"As in the civil field, the principle of mutual recognition must remain the *cornerstone* of judicial cooperation".

"Improvements in the training of those working in the criminal justice systems and work on the evaluation of those systems will also help to strengthen mutual trust".

COM (2004) 4002 final, Communication from the Commission to the Council and the European Parliament, June 2nd 2004.

- "This problem of insufficient implementation also applies to co-operation mechanisms concerning agencies (e.g. Europol not receiving enough information from the Member States)".

"Furthermore, the principle of mutual recognition of judicial decisions as a cornerstone of this common policy should be enshrined in the Treaty."

"First, that mechanisms of "mutual evaluation" or "peer review", as practised successfully over recent years (.....), should be encouraged and applied more widely. This technique has proven a powerful tool for monitoring the efficient *practical* implementation of Union policies by administrative and judicial authorities of the Member States, thus helping to build up mutual confidence in each others' police and judicial systems, which is at the heart of a common area of freedom, security and justice. Indeed, if the system of mutual recognition is to work, there must also be complete mutual confidence in police and judicial systems in the Member States. High standards not only must be attained, but also must be maintained".

CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", Dec 2nd 2002.

- EULEC believes that the principle of mutual recognition basically is getting close to the basic co-operation attitude known in the "Nordic Model" and applied in the Scandinavian Countries.
- Practical experiences in cross border co-operation frameworks and multi / international co-operation frameworks; unprofessional (selfish) attitude i.e. in intelligence sharing and competitiveness in controlled deliveries were experienced.
- These experiences are recognised i.e. by:
Jörg Monar in "Justice and Home Affairs after the 2004 Enlargement", The International Spectator, March 2003: "this trust is still not fully developed among the current member states. An example is that some national police forces continue to be reluctant systematically to provide Europol with relevant data."

and:

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002:

"trust is the most difficult of these concepts and widely differing opinions co-exist concerning the basis of trust" and "if existing JHA arrangements are to operate effectively, especially in an enlarged EU, higher levels of trust must be established".

Unawareness of partner's roots, culture and perspective and the lack of skills to manage these appropriately, create misbalanced starting positions and unequal relationships in co-operation.

Indication:

- "The accession to the Union of ten new Member States will have to be accommodated, and possible new challenges will have to be faced".
"Partnerships and cooperation with third countries will be an essential part of the external dimension of a common European asylum policy".
JAI 258, July 9th 2004, 11122/04
- "There needs to be an attention to the uniqueness of the Central and East European (CEE) border regions and their cultural, historical and socio-political past and present as regards to the management of borders."
Draft Report and Policy Recommendations, EastWest Institute, NEAR Forum: Creating a common European space of security, freedom and justice, Brussels-Moscow, May 17th 2004

- The actual experiences how “institutional laboratories” like TREVI and SCHENGEN have contributed largely and fundamentally to the achievements in the creation of the Area of Freedom, Security and Justice so far.
- In the same line, co-operation frameworks / partnerships have proven to have been of indispensable value for the successful enlargement-process, such as those in EU-regional frameworks (NEBEDEAGPOL), bilateral frameworks like BNPS (the Belgian-Dutch Police Co-operation), the German-French Saarbruecken Agreement and the Dutch Hungarian / Dutch Polish Police Partnerships, multilateral frameworks like HAZELDONK, (France, Belgium, Luxembourg, the Netherlands), the Nordic Cooperation Agreement (1962) and the Cross Channel Conference.

The absence of radical assessments and constructive reward mechanisms allow poor performances to flourish and slow progress to continue.

Indication:

- “The Group takes the view that.....two mechanisms will enhance the efficiency of implementation of the obligations undertaken by the Member States within the Union. Monitoring practical implementation in the operational area can be achieved efficiently through "peer review" but where breaches of Member States' obligations occur there must be recourse to legal control through the infringement procedure”

“mechanisms of "mutual evaluation" or "peer review", as practised successfully over recent years (e.g., in the field of fight against organised crime or concerning effective application of the Schengen acquis), should be encouraged and applied more widely”.

CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", Dec 2nd 2002.

- “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”.

JAI 258, July 9th 2004, 11122/04

- “The European Commission has made a practice of commissioning from evaluation reports on specific programmes from panels of experts or management consultants. These are based on both qualitative and quantitative analysis. Value for money and “efficiency” are concepts frequently used. Both, and particularly the latter, are slippery concepts and alleged misuse of them can cause angry reactions from the groups being assessed. The two main professional groups most involved in JHA, police and magistrates, are particularly sensitive about attempts to apply these concepts to their activities. Efficiency is desirable in JHA cooperation but what this means should be carefully reviewed; different kinds of efficiency criteria should be developed which should be easily comprehensible and avoid technical complexity. Efficiency is a concept that has been a particular preoccupation of economists. Pareto made the most influential contribution to the definition of efficiency in his discussion of maximising welfare, positing that an efficient outcome is one that makes some people better off without worsening the situation for others. Pareto-optimal policy solutions bring additional net benefits for some of the parties concerned while not incurring costs to others. Agreeing on a cooperative JHA policy solution that meets the Pareto-efficient criteria may be politically unsustainable. Policy-makers at the political level are rarely concerned with efficiency only – often they scarcely take it into account. Calculations of national interest – particularly political and electoral impacts – are often given much higher priority. Nonetheless, assessment policies in terms of Pareto optimality can serve as a valuable reminder to the highest level of decision-makers that other criteria exist.”
Anderson and Apap in “Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.
- Some documents have wordings which can be considered as leniently or just reflecting an administrative reality:
 “the role of.....might be reviewed, revitalized and developed in view of its privileged position in operational coordination” and “promote cooperation between them” and “stronger and better coordinated external action” and “Minimum standards could be drawn up”
JAI 258, July 9th 2004 and Com (2004) 4002 Final, June 2nd 2004.
- “Thought should be given to setting up “performance agreements” between the main authorities concerned”
Com (2004) 4002 Final, June 2nd 2004.

Personal and/or institutional and/or national interests and/or sovereignty hinder effective and efficient accomplishments.

Indication:

- "The original ambition was limited by institutional constraints, and sometimes also by a lack of sufficient political consensus."

"The constraints of the decision-making process and of the current institutional context preclude the effective, rapid and transparent attainment of certain political commitments. It was not always possible to reach agreement at European level for the adoption of certain sensitive measures relating to policies which remain at the core of national sovereignty".

Com (2004) 4002 Final, June 2nd 2004.

- "Given the evident ineffectiveness of purely national policies". (in the framework of illegal immigration)

"On the other hand, the Group could try, as much as possible, to build on results found in the Convention generally on this issue, rather than to devise special mechanisms exclusively for the current 3rd pillar".

CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", Dec 2nd 2002.

1.2. Desired situation

An honest, profound widespread culture of mutually respectful co-operation, both horizontally and vertically, in the entire chain of justice throughout the entire Area of Freedom, Security and Justice.

Transparent and effectively controllable co-operation mechanisms, open and objectively criticisable attitudes, less selfishness, more altruism, broader visions, genuine policies.

1.3. Proposals

Focussed, Area wide education and training on cultural aspects of co-operation.

Inclusion of specifically skilled process management in JHA (co-operation) frameworks.

Structural progress and result related assessments of co-operation behaviour and mechanisms, using the LogFrame Methodology, including its objectively verifiable indicators.

Inclusion of output and outcome related payment and reward mechanisms in EU financed JHA programmes, structures and mechanisms.

2. Integrated and Maslov based criminal policy.

2.1. Current situation

A too widespread absence of integrated security and safety policies, at all levels: local, national, regional, European.

Indication:

- "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, ...".

"The aim should be to deal with asylum and migration issues in a common and integrated manner that encompasses all stages of migration".

JAI 258, July 9th 2004, 11122/04

- "There is a general agreement within the group that practical progress should be made on this subject, in order to develop gradually a genuinely integrated system of external border control management, as agreed by the Seville European Council".
CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", Dec 2nd 2002.

- "The European Union underlines that all powers and instruments at the disposal of the Union, in particular in external relations, must be used in an integrated and consistent way to build the area of freedom, security and justice. Justice and Home Affairs concerns must be integrated in the definition and implementation of other Union policies and activities".

"In November 2003, the Commission presented a Communication on co-ordination on drugs in the European Union. Given that this is a complex, multifaceted problem involving a large number of players, effective coordination between all of them is essential. This implies an appropriate level of coordination both within and between the European Union institutions and the Member States. This is one of the key points of drugs policy, since coordination goes to the heart of national and European decision-making processes".

COM (2003) 812, Dec 30th 2003, the Scoreboard.

- Basic in-house knowledge on the fact that (concepts of) multi-lateral / integrated security policies for local communities (county level and municipality level) are the exception rather than the rule. The same statement applies still for a range of crime domains due to too departmentalised structures and/or lack of communication and co-operation.

The vital links to housing, labour, health and welfare have vanished.

Indication:

- "For the purpose of this Communication, the Commission proposes to use the definition of crime prevention presented in the Council Decision of May 2001 establishing the European Crime Prevention Network (EUCPN). According to that definition, "... crime prevention shall cover all measures that are intended to reduce or otherwise contribute to reducing crime and citizens' feeling of insecurity, both quantitatively and qualitatively, either through directly deterring criminal activities or through policies and interventions designed to reduce the potential for crime and the causes of crime. It includes work by government, competent authorities, criminal justice agencies, local authorities, specialist associations, the private and voluntary sectors, researchers and the public, supported by the media"".

"Preventive measures should thus not only address crime *stricto sensu*, but also cover "antisocial behaviour", which forms, so to speak, a sort of 'pre-stage' of crime. Examples of such behaviour are noisy neighbourhoods, neighbourhoods characterised by teenagers hanging around, drunk or rowdy people, rubbish or litter lying around, deteriorated environments and housing. Such conditions can affect the regeneration of disadvantaged areas, creating an environment in which crime can take hold. Anti-social behaviour undermines the sense of security and responsibility that is needed for people to participate in their community. From a prevention perspective, it is therefore also an important area to concentrate upon".

COM (2004) 165 Final, March 12th 2004, in which the European Commission calls for national crime prevention policies and effective cooperation at EU level

- "In the light of the foregoing, the Group recommends that the objective of a common policy on immigration should be enshrined in the Constitutional Treaty, and that a legal base should be provided to allow the Union to take incentive and support measures to assist Member States' efforts to promote the integration of legally resident third country nationals. Other than these points, the Group does not recommend substantive changes to the legal bases contained in Article 63 § 3 and § 4 TEC on the understanding that these include action against illegal immigration, including criminal sanctions (see part B). The Group recommends a move to qualified majority voting and co decision for Union legislation in these areas".

"Without prejudice to the procedure for social security matters which should be considered in the context of other social policies".

CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", Dec 2nd 2002.

- “Proliferation of rules in the JHA field, lack of convergence of these rules and a need for coherence”.
Conclusion on the Conference: Integrated Security in Europe, a democratic perspective, Belgian EU Presidency, Bruges, Nov 14-17th 2001.
- “Stressing the linkage between immigration and asylum issues and other policy areas such as employment policy, social development and integration and economic policy in the context of an ageing population, the Commission tried to convince opinion, and national governments in particular, of the gains to be made by fully developed EU-wide policies. The Commission has also promoted measures to ensure appropriate legal protection of immigrants, refugees and asylum-seekers, including respect for human rights and enjoyment of privileges similar, where possible, to those of EU nationals.”

and:

“The provision of minimum temporary protection for displaced persons, including residence permits, access to employment, accommodation and housing, means of subsistence, access to medical treatment, the right to education of minors, and so on, was proposed by the Commission in May 2000.”

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

2.2. Desired situation

Multi-disciplinary policies on freedom, security and justice, both vertical, i.e. European, regional, national, local, as well as horizontal, i.e. integrating the related domains, being part of a lasting though adjustable integrated EU vision and balancing both pro-activeness and responsiveness.

It is considered easier to attain freedoms in a secure environment, rather than attaining security in a free environment.

2.3. Proposals

Creation of a holistic EU Criminal Policy, flexible to swiftly meet society needs and safeguarding the balance between freedom and security.

Cross sector coaching, co-ordination, monitoring and assessment of EU programmes and EU funded activities and similar programmes and activities on regional, national and local level.

Strategic inclusion of the Log Frame Methodology in policy processes.

3. New Neighbourhoods

3.1. Current situation

New, very valuable if not indispensable policy for -Europe's- future, however only tangible and on the agenda for some insiders.

Indication:

- The fact that the declaration on the "new neighbourhood" was adopted at the Thessaloniki summit on 20 June 2003, does regrettably not imply that this policy is common sense, even so in circles in which one would take this for granted; this presumption is based on experiences with the Schengen, Maastricht, Amsterdam, Nice, Laeken, Thessaloniki.

Swift and smooth co-operation with the New Neighbourhoods easily are taken as none of ones business, if not just totally unknown.

Indication:

- "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 (.....) 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".
JAI 258, July 9th 2004, 11122/04
- "Finally, there is a need for greater cooperation with neighbouring countries, and in particular countries with whom we share borders, consistent with the new Union neighbourhood policy"
COM(2004) 401 final, Brussels, June 2nd 2004, Commission Staff Working Paper, annex to the Communication from the Commission, Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations .
- In line with the experiences referred to above in this paragraph, preparedness of local authorities and powers, to comply with objectives and regulations only basically materialise as soon as the issues at stake are of direct relevance. If not, how perfect and beneficial it all may be, it's beyond their current business or not defining their agenda and will be dealt with when really due.
- "There is the need to create a new model for border management. It must be better organised, elaborated, synthesised and harmonised, involving people (bottom up) and employing a greater use of Information Technology (IT)"
Draft Report and Policy Recommendations, EastWest Institute, NEAR Forum
Creating a common European space of security, freedom and justice, Brussels-Moscow, May 17th 2004

3.2. Desired situation

Consent at all JHA levels on relevancy and accordingly the wish and commitment to invest in creating the solid platform for effective and efficient co-operation, even with these far-away geographies and/or on behalf of lofty reasons.

3.3. Proposals

Implementation of an unmistakably clear promotion campaign towards the professionals in the JHA domain.

Allocation of funds.

Orchestrated joint education and training on basic standards like democracy, good governance, the rule of law, human rights, code of ethics with new neighbours

Joint creation of joint JHA policies, strategies and tactics with new neighbours.

Joint establishment of joint JHA priorities with new neighbours.

Joint efforts to create inter-operationalability of JHA information procedures and systems with new neighbours.

4. Pro-activeness

4.1. Current situation

Lack of possible scenarios on freedom, security and justice in the closer and further future.

Indication:

- "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'."
JAI 258 -11122/04, July 9th 2004
- Some documents exist on future safety scenarios, however not encompassing freedom, security and justice in a trustworthy way and certainly not based on an orchestrated approach. (joint political-academical-operational perspectives)
- Risk / threat assessment is not yet an accepted and widespread shared functioning tool as we learned from questions asked by the European Commission, DG JHA.
- "A forum on organised crime prevention exists at European Union level. National law enforcement authorities, business and professional groups, academic researchers, non governmental organisations and civil society as a whole take part in the forum on organised crime prevention which was created at European Union level in 2001, to discuss new approaches in preventing organised crime. The European Union has also created a financial programme called Hippokrates to fund EU-wide prevention projects. Crime in Europe has been growing since the 1960s, despite considerably increased budgets dedicated to crime repression. In fact new forms of criminality have appeared as a result of globalisation and the boom in new technologies. Child pornography on the Internet and worldwide money laundering are two examples of this trend. Article 29 of the Treaty on European Union refers to the prevention of crime, organised or otherwise, as one means of achieving the Union's objective of providing citizens with a high level of safety within an area of freedom, security and justice. Building on the success of preventive experiments in some Member States and on the acknowledgement that combating crime, and particularly organised crime, required innovative countermeasures, European leaders emphasised at the European Council in Tampere in October 1999 that crime prevention should also be a common priority both in internal and external policies".
DG JHA, website

- "...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."

JAI 258 -11122/04, July 9th 2004

- "Need for a methodology to
 - > *define* opportunities and vulnerabilities (future oriented)
 - > *measure and rank* the opportunities and vulnerabilities (defining priorities)
 - > be used for preventing (organised) crime"

Prof. Dr. Tom Vander Beken, Crime proofing and threat assessment -a methodological approach- differences and similarities, EU Forum on the prevention of organised crime, Workshop: A strategy on crime and terrorism proofing and the assessment of the threat from organised crime, European Commission, Brussels, 30 October 2002

- "This conclusion is concerned with possible future policy directions. Making statements about the future, especially in this field, is notoriously hazardous, but the reason for imagining the future is to plan strategies that prevent the development of undesirable states of affairs".

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

Lack of concise standard production and exchange of crime analysis.

Indication:

- "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".

"Timely access to accurate, up-to-date information is essential if law enforcement agencies are to detect, prevent and investigate crime effectively., substantial progress will have to be made in improving and simplifying the exchange of information between enforcement authorities. Issues to be addressed 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".

JAI 258 -11122/04, July 9th 2004

- “Concluding Remarks
.....The Commission works closely with Europol (a common statistical framework at EU level would also allow Europol’s OC report to provide more concrete recommendations to gauge effectiveness of policy, monitor trends and assess risks) and Eurostat. It is of crucial importance that the European experts in this area can take part in this work. To avoid duplication of work and create synergies, one single and coherent approach is necessary. There is a demand for a common terminology, common definitions will have to be developed and decided on in the longer term. In the short term,priority should be to find agreement on what exactly we want to use this future comparable information for. There might be merits in formalising this experts group, the Commission will further consider a solid structure that can advice the Commission in the process and guarantee quality and scientific validity of action taken. Considering that the new Member States all are in a process of adopting to the EU, a synergy effect could be created by acting now to set up structures especially aimed at the new Member States. The data collection mechanisms envisaged could be a blend of different approaches rather than one single all-encompassing system.The development of an infrastructure for the collection and analysis of information on crime and victimisation levels and trends and of information on the criminal justice system must be seen as a more long term goal.private sector data, but the Commission will include this area in developing the action plan.”

EU Forum for the Prevention of Organised Crime

Minutes of the 26 January 2004 ad-hoc experts group on crime and victimisation statistics – Towards comparable information on crime and victimisation – an EU-wide approach, Monika Olsson, Brussels, 19.02.2004

- “There are many different partners and organisations operating in the crime prevention field, which often do not operate in a co-ordinated manner as would be desired.insufficient inter-linkage between information of the many authorities and organisations involved in crime prevention (.....). The limited use of the large amount of information contributes to the measures taken not being in accordance with the actual problem.
There is still not very much knowledge for quantitative and qualitative methods of analysis and of all possible preventive measures, their relevance, limitations and successes. There are ample cases of crime prevention still getting limited attention compared with the other chains of the criminal justice system. The limited means and human resources lead to the fact that necessary long-term planning is often replaced by a short-term approach and that insufficient attention is paid to the proper implementation of prevention projects.”

COM(2004) 165 final, Communication from the Commission to the Council and the European Parliament, Crime Prevention in the European Union, March 12th 2004

Lack of sufficient funds to materialise the political ambitions.

Indication:

- In 2003 there was a budget for Justice and Home Affairs for the 15. (€ 146.370.000)
In 2004 for these 15, € 163.870.000 were planned and in the framework of the enlargement some € 364.540.000, so in total for JHA, € 509.390.000
(Amounts without provisions for human resources/tb)
IP/03/606, Brussels, April 30 2003.
- The budget for the Area for 2004 was € 535.040.000, for commitments and € 395.000.000 for human resources, a total of € 930.040.000
The draft budget for the Area for 2005 is € 584.710.000 for commitments and € 444.000.000 for human resources, a total of € 1.028.710.000
IP/04/554, Brussels, April 28 2004.
- Undeniably, there is an increase in budget.
One can even say a threefold increase, from 0.1476% to 0.4988%
In figures: from € 146.370.000 on a total of € 99.865.690.000 (2003), to € 584.710.000 on an total of € 117.213.520.000
Yet, referring to our reflections as described on page 4, 0.5 % for the Area of Freedom, Security and Justice, what to think of it?

4.2. Desired situation

Reliable long term JHA vision, policy and strategy, based on wide angled forecasts, originating from the two main triggers: multiculturalism and economical development. The vision, policy and strategy should be substantialised through critical assessments of vulnerabilities regarding freedom, security and justice.
Pro-activeness being practiced as indispensable part of all JHA and FSJ-management cycles.
Sufficient funds to materialise political JHA-will and FSJ will.

4.3. Proposals

Recurrent scientific and operations based research on future JHA scenarios and FSJ scenarios.
Systematic exchange of JHA and FSJ related analysis and threat assessments.
Inclusion of pro-activeness as integrated preceding phase to the inception phase in programmes and projects.
Realistic budget allocation to the Area.

5. Crime Prevention

5.1. Current situation

Lack of integrated management of crime; only a strong focus on crime / organised crime exists.

Indication:

- "A number of measures can remove the above obstacles. Descriptions of best and good practices should be more user friendly particularly for those working in daily practice. In case of the recruiting, selection and promotion of management staff and personnel implementing the crime prevention policy, greater importance should be attached to the knowledge of professional literature and analysing methods and their application in crime prevention practice. Subsidising authorities should draw the attention of those implementing prevention programs to existing best and good practices and to the possibilities of making use of them. Adequate process and impact evaluation should be a standard condition for agreement with or support of any crime prevention scheme. The exchange of information between various partners should be rewarded. There are Member States which place obligations on local authorities, the police, police authorities, health authorities and probation committees (amongst others) to co-operate in the development and implementation of a strategy for tackling crime and disorder in their area (including exchanging information). These organisations have to consider changed working practices, internal priorities and their relationships both with other agencies and with the wider community."

COM(2004) 165 final, Communication from the Commission to the Council and the European Parliament, Crime Prevention in the European Union, Brussels, March 12th 2004

- "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."

JAI 258 -11122/04, July 9th 2004

Crime Prevention as such is not dealt with as an integrated and embedded element in JHA management cycles.

Indication:

- "November 2000 the Commission submitted a Communication "The prevention of crime in the European Union: Reflection on common guidelines and proposals for Community financial support".⁴> the first step from the Commission to identify priority areas in crime prevention at EU level and to contribute to developing an effective EU strategy. important developments have taken place, such as the creation of the European Forum for the Prevention of Organised Crime⁵> , the establishment of the European Crime Prevention Network⁶> and the adoption of a Council Decision creating the Hippocrates program to cofund co-operation projects⁷> In addition, a specific research topic on crime prevention has been introduced in the 6th EU Framework Programme RTD (Research and Technological Development). This will inter alia help defining common instruments for measuring the extent and the nature of volume crime, evaluating crime reduction strategies and analysing long-term threats. Like, the current Communication also underlines the primary responsibility of the Member States, since juvenile, urban and drugrelated crime occur at the local level. In order to effectively support prevention activities, to avoid duplication of efforts and to use resources more efficiently, certain co-operation activities need to be taken at EU level.
⁴> COM(2000) 786 final of 29th November 2000
⁵> The establishment of the Forum was foreseen in the Commission Communication mentioned in footnote 1 (OJ C 251 of 15 August 1997)
A first plenary meeting of the Forum took place on 17th and 18th May 2001.
⁶> Council Decision of 28 May 2001 (OJ L 153 of 8.6.2001)
⁷> OJ L 186 of 7 July 2001.
COM(2004) 165 final, Communication from the Commission to the Council and the European Parliament, Crime Prevention in the European Union, Brussels, March 12th 2004

5.2. Desired situation

More crimes registered as being prevented than repressed.

Crime prevention being on the agenda where it should be: higher than repression and inextricably bound up in the Chain of Justice at all EU levels.

5.3. Proposals

Inclusion of Crime Prevention as integrated phase in development of policies, strategies, priorities, programmes and projects.

Focussed continuous education and training. (general and vocational)

6. Victimology

6.1. Current situation

No concerted integrated attention on European level for victim care, implying a misbalance between victim's and offender's rights and provisions.

Indication:

- "Within the European Union, and the Framework Decision on the Standing of Victims in Criminal Proceedings sets such standards. It must be acknowledged, however, that legal systems and administrative practices still vary considerably across the European Union and the precise method of delivering victims' rights and services may differ between member States."

"In that context, may I take this opportunity to acknowledge the role of the European Forum for Victim Services. For many years they have been furthering the development of victim services throughout Europe and promoting policies for victims, both in the context of criminal justice and in the wider social environment.and I wish them well in their important work".

Michael McDowell T.D., Minister for Justice, Equality and Law Reform, PHARE Project Workshop on Victim Services, October 2nd 2002

- "In accordance with the conclusions of the Tampere European Council....., theFramework Decision of 15 March 2001 is to establish and guarantee victims throughout the European Union a comparable high level of protection, irrespective of the Member State in which they are present. Member States should approximate their laws and regulations to the extent necessary, with particular regard to the right to be treated with respect for their dignity, the right to provide and receive information, the right to understand and be understood, the right to be protected at the various stages of procedure and the right to have allowance made for the disadvantage of living in a different Member State from the one in which the crime was committed. The provisions of this framework Decision are therefore not confined to attending to the victim's interests under criminal proceedings proper. They also cover certain measures to assist victims before or after criminal proceedings, which might mitigate the effects of the crime. The rules and practices as regards the standing and main rights of victims therefore need to be approximated, with particular regard to the right to"

"But the Framework Decision does not impose an obligation on Member States to ensure that victims will be treated in a manner equivalent to that of a party to proceedings."

COM(2004)54 final/2

Report from the Commission on the basis of Article 18 of the Council Framework Decision of 15 March 2001 on the standing of victims in criminal proceedings, Brussels, February 16th .2004

6.2. Desired situation

Administering victim-care being valued as delivering needs based quality performance.

Victimology integrated as undisputable link in effective criminal justice structures, frameworks, procedures and provisions.

6.3. Proposals

EU wide, general policy based local implementation of coping – projects, mediation, compensation/restitution, restorative justice and other alternative effective solutions to manage crime.

Acknowledged and applied EU Victim's Bill of Rights,

Sensibility education and skills training on victim-care.

7. Re-socialisation and re-integration

7.1. Current situation

Saliently missing in most European concepts on crime, implying it is a desintegrated part of the criminal justice process, if not a non-issue.

Indication:

- We could not find recent hits on searching on “re-socialisation”, “rehabilitation” or “restorative justice” in any EU (linked) policy document.
- Only exceptions were
“COM(2004)334 final
GREEN PAPER on the approximation, mutual recognition and enforcement of criminal sanctions in the European Union
(presented by the Commission)
COM(2004)334 final, April 30th.2004

“European Forum on the Prevention of Organised Crime, Workshop
“Prevention of Trafficking in Human Beings” on 30 June 2003
Minutes and summary conclusions of the Chairman”
Minutes of the Workshop “Prevention of Trafficking in Human Beings”, Jürgen Merz, European Commission, DG JHA, Brussels

7.2. Desired situation

Re-socialisation and re-integration being coherently developed and successful disciplines in the process of criminal justice, underpinning the clear cut distinction between those who wish to improve and those full of vice.

7.3. Proposals

Needs and Gaps Analysis.

Recurrent scientific and operations based research on effectiveness, efficiency and tools to use.

Inclusion of integrated chapters on re-socialisation and re-integration in the holistic EU Criminal Policy.

Massive public promotion campaign, including the professional sector and public administrations.

Programme development accordingly.

8. Code of Ethics

8.1. Current situation

Lack of a binding EU Code of Ethics.

Indication:

- "It is anticipated that Proposals will be made to give the '**European Code of Police Ethics**' as formulated by the Council of Europe more status within the EU."

Irish EU Presidency, Website.

- "This seminar aims to promote the '*European code of police ethics*' and the Council of Europe's '*Police and human rights beyond 2000*' program. It will seek to various aspects of the ethical standards in the public sector, like the strengthening and promoting of the application of the Police and Human Rights Program in the member states' police services, the creating and promoting of an electronic network of police officers responsible for ethical standards in all the member states and the incorporating of the '*European code of police ethics*' and the human rights program into police training programs in all the member states."

"The '*European code of police ethics*' and the '*Police and human rights beyond 2000*' program are aimed at persuading the member states to adhere to the principles set out in them when drafting legislation, providing police services, and drawing up codes of conduct governing police behavior."

Conference "Ethical standards in the public sector", the Dutch Ministry of the Interior and Kingdom Relations and the Council of Europe, March 31st and April 1st 2004, Noordwijkerhout, the Netherlands.

- "It goes without saying that at the same time, we must continue to keep our core values in mind when considering any type of repressive measure. The inclusion of the EU Charter of Fundamental Rights in the draft Constitutional Treaty is a sign of the importance we attribute to these rights in the EU. The work already done in the Council of Europe in this area, and especially the adoption of the European Code of Police Ethics, are positive developments to be welcomed."

Speech Commissioner Dr. Antonio Vitorino, 7th European Police Congress, February 16th 2004, Bonn/Bad Godesberg, Germany.

European Code of Police Ethics only applies for the police and is not binding.

Indication:

- Council of Europe, Committee of Ministers
Recommendation Rec (2001)10 of the Committee of Ministers to member states on the European Code of Police Ethics, (Adopted Committee of Ministers on 19 09 2001, 765th meeting of the Ministers' Deputies)
Council of Europe, Website.

8.2. Desired situation

One Code of Ethics existing for and applied in entire Chain of Justice, also underpinning that the strength of the chain is in its weakest link.

8.3. Proposals

EU wide programme development and implementation accordingly.

9. Human Rights

9.1. Current situation

Despite all efforts in the past still not recognised and applied impeccably Europe wide.

Indication:

- "The European Union (EU) was not constructed to respect human rights.

The EU was created principally to harness economic growth after the Second World War. Consequently, the Member States developed the economic structure and left the fundamental Human Rights to their own individual legal frameworks. However, the increasing level of Human Rights case loads have highlighted the need for a fully integrated European Community which deals with social as well as economic and political problems on a level playing field. As a consequence of the omission of fundamental human rights legislation within the original Treaties, the EU has tried to include this massive section ad hoc. The progression towards an integrated European Community has been slow, and the most recent Treaty, the Treaty on European Union (TEU) 1992, incorporated provisions for both economic and monetary union (EMU) and political union (EPU), but did not include written provisions relating to fundamental human rights. This has meant that increasingly, the European Court of Justice (ECJ) must intervene and apply general principles of law to supplement Community Law."

"All Member States are also members of the Convention, and although they have transferred sovereignty to the Community, it is held that the rights enumerated in the Convention will overrule Community law.

"This means that under the general principles of Community law, Community Acts are void when conflicting with the European Convention on Human Rights". (H. Schermers)

"We have seen a remarkable effort by the EU to 'respect' the principles of Human Rights through applications of general principles of law and, as in the UK, an increasing Judicial Activism and radical freethinking in the interpretation and application of case law. Likewise the ECHR is rich in developed principles of Human Rights law. Observing these two bodies who are striving towards the same goal but whose ball passing is not completely in sequence, it would serve the Community if the Articles of the Convention were passed as law into the EU to facilitate a stronger, more compatible forum to serve fundamental freedoms."

Anita Walton, March 7th 2000, Essay Lancaster University.

"In spite of this generally accepted *raison d'être*, the Charter has realised a number of controversial questions regarding both its contents and its consequences. Critics of the Charter express concern about the enhanced role of the judiciary and the possibility that "judicial activism" will move the identification and protection of human rights in direction unacceptable to the views and values of the European peoples. Critics also worry that the Charter poses a risk of the unwarranted harmonisation of laws and procedures in areas where there are important and supportable differences in the legal cultures of Member States."

Carlo Casonato, "The Protection of Fundamental Rights in Europe: Lessons from Canada", Chicago 2003

9.2. Desired situation

Full and never failing application of these fundamental rights, as a benchmark of civilisation.

9.3. Proposals

EU and chain of justice wide programme on Permanent Education on Human Rights.

Create link between EU Code of Ethics and EU Criminal Procedural Laws and Codes.

Recurrent independent assessments, and improvements accordingly.

10. Strategic management

10.1. Current situation

Inconveniently organised JHA strategic management.

Indication:

- "There is a broad acknowledgement amongst members of the Working Group that current operational collaboration lacks efficiency, transparency and accountability. At present, operational responsibilities are split between Member States' police and judicial authorities (having primary responsibility), Europol, more recently Eurojust (with a mission of support and facilitation of cooperation), and OLAF (tasked with administrative investigation procedures in the specific area of protecting the Community's financial interests). In addition, efficient control of the Union's external borders presents a new major challenge for operational co-operation. In the area considered, people expect major progress: improvements would have an immediate and visible impact on the way Europe is perceived by ordinary citizens."
CONV 426/02, Final Report of Working Group X "Freedom, Security and Justice", December 2nd 2002.
- "All three dimensions of diversity (political, structural and implementation capability diversity / tb) indicated above will remain after enlargement and will make common decision-making in the JHA area more difficult. The obvious response to this challenge would be a more strongly developed EU decision-making capacity."
Jörg Monar in "Justice and Home Affairs after the 2004 Enlargement", The International Spectator, March 2003
- "New machinery or units at the European Union level – Europol, Schengen, Eurojust, European Police Academy, Police Chiefs Task Force and OLAF – illustrate the advantages and some of the drawbacks of EU institutional flexibility. New initiatives will doubtless be proposed from time to time. The existing initiatives and the possibility of new ones demonstrates the adaptability of the EU, but once the machinery is in place they add an element of rigidity to the EU system since they develop institutional interests in their survival and in the development of their influence and field of activity. These often co-exist with older forms of cooperation and communication, established outside the EU framework, but rationalisation is difficult because of the difficulties of abolishing institutions or regular practices that have worked reasonably well."
Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

- “Greater clarity in the methods of external cooperation will become a priority. The many different frameworks of cooperation are a hindrance. These include: a common strategy and an overall action plan (Ukraine), a targeted action plan (Russia – organised crime), a stability pact, a stabilisation and association process (Balkans), a common strategy and the Barcelona process (Mediterranean), an informal dialogue alongside the Task Force or the Joint Cooperation Committee (United States, Canada), and common approaches or joint positions within international organisations. The picture is further complicated by the number of international fora (Council of Europe, United Nations, Financial Action Task Force, G8, Special Conferences, etc.) in which the EU is present. Member states also take initiatives, reducing the visibility of EU actions still further. The instruments for providing assistance to cooperative actions are also complex, to mention only obvious examples: regional programmes, action plans, regional cooperation, and the methods used – MEDA (.....), TACIS (.....) and shortly CARDS (.....). The external relations of JHA would be clearer if they were part of a more integrated, overall approach that was understood by those responsible at the technical level, as well as the press and parliamentarians in the member states. A regular assessment of each priority set out on a list, as is already the practice for the Balkans, is a highly probable development. Pressure for these approaches is likely to increase. To refer again to the core values identified in Chapter 3, improved coordination between the various programmes and instruments is essential.”

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

- “Moreover, in recent years, the Commission has paid greater and greater attention to the justice and home affairs dimension in the Community’s external relations, in particular with its new neighbours in the enlarged Europe. In the context of the new neighbourhood policy the Commission is establishing a series of action plans for neighbouring third countries in the enlarged Europe involving a substantial justice and home affairs aspect.”

“Under the European Security Strategy, it will be necessary to implement the action called for by the European Council on 25 and 26 March 2004 and to develop a multidisciplinary approach, providing a coherent interface between the internal and external dimensions of the various Union policies.”

COM(2004) 401 final, June 2nd 2004, Commission Staff Working Paper, annex to the Communication from the Commission, Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations .

Lack of adequate strategic policing management on EU level.

Indication:

- "The European Union (EU) has created a task force of police chiefs to develop personal and informal links between the heads of the various law-enforcement agencies across the EU, to exchange information and assist with the development of more spontaneous interaction and closer cooperation between the various national and local police forces and other EU law-enforcement agencies. Theheld its first meeting in April 2000.regular meetingsthe opportunity to exchange information at high level on European policing issues and practices.informal links at a high level between EU law-enforcement agencies drive a more spontaneous interaction and closer cooperation between national and local police forces in EU Member States in the continuing fight against crime".

European Commission, DG JHA, Website.

- "On March 22 and 23, 2004 the European chiefs of Police had their regular meeting in Dublin. The Netherlands mainly played an important role in and the introduction of a management and planning cycle for the taskforce called COSPOL (Comprehensive Operational Strategic Plan). This Cycle may be of great value in the future. The Netherlands will propose a first draft of COSPOL during the 10th meeting of European Police Chiefs October 2004 in The Hague, Netherlands"

NCIPS, Netherlands Centre for International Police Co-operation, the Hague, Team Netherlands Presidency European Union, Website.

- "COSPOL (.....) is just the name of a management tool based on a conventional policy cycle. During the European Police Chiefs plenary meeting at Rome (October 2003) it was concluded that a proposal for a long-range programme and an annual report on the results should be drawn up. This programme should focus on operational cooperation in the fight against transnational crime. The Dutch delegation was asked to prepare a draft to be presented at the meeting in Dublin (March 2004). This meeting of Dublin accepted the COSPOL tool to setup a new management cycle. It supports the EPC taskforce in dealing with the problems of continuity (a long-range programme is needed), coordination (who is responsible for certain parts of the programme) and with the issue of communication (.....). COSPOL works from a practical point of view and fits into the framework set by the political level. The current roles and responsibilities of all relevant partners and bodies will be respected."

COSPOL-leaflet produced on behalf of the European Police Chiefs Task Force.

- "EU-level cooperation crucial for national police forces"
European Commission, DG JHA, Website.

The European Police Chiefs Task Force is not having any formal status; the position of its members in the respective home administrations is differing too much; accordingly the level of their mandate in the EPCTF is diverging too much; consequently the impact of the joint expertise and skills is impeded:

Indication:

- "The European Union (EU) has created a task force of police chiefs to develop personal and informal links between the heads of the various law-enforcement agencies across the EU, to exchange information and assist with the development of more spontaneous interaction and closer cooperation between the various national and local police forces and other EU law-enforcement agencies."
European Commission, DG JHA, Website.

- "It is also necessary to simplify decision-making mechanisms by encouraging qualified majority voting."

"..... the role of the Police Chiefs' Task Force might be reviewed, revitalized and developed in view of its privileged position in operational coordination."

COM (2004) 4002 final, Communication from the Commission to the Council and the European Parliament, June 2nd 2004.

- "Efficient JHA cooperation requires a certain degree of compatibility of law enforcement and administrative structures. This continues to be a major challenge among the current member states with their diversity, for instance, in the areas of police and court structures."

"There is....., a problem with creating structures, such as the Police Chiefs Task Force, whose role and position have been ill defined."

Jörg Monar in "Justice and Home Affairs after the 2004 Enlargement", The International Spectator, March 2003

10.2. Desired situation

Adequate representation of field expertise in internal and external policymaking.

Strategic police leadership structurally embedded on EU level and functioning as a respected partner in the chain of justice.

Clear, coherent, effective and efficient JHA structures.

10.3. Proposals

Development and implementation of an adequate legal framework and a communication and tools framework for the European PoliceChiefs Task Force.

Cross Pillar re-design simplifying the JHA structures as well as working and communication processes in the enlarged JHA domain, the consequent improved structuration, facilitation and effectuation of the appropriate co-operation culture.

11. Training and Education

11.1. Current situation

No harmonised EU curricula, regardless the level or the domain in the Chain of Justice.

Indication:

We did not encounter such a curriculum; only “upgraded” national curricula exist.

Training and education in the Chain of Justice is too fragmented.

Indication:

- “As agreed at Tampere, the Council in 2000 established CEPOL, the European Police College as a network of police training schools in the Member States to contribute to the training of the senior police officers. In December 2003, the European Council established CEPOL’s head office in the United Kingdom. A series of initiatives were then launched to improve operation.”

“Initiatives have been put forward to locate CEPOL at Bramshill and give it legal personality. In addition, on the basis of a Commission proposal, the discussion on its structure and future tasks and the financial aspects is in progress in the Council.”

COM(2004) 401 final, June 2nd 2004, Commission Staff Working Paper, annex to the Communication from the Commission, Area of Freedom, Security and Justice: Assessment of the Tampere programme and future orientations.

- “Strengthen mutual trust by assuringa high-quality system of justice based on common values: A series of measures to ensure mutual trust between national judicial authorities should cover: and measures to strengthen the protection of victims. Improvements in the training of those working in the criminal justice systems and work on the evaluation of those systems will also help to strengthen mutual trust.”

COM (2004) 4002 final, Communication from the Commission to the Council and the European Parliament, June 2nd 2004.

- “In the EU, best practice identification should be elevated to a major objective of the AFSJ, generalised across all areas, and made a central element of all training programmes. The main advantage of best practice identification and transfer as a diversity management instrument is that it is both a relatively painless process – as there are no formal sanctions – and a cost-effective way of improving implementation capabilities.”

Jörg Monar in “Justice and Home Affairs after the 2004 Enlargement”, The International Spectator, March 2003

- We did not encounter integrated curricula; interdisciplinary exchange programmes seem not to be concerted common practice; only on conference and seminar level, multi-disciplinary settings seem common practice.
- An acknowledged JHA Management Development Programme on EU level is still just an existing EULEC - plan.

Language capacity for practitioners (operations, working groups) throughout the entire criminal justice system is lagging behind or lacking: the real European scope is still privileged for a small group.

and

Capacities on various basic European (vocational) domains are lagging behind or lacking: code of ethics, human rights, victimology, re-socialisation and re-integration, trafficking in human beings, financial crime, precursors, cross border criminal justice procedures, migration, etcetera.

Indication:

- Reported experiences and own experiences.
"Redeployment and re-training of personnel is one of the difficult preconditions of flexibility of police, magistrates, immigration officials and personnel of ministries of Justice and the Interior. This is because of time constraints on these professionals, their conservatism and *esprit de corps*, and certain political blockages. The JHA programme OISIN addresses mainly the training aspect of the problem. Its objectives are:
-to raise language skills and knowledge of legal and operational terminology;
-to promote awareness of legislation and operational procedures through training, exchanges and study visits;
-to organise joint operational projects;
-to organise briefings and debriefings of joint operational projects;
and,
-to provide information, training, research, operational studies and evaluation.
However, the resources (at €3 million) devoted to this programme are insufficient."

"This would increase the level of trust in other member states' judicial systems but there is also scepticism about the competence of some of the magistrates in some countries. A French proposal to set up a network of colleges for training of magistrates is intended to address these doubts."

Anderson and Apap in "Striking a Balance between Freedom, Security and Justice in an Enlarged European Union, CEPS-Brussels 2002.

- 11.2. Desired situation
Existence of real European Curricula on basic knowledge and skills issues as well as in acknowledged vocational domains.
EU wide JHA Management Development Programme is successfully in full swing, creating trust and effective cross-institutional connections.
- 11.3. Proposals
Development of de-nationalised cross dimensional European Curricula, on adequate operational and strategic levels, on relevant operational and strategic issues, in close co-operation with respected Law Faculties and other relevant scientific partners throughout Europe.
Creation of a Boost Framework for CEPOL.
Creation of a framework to implement the EULEC JHA Management Development Programme.

To conclude

We did not describe the one and only ingenious way forward.

Nowadays one tends to speak less in terms of Justice and Home Affairs, and more along the lines of the wider vision on freedom, security and justice. In this perspective, we also went beyond these two conventional domains, however not denying their core-position and responsibilities in the Area.

Focussing on the cultural dimensions of creating solid bases for co-operation between all those parties which have a responsibility in the creation of the Area of Freedom, Security and Justice is assessed as an invitation to seriously consider the shift of the European Strategy, or even better, the completion of the European Strategy to further this Area progressively.

The European Institute for Freedom, Security and Justice is eager to fulfil its mission.

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