



**COUNCIL OF
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NOTE

from : Presidency
to : COREPER/Council

Subject : Report on the review of The Hague Programme

**Reviewing The Hague Programme: a new impetus to strengthen the Area of
Freedom, Security and Justice**

1. The Hague Programme was adopted by the European Council in November 2004. It reaffirmed the importance that the European Union attaches since the Tampere European Council in 1999 to the area of Freedom, Security and Justice, placing it high among the Union's priorities.
2. Since the end of 2004, the Member States and the EU Institutions have worked to ensure the implementation of the Programme in accordance with the Council and Commission Action Plan adopted in June 2005. The European Council stated in December 2004 that "*since the Programme will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful.*

3. The Commission presented in June this year a package of four Communications as a comprehensive basis of the review (Report on the Implementation of the Hague Programme 11228/06,; Implementing the Hague Programme; the way forward 11220/06, Evaluation of EU policies on Freedom, Security and Justice 11223/06 as well as Adaptation of the provisions of Title IV of the Treaty establishing the European Community relating to the jurisdiction of the Court of Justice with a view to ensuring more effective judicial protection 11356/06).
4. Even in the absence of the entry into force of the Constitutional Treaty, the Council considered it necessary to draw up a first political assessment of progress made in implementing The Hague Programme and to propose the necessary adjustments. The aim of such a review had thus been not to identify new priorities compared to those set out by the Hague Programme but mainly to take stock of the progress made, to assess the level of implementation at EU and national level and to propose a thorough evaluation of results.
5. The Presidency recalls that the informal ministerial meeting in Tampere on 20 – 22 September 2006 discussed the following issues concerning the review of the Hague Programme on the basis of the presidency discussion papers:
 - Improvement of decision-making in justice and home affairs
 - Follow-up to the mutual recognition programme: Facilitating access to justice and better regulation in civil justice
 - Follow-up to the mutual recognition programme: Difficulties in negotiating legislative instruments on the mutual recognition of judicial decisions in criminal matters, and possible solutions
 - Migration management; extended solidarity in migration, asylum, border control and immigration policies,
 - Development of the EU's integrated management system for external borders; Border management strategy

- Next steps in the development of the Common European asylum system
 - Combating terrorism and organised crime; enhancing operational activities and multidisciplinary law enforcement cooperation
6. The Presidency notes the need to find a new impetus in the area of Freedom, Security and Justice as part of an ambitious, policy-driven agenda for EU citizens
7. On this basis, the Presidency has identified those areas in respect of which it believes a renewed effort is necessary to take forward the political agenda of the Union before the expiry of The Hague Programme (2009).

The assessment of the implementation of the Hague Programme

8. In response to the Council's call, the Commission has presented in June this year the first annual report on the implementation of the Hague programme and action plan (Communication on "Scoreboard Plus").
9. The Presidency notes that very first evaluation of the monitoring of the implementation of JHA policies at national level appears compartmental, and certainly insufficient at this stage, given that many JHA policies are still in their infancy. The evaluation of national implementation is still often premature, in particular as far as asylum, legal immigration, mutual recognition in criminal matters and civil justice are concerned.
10. The Presidency notes that both quantitative and qualitative deficiencies have been identified regarding the general rate of transposition for instruments under Title VI of the EU Treaty.
11. The Presidency notes that there is room for improvement in the existing framework, in particular regarding the decision-making process in the areas of police and judicial cooperation in criminal matters.

The decision-making: facing recurrent difficulties in the area of Freedom, Security and Justice

12. The area of Freedom, Security and Justice is of real concern and relevance for European citizen. Despite this strong interest, progress is slow and the development of Freedom, Security and Justice policies at EU level faces recurrent difficulties leading to numerous blockages.
13. The Presidency notes, that discussions in the Council have showed it is proving difficult to move forward in the EU in areas such as mutual recognition in criminal matters and police cooperation. Agreement on the Commission proposal for a European evidence warrant was reached only after extremely lengthy negotiations. No progress has been made either in the last three years on basic minimum standards for procedural rights applicable throughout the EU. Discussions on a text providing for defining and condemning in the same way throughout Europe offences of racism and xenophobia are equally blocked for almost two years. Finally, discussions have not progressed on a Commission proposal intended to authorise further cross-border investigation and prosecution.
14. As requested by the June 2006 European Council, the Presidency has explored in close collaboration with the Commission, possible ways to improve the functioning of Freedom, Security and Justice policies by using the possibilities provided for in the current Treaties. The Presidency has addressed this issue in Tampere at the Informal JHA Council in September this year. The discussion at Tampere was of an exceptionally high quality and very analytical. This topic shall be further elaborated by the European Council at its meeting in December.

The second term of The Hague Programme (2007-2009)

15. A first assessment of the implementation of The Hague Programme and its Action Plan through the Scoreboard plus presented by the Commission as well as the work undertaken within the Council structures during the Finnish Presidency, enables the Presidency to identify the following areas as those needing attention in the Union's work and where further efforts are needed.

Strengthening Freedom

Citizenship of the Union

16. The Presidency emphasizes the importance of the protection of fundamental rights within the European Union as proclaimed in the context of the Charter of Fundamental Rights. The Union should further develop the rigorous method to ensure the compliance of legislative measures with the Charter. [The Council welcomes the political agreement reached on the European Union Agency for Fundamental Rights and committees itself to take all necessary measures to make it fully operational without delay.
17. The right of all EU citizens to move and reside freely in the territory of the Member States is the central right of citizenship of the Union. The Presidency invites the Commission to submit in 2008 a report on this subject, as foreseen in the Hague Programme, in the framework of Directive 2004/38/EC. Furthermore, the Presidency welcomes the plans to reinforce and clarify the right to diplomatic and consular protection as EU citizens should be able to exercise those rights whenever needed. Millions of Europeans travel all over the world each year and they need protection and support when in difficulty

Asylum, migration and border policy

18. The Presidency recalls the commitment, set out in the Hague Programme, to the development of the second phase of the Common Asylum System by the end of 2010, on the basis a thorough and complete evaluation of the legal instruments that have been adopted with the aim of establishing a common asylum procedure and uniform status for those granted asylum or subsidiary protection. The Commission is invited to submit its Green Paper on Asylum Policy in 2007. Particular emphasis should also be paid to the development of practical cooperation in the field of asylum.
19. The Presidency has paid particular attention to the development of migration management policies of the European Union. The European Union needs in the Presidency's view to continue developing comprehensive policies to address the different facets of the asylum and migration policies. In the Presidency's view it is also important to link more closely the development policies with the issues and the priorities in the field of migration, including in the implementation of the financial instruments.
20. The Presidency initiative on extended European solidarity in asylum, border control and immigration policies, presented at informal ministerial meeting in Tampere, is related to the development of a comprehensive EU policy, especially with regard to illegal immigration. The initiative would involve creating, in return for a significant financial contribution from the EU, a procedure for ensuring that Member States conform to the common EU rules and take responsibility for illegal immigrants and asylum seekers entering their territory. The system would include enhanced inspection mechanisms for ensuring in a transparent way that Member States follow jointly agreed EU rules, and would also include the use of biometric identification as a basis for registration of illegal immigrants, and the creating of the required information systems or the improving of existing ones.

21. Action on the external dimension of migration will be further strengthened. Migration issues must be firmly embedded in the Union's external relations with countries of origin and transit, as part of a global approach to migration. The Presidency welcomes the comprehensive cooperation that has begun during the last half a year with regard to cooperation between the European Union and Africa, at the Ministerial meeting in Rabat in July 2006 and in particular in the EU – Africa Ministerial Meeting on Migration and Development, held in Tripoli, Libya on 22 – 23 November 2006, where the Ministers, which resulted in the adoption of a joint Africa – EU declaration on Migration and Development as well as joint Action Plan to Combat Trafficking in Human Beings, Especially Women and Children
22. A global approach to migration management implies that a policy addressing the situation of legal migrants at Union level is developed in parallel with measures to address more effectively illegal migration and to enhance the fight against migrant smuggling and trafficking in human beings, in particular women and children.
23. The Presidency reaffirms the importance of the Visa Information System (VIS) as an instrumental tool to exchange visa data between the Member States, contribute towards improving the administration of the common visa policy and towards internal security and to combating terrorism as set out in Council conclusions of 19 February 2004.

Integrated management of external borders

24. The Presidency notes the significant recent progress made on developing an integrated border management strategy for the Union as a whole. Within the strategy, the Council has developed further and given an exact definition to the concept of integrated border management, which is a useful step on the way forward in enhancing our common border security. The Presidency considers that the strategy should be kept under constant review in order to adapt it to a changing reality and new challenges.

25. The importance of operational cooperation has been emphasised, including cooperation coordinated by FRONTEX, and Member States have been invited to contribute to joint operations organised under the aegis of FRONTEX. The need for further developing the Common Integrated Risk Analysis as a tool for improving the effect and uniformity of border control has been emphasised as has the need for inter-agency cooperation.
26. The Presidency also notes the significant contribution of Schengen evaluations to the development of a uniform, transparent and high level of border control in Member States, including the role of member States' experts and unannounced inspections. The Presidency looks forward to the upcoming evaluation report on Frontex as well as the proposal to supplement the Schengen evaluation mechanism, to be presented by the Commission as foreseen by the Hague action plan, which will further enrich and develop the strategy.

Enlargement of the Schengen area

27. The Presidency refers to the Hague Programme, in which the European Council urges the Council, the Commission and the Member States to continue to take all necessary measures to allow the abolition of controls at internal borders as soon as possible, provided all requirements to apply the Schengen acquis have been fulfilled and after a Schengen Information System has become operational.

Fight against terrorism and organised crime

28. Terrorism and organised crime are and 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. The Presidency stresses the importance of work to further the implementation of the Counter-Terrorism Strategy as well as the EU strategy for combating radicalisation and recruitment to terrorism.

29. Information needed for the fight against terrorism and serious crime should cross 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. The Presidency considers that the efforts to exchange information between the law-enforcement authorities of the Member States should be intensified to implement the principle of availability as foreseen in the Hague Programme. The Presidency considers that the possibilities offered by the Prüm Treaty should be explored.
30. As the operational cooperation and mutual trust between Member States grows, the Presidency believes that it is time to consider developing 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.
31. The Presidency notes that the Hague Programme refers to the coordination of operational activities by law enforcement agencies and other agencies in all parts of the area of Freedom, Security and Justice must be ensured. Efforts to ensure this coordination should be intensified.
32. The Presidency considers it necessary to gather experiences and best practices in multidisciplinary law enforcement cooperation and the implementation in the Member States of Council Recommendation of 27 April 2006 on the drawing up of agreements between police, customs and other specialised law enforcement services in relation to the prevention and combating of crime. The further development of an intelligence-led approach at the EU level that adds value to Member States' efforts on operative law enforcement cooperation should be encouraged, since it is a clear imperative to maximise practical, operationally focused criminal intelligence exchange.

33. In addition to cooperation between the national authorities, best practices in regional cooperation and cooperation with third countries could also be gathered. The Presidency considers that appropriate evaluation mechanism should be set up so that the Council could consider how to further strengthen the operational activities and multidisciplinary law enforcement cooperation.
34. 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. The Presidency 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.
35. The Presidency notes the Commission's intention to present before end 2006 a proposal for a Council Decision replacing the existing Europol Convention, with a view to improving its operational efficiency.

Strengthening Justice

Follow-up to the Mutual Recognition Programmes in civil and criminal matters

36. As recognized in the Hague Programme, the principle of mutual recognition is the cornerstone of judicial cooperation. Mutual recognition relies on mutual trust and confidence in one another's legal and judicial systems. Work should be stepped up on current proposals and initiatives with a view towards finalising them as soon as possible.

37. The effective implementation of instruments and of practical cooperation among authorities is of fundamental importance. The Presidency recommends that the Council takes into account the forthcoming Commission study of implementation of instruments on mutual recognition, with a view towards formulating a horizontal approach to address recurring difficulties in the negotiation and implementation of instruments and the gaps in the present system of cooperation in criminal matters. This should not, however, defer the beginning of the negotiation of necessary new instruments in accordance with the Hague Programme and the programme of measures to implement the principle of mutual recognition.
38. The Presidency stresses the importance of enhancing mutual trust and confidence, *inter alia* through the development of common minimum legal standards and training of judiciary. Developing such common minimum standards is a necessary step in order to successfully implement the mutual recognition regime.
39. The Presidency notes that there exists unnecessary fragmentation in the field of civil procedural law. In order to enhance access to justice and better regulation, there is need to improve the coherence and consistency of the instruments already adopted. A more systematic overview of co-operation in civil procedural law would lessen fragmentation of Community legislation and improve user-friendliness.
40. To this end, the Presidency suggests that the Commission evaluate options for the streamlining of instruments on cross-border litigation in order to reduce the number of instruments and unnecessary discrepancies. Among the areas that streamlining should cover are, *inter alia*, jurisdiction, the service of documents, the taking of evidence, the use of languages and translation, payment and small claims procedures, as well as recognition and enforcement of judgments

External dimension of justice and home affairs

41. The Presidency recognises the growing importance of external dimension of the Justice and Home Affairs. It stresses that the JHA concerns need to be included properly in the definition and implementation of other EU policies and activities, particularly external relations. The Presidency considers that appropriate measures to ensure complementarity and coherence between the justice and home affairs and the general external relations policy of the European Union should be taken

Law-making, implementation and evaluation of Justice and Home Affairs policies

42. The Presidency stresses the importance of careful preparation of proposals for new instruments. Once the practical need for action has been clearly identified in a certain field on the basis of practical experience or other evidence, attention should be given to whether action is called for on the level of the European Union. Initiative and proposals made by Member States and the Commission should be accompanied by a rigorous assessment of their anticipated impact in view of the different legal and administrative systems of the Member States. At the same time, such rigorous assessment should not excessively defer the adoption of necessary measures.
43. The Presidency notes the importance of strengthening the operation of the Court of Justice. For example, it invites those Member States that have not yet done so, to issue the declaration referred to in article 35 TEU accepting the jurisdiction of the Court of Justice to give preliminary rulings.
44. The Presidency also stresses the importance of the effective and timely implementation of EU instruments by Member States, and of the continued strengthening of practical measures for cooperation with the framework of European Union work on justice and home affairs.

45. The Presidency considers it necessary to set up a coherent and comprehensive mechanism for evaluation of EU policies on freedom, security and justice, bearing in mind the mandate given by The Hague Programme.
46. The Presidency is of the view that the evaluation mechanism proposed by the Commission in the Communication of June 2006 should be adjusted in the light of the contributions of Member States. It should include the existing mechanisms in the different justice and home affairs policy fields and should seek to avoid any duplication of efforts at the EU and national levels and limit the administrative burden on Member States to the extent possible.
47. The mechanism will be implemented by the Commission and the Council in full compliance with their institutional prerogatives. Concerted action and full commitment by EU institutions and Member States are necessary for effective establishment and implementation of the evaluation mechanism, with national authorities and administrations playing a key role in this respect.
48. The Presidency invites the Council, in close collaboration with the Commission, to discuss further how to develop concrete proposals and objectives for the implementation of the future mechanism, so as to allow the Commission to establish the contact points' network proposed in its Communication of June 2006 and with the view to launching the first round of evaluation by June 2007.
