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NOTE

from:	The Swedish Delegation
to:	Delegations
Subject :	Preparing the Stockholm Programme – Conference in Bruges on 4-5 March 2009

Delegations will find enclosed in Annex I a summary of the Conference that took place in Bruges on 4-5 March 2009. The Conference was organised by the College of Europe in cooperation with the Trio Presidency France, The Czech Republic and Sweden as well as the European Commission. This summary has been drawn up under the responsibility of the Swedish Delegation.

Annex II contains the programme of the Conference.

***Preparing the Stockholm Programme:
A Strategic Agenda for Freedom, Security and Justice***

The welcome addresses were made by Professor Paul DEMARET, Rector of the College of Europe, Mr. Thierry DENYS, President of the Court of First Instance, Bruges, and Mr. Philippe DE WULF, Chef de Corps (Police), Bruges. In the light of the coming discussions on the future Stockholm Programme the three initial speakers underlined the importance of a reinforced Europe with judicial cooperation and mutual recognition as key elements for its success. The borders separating the Member States cannot continue to be an obstacle for the legal systems. In their view, a certain amount of harmonisation, in civil law as well as in criminal law, must to a higher extent become a reality on the national arena.

Session 1: Strategic Perspectives

Chair: Professor Jörg MONAR, Director, European Political and Administrative Studies, College of Europe

Professor Monar opened the discussion with a reflection regarding the fact that the creation of a European Area of Justice and Home Affairs merely has existed as an objective for ten years. In the European integration process this area is only a young child in comparison to other areas.

Since 1999 more than 1200 texts have been adopted by the JHA Council. That in itself gives an indication of the enormous growth and importance of the area. The added value given to the European citizens has resulted in a long list of improvements such as better access to the judicial system and better management of migration problems.

Regarding the development of the area of justice and home affairs, Professor Monar pointed out the important issue of balance between security and justice, and security and freedom, as well as the link between mutual recognition and harmonisation.

In recent years another dimension has become increasingly present in the JHA area, namely the link to the growing domain of the external relations.

All these aspects comprised make the significance of the Stockholm Programme obvious. It will be the third political instrument in the area, preceded by Tampere and then Hague. Although these instruments are not legally binding, they have an enormous impact on the evolution of the area. According to Professor Monar, they indeed have a fundamental role in the future development.

Ivan LANGER, Czech Minister for Interior and President of the JHA Council, "The views of the Czech Presidency on the content of a future programme"

Minister Langer opened by commending the fact that many tasks have been accomplished since the Hague Programme. The Schengen enlargement and the Prüm Decision were excellent examples of projects that have evolved into a success as a result of the outstanding cooperation between the Member States.

According to Minister Langer there is however still a lot left to be done. The Hague Programme was focusing on fundamental rights as well as the fight against cross-border criminality. Whether the emphasis will be on the first point or the second remains to be seen. In creating the Stockholm Programme the central idea will however be the decision on where the focal point should be. The crossroad where Europe is currently standing is not an uncomplicated situation and none of the paths chosen will be trouble-free.

The most important aspect in creating the Stockholm Programme is, according to Minister Langer, the necessity to create a programme with the European values based on the fundamental principles of freedom, justice and security. There is however a danger in only focusing on strong words, great ideas and the production of numerous legal texts. The European production must be more concrete and tangible so that the average citizen reading the newspaper can see the added value. Clarity in both legal and non legal instruments is therefore of utmost importance as well as the consolidation of already existing instruments. The assessment of the quality of these instruments is also central.

Furthermore, Minister Langer underlined that the paramount responsibility in the JHA area still is on the Member States, so a reminder of the principle of subsidiarity could be in place in this context.

Regarding the main sources of inspiration in creating the Stockholm Programme Minister Langer referred to the works of The Future Group as well as the input coming from the French, Czech and Swedish Troika. In the area of asylum and migration the importance of the European Pact on Immigration and Asylum was stressed.

Furthermore, Minister Langer pointed out two main topics for the programme. Firstly, further development of the external dimension of the home affairs policy, as a result of the increased relation between these areas. Secondly, the use of modern technologies in the area of home affairs should also be covered.

Regarding the policy issues Minister Langer emphasized the continuance of progress in the areas of asylum, migration, borders and visa with an efficient management of migration flows. The continued fight against illegal immigration and an efficient return policy were also stressed as well as the connection to integration policy.

According to Minister Langer the cooperation with third countries is a key ingredient in finalising the building of the Common European Asylum System. Achieving mutual recognition in the area of international protection as well as the development of the integrated border management is crucial. Frontex and Europol are important actors and tools in this area and the new legal basis of Europol was therefore warmly welcomed by the Minister.

Furthermore Minister Langer stressed the importance of finding a balance between security and privacy, hinting that there today is a tendency in Europe to focus too much on security. Freedom, privacy and mobility is however, according to Minister Langer, as important and has been left outside the focal point lately.

In concluding, Mr. Langer stressed the importance to strive for a text that all Member States, and particularly their citizens, can identify with. In accomplishing this the opinion of the Future Group will play an important role.

Beatrice ASK, Swedish Minister for Justice, “Why Europe needs a forceful Stockholm Programme”

Minister Ask started her discourse by emphasising the importance of the Stockholm Programme in itself but also as one of the key priorities of the incoming Swedish Presidency. It is however clear that Europe faces quite some challenges to be tackled in the new 5 year programme.

The most important task today is according to Minister Ask to respond to the main concerns of the citizens. EU action should be taken when it creates an added value for citizens’ every day life.

Lately, there has been an increase in repressive instruments. There is a need to balance these measures with initiatives securing the rule of law and the rights of the individual. Individual rights in criminal proceedings, rules on international protection and rules on data protection are important issues to work on.

The new programme must be ambitious and visionary, but also pragmatic and concrete. It is of vital importance to obtain citizens trust in the EU institutions. Transparency is a crucial prerequisite in this work. Trust is also of importance for an efficient cooperation between authorities and services in the different Member States. The principle of mutual recognition is dependent on reliance in each others legal and administrative systems. Thus, ensuring trust and finding new ways to increase reliance and mutual understanding between different systems in the Member States will be one of the main challenges for the future.

Minister Ask mentioned that the existing legislation has been developed step by step and that it has become increasingly difficult to manage with overlapping and lack of coherence in some cases. Therefore legislation should be consolidated and conceptual with clear language. That increases the efficiency and legitimacy. EU must also develop its capacity to evaluate.

Furthermore Minister Ask underlined the importance of an efficient exchange of information. That in itself is a prerequisite to prevent, detect and investigate crimes. There is a need to ensure that the information is shared in a secure environment and used for specific purposes. The aim should be to ensure a holistic approach to law enforcement information management, comprising data security, data protection and law enforcement needs. An EU master plan for information exchange. should be created.

Minister Ask emphasized once more the need to balance repressive measures with measures securing the rule of law and the rights of the individual. Important proposals in this regard include common minimum rules on procedural rights, such as the right to translation and interpretation, the right to defence and the right to information. There is a need to work with these issues with a long-term perspective and with a step by step approach.

Regarding civil law cooperation Minister Ask stressed its importance to EU citizens daily life. If problems related to civil law arise in connection with the movements across borders, it creates obstacles to the free movement. Although for instance family law touches on sensitive national issues it is still very relevant to find the common denominators to facilitate the situation for the citizens.

On the subject of external relations Minister Ask pointed out the fact that this dimension has developed substantially in relation to the JHA area. Therefore the actions need to be more coordinated and efficient than before. The cooperation between Ministers for Justice and Ministers for Foreign Affairs needs to be enhanced, which it itself is a challenge, according to Minister Ask.

Minister Ask ended by stressing the importance of the European cooperation. On a global area each Member State will not suffice and therefore the European agenda is of such importance.

Jacques BARROT, Vice-President of the European Commission, “The lessons to be drawn from the Hague Programme; the Commission proposals”

Vice President Barrot opened by expressing his great expectations for the incoming Swedish Presidency. Plenty has happened since Tampere, both in the EU as a whole and in the everyday life of the citizen. VP Barrot pointed out that there is however no future without memory and that is why the evaluation of the Hague Programme is so important.

The Hague Programme has brought a substantial amount of advantages through the increased cooperation between the Member States. There is now better police cooperation, rules of data protection, a clear path towards a Common European Asylum System, increased coordination in the fight against organised crime, the European Arrest Warrant, reinforcement of Eurojust, civil law cooperation. The list seems almost endless.

VP Barrot pointed out the success of these achievements despite the complication due to the institutional pillar structure. This could be solved hopefully in the near future.

VP Barrot highlighted the importance of asking oneself what the new challenges are for Europe and where the added European value lies. Many actors have responded to those questions: MP:s, MEP:s, the Future Group and others.

The most important point at this stage is that the politicians and legislators turn to its citizens. They are the “fil directeur”, the main focus. Therefore it is essential to never forget the principles of subsidiarity and proportionality.

The future work in the JHA area should, according to VP Barrot, pervade by two key aspects. Firstly, the use of modern new technologies which is extremely important. SIS II, VIS, Eurodac and E-justice are all examples of how a Europe of Justice is built. The second aspect is the European training of judges and policemen so that the understanding of the different systems is increased.

In creating the Stockholm Programme VP Barrot listed five top priorities where the focus should lay. The first one is the EU for the citizens, emphasising the right of peoples, the respect of diversity, the fight against racism and xenophobia, help to the most vulnerable and the free movement of persons. The citizens must also have access to information about their rights.

The second priority is according to VP Barrot to create a Community of rights, a legal system that is efficient and accessible. Mutual recognition is here a key factor for success as well as minimum harmonisation. E-justice will be an important tool to make comparisons of the judicial systems so that the best solutions can be identified.

The third priority is to create a more protective Europe. The basic element is to make the judges and the policemen work in better cooperation together, among other things through Europol and Eurojust. Cooperation to obtain evidence on a transnational basis and electronically transmitted evidence, as well as enhancing the harmonised procedural rights, is also essential.

The fourth priority is a more equitable and solidary Europe as regards the migration flows. The European Pact on Immigration and Asylum is, according to VP Barrot, a great step in the right direction. It must however be developed further. The immigrants must have a true status and there is a need of better harmonised protection rules among all Member States.

Finally, the fifth priority, is a Europe that is more open towards the world. In this context the external dimension of the JHA area is very significant. Without the close cooperation with the neighbouring third countries Europe cannot truly fight organised crime.

VP Barrot ended by underlining that if Europe shall succeed in its future tasks, Europe must speak at the heart of its citizens.

Christian DE CHARRIÈRE, Prefect, Director of the Private Office of Minister Eric Besson, French Minister for Immigration, Integration, National identity and Solidarity development, "A vision for a responsible and solidary Europe"

Mr. De Charrière started by commending the JHA area as being one of the biggest successes of the European Union, apart from the single currency. Only a European response can tackle the situations faced today. Therefore there is a need for continuity, tolerance and action.

The continuity of the European migration policy is based on solidarity between the Member States. That is according to Mr. de Charrière the founding starting point. Plenty has been done but there is still quite some left to do.

The importance of the multiannual programmes of Tampere, The Hague and now Stockholm must not be underestimated. These instruments have shown to be extremely important when fixing the future objectives of the union. Other policy instruments such as the Global Approach to Migration and the European Pact on Immigration and Asylum have shown to be of equal significance.

In creating the Stockholm Programme Mr. de Charrière stressed the importance of coherence between the legislative acts and the verbal communication. The Stockholm Programme must be the realisation of the Pact as well as the Global Approach. There must be a putting into practice of what has been said.

Main priorities in the migration area is, according to Mr. de Charrière, to organise the legal migration and to fight illegal immigration. EU has to have a migration chosen by the Member States where they can have the people needed on the labour market without creating brain drain in the countries of origin. General cooperation with third countries is of essential importance, not only as regards return policy.

Vis-à-vis the internal work of the Member States Mr. de Charrière stressed the importance of facilitating access to the labour market as well as integration and education with particular focus on women and children.

Mr. de Charrière also stressed the point in the Migration Pact limiting mass regularisation, advocating that it should only be done on an individual basis.

As regards legal work on the Common European Asylum System Mr. de Charrière stressed the importance to strive for a unified and harmonised asylum procedure where the same rights are guaranteed everywhere. It is therefore essential to, as soon as possible, implement the second generation of Dublin as well as Eurodac, the Reception Directive and the Asylum Support Office.

Some of the key elements in the European Migration Policy, emphasised by Mr. de Charrière, are the efficiency in the system as well as the protection of the individuals' rights. The principle of solidarity with the Member States that are overwhelmed by the influx of immigrants, due to their geographic and demographic situation, is also important. However, as stressed by Mr. de Charrière, the help to these Member States must remain on a voluntary basis.

In closing, Mr. de Charrière, underlined the importance to mobilise the dialogue with third countries; transit countries as well as countries of origin. The Stockholm Programme should therefore deepen the Global Approach and strengthen the connection between migration policy and development policy.

Minister Frieden started his discourse by highlighting the fact that in the justice area the borders are still quite present. There is therefore a need to find out how to eliminate these borders so that the free movement of persons becomes more of a reality in practice. Therefore the Stockholm Programme must be ambitious. People do still not understand that the judges and the policemen have to stop at the borders and that in the area of justice quite some problems are still left unsolved.

According to Minister Frieden there are a number of key priorities that the Stockholm Programme should focus on. Firstly, there is a need to harmonise some legislation in the Member States within the justice area. That is essential to increase the mutual trust and confidence as well as the knowledge of the other Member States' legislation.

In the light of this there is also a necessity to develop a more common framework as regards judicial education. Legal comparative studies, as well as EU law, should to a higher extent constitute a part in the university education in all Member States. A European Academy of Judges could also be a possible future project according to Minister Frieden.

Thirdly there is a need for an exchange programme for judges so that the confidence amongst them increases. Practical and theoretical knowledge is a prerequisite for mutual trust.

A fourth key principle is the evaluation of the judicial system.

Furthermore, Minister Frieden pointed out the importance of having common minimal procedural guarantees. The existing minimal guarantees are inadequate. According to Minister Frieden, the best thing for the citizens would be a European catalogue with common fundamental rights and freedoms.

Europe also needs to develop a system of checks and balances. There is a necessity for a similar system on European level as to have it at national level. The EU has to become a uniform and homogeneous construction governed by law. In this context mutual recognition plays a fundamentally important role. The principle of availability is also essential for the police cooperation and the fight against crime.

Regarding the civil law area Minister Frieden asked for further European reflection on this area. There must be a common form for acts relating to civil status considering the fact that people move much more freely nowadays. Family law can today give rights in one country and not in another which is unacceptable. The system should therefore be more harmonised.

On the whole Minister Frieden stressed the importance of general harmonisation in the justice area. The European Commission should therefore be encouraged to propose further harmonisation of the Member States' legislation. Minister Frieden warned however that enhanced cooperation could be a reality in the future due to some Member States reluctance to cooperate.

Important instruments for the future would be a European catalogue of procedural rights as well as stronger legislation against xenophobia.

Minister Frieden ended his speech by concluding that although there is still some work left to be done, the common judicial area in Europe is truly an added value for the Europeans. The final goal for Europe should in the end be to strive for a single European judicial market.

Session 2: Agenda-setting

Chair: Hans G. NILSSON, Minister, Swedish Permanent Representation; Visiting Professor, College of Europe

Mr. Nilsson welcomed the audience to the second session and introduced the speakers that were to deal with the subject matter of the Stockholm Programme from a more purpose-oriented angle. Mr. Nilsson stressed the importance of developing a Programme for the future that strikes the right balance between security and individual rights.

Minna LJUNGGREN, State Secretary responsible for Migration and Asylum, Swedish Ministry of Justice, "Towards a new approach for managing the migration challenge"

State Secretary Ljunggren commenced by reminding the audience of the fact that ten years have passed since Tampere and five since The Hague Programme. The development has entailed significant steps towards the Common European Migration and Asylum Policy. Ljunggren also pointed out that Europe's new approach towards migration will to a substantial degree be influenced by the work of the Future Group as well as the European Pact on Immigration and Asylum.

State Secretary Ljunggren also pointed out that migration and human mobility is a considerable source of economic and cultural development. The benefits through well managed migration are substantial and it can help to prevent labour shortages. Remittances to the countries of origin can have an impact on the development of these countries.

Europe is facing a demographic challenge with a shrinking working population. An effective, flexible and demand driven labour migration will best meet Europe's needs according to State Secretary Ljunggren. Sweden recently adopted a new system for labour immigration that in short means that as long as salary conditions and other relevant social insurance conditions are fulfilled, it is the needs of the labour market that should be decisive when applications for work permits are examined.

State Secretary Ljunggren continued by stressing that, for further success, there is a need for an efficient implementation of the Global Approach to Migration, based on a genuine partnership and a spirit of solidarity. It should be fully integrated into all relevant aspects of the EU's external policies. There is also a need to improve measures to combat illegal immigration and human trafficking with respect of fundamental human rights while not undermining the access to the asylum system. According to Ljunggren the best way to combat illegal immigration is by encouraging legal migration. A successful integration policy is a key factor for realising the positive impact of migration.

International migration has several faces. Therefore the establishment of a Common European Asylum System remains a key objective. According to Ljunggren the asylum system must be fair and efficient as well as credible and sustainable. In addition solidarity is a necessary element towards those Member States that are under particular migratory pressure.

Other priorities for Europe should be to facilitate the access to the asylum system for those people who are in need of protection, bearing in mind that the most vulnerable people in need do not even manage to come to Europe.

A European resettlement scheme is therefore a key priority as well as regional protection programmes. It is however also important for the credibility of the Common European Asylum System that those who are not in need of protection are identified and secured.

State Secretary Ljunggren ended by stressing the fact that although we are facing challenges there are also windows of opportunity. Migration is not a problem, it is part of the solution, and protectionism cannot be the answer. Mobility and openness must therefore be embraced.

Emilio DE CAPITANI, Secretary of the LIBE Committee, European Parliament, “Finding the right balance between security and justice while safeguarding freedom”

Mr. de Capitani commenced by expressing the great importance of the JHA area for the European Parliament. Some ten resolutions have been adopted in the area the past year which shows its political significance and interest. The importance will increase even more with the Lisbon Treaty which will add the fundamental democratic perspective on the legislation procedure; the parliamentary scrutiny.

The policy area is however often quite complicated to handle and the stages reached have not been linear. Sometimes it only takes a judgment from the European Court of Justice to change a debate completely. The European spirit becomes here even more instrumental.

After Tampere, Europe has been facing several challenges. Successful answers to those challenges have for instance been the increased spirit of mutual recognition and the European Arrest Warrant. The key element to success is however according to Mr. de Capitani to thoroughly evaluate past initiatives before creating new instruments.

Furthermore, it is important to find the balance at European level, not only at national level. There is a need to find a common denominator on a general level, a heritage which all Member States can consolidate.

As many previous speakers, Mr. de Capitani emphasized the importance of a policy directed towards the citizen. In this context the Charter of Fundamental Rights of the European Union was stated as a primary example of materializing the individual's rights. The legal status that the Charter would obtain if the Lisbon Treaty enters into force would further increase this.

In the development of the Stockholm Programme Mr. de Capitani stressed the work of the Future Group which will have a profound effect on the outcome of the final text.

Mr. de Capitani ended by summing up the significance of the European project. Despite the complexity of the current institutional framework the Member States have reached enormous achievements.

Stefano RODOTA, Chairman of the Scientific Committee of the Fundamental Rights Agency, "Promoting fundamental rights as the core of the Area of Freedom, Security and Justice", former Member of the Camera dei Deputati in Italy

Mr. Rodota commenced by stating that nowadays the European Union is widely perceived as an innovative model of protection, emphasising too much security and too little human rights. Therefore it is now the right moment to reflect on the opportunities provided by the Charter of Fundamental Rights of the European Union. The legitimacy of the European Union derives from its global role as regards fundamental rights.

Mr. Rodota shared three general remarks on the topic of the Charter. Firstly, the Charter will be significant in solving the problems of legitimisation that EU is currently facing. It is therefore important to have a proactive fundamental rights policy. Another remark was that even though the Charter is not yet legally binding, judges all over make reference to the articles and they become therefore dynamic actors on the road to the European constitutionalisation.

The importance of the Charter was reinforced when the Agency of Fundamental Rights was created. The set of principles stated in the text became reinforced and it has since become more evident that the Union must place the person at the centre of the action.

Furthermore, Mr. Rodota highlighted the problems currently dealt with. He stated that the indivisibility of rights has resulted in a weaker status being given to the social rights. Also, the fundamental rights have in a way been polluted and exploited in the fight against terrorism. There are today restrictions far beyond the need to fight terrorism. All of this is due to the lack of filter of the requests from the US. An example of this is PNR and data protection and the fact that the US refused the equivalent protection of European citizens compared to US citizens. According to Mr. Rodota the EU must refuse the “securitism resulting in a digital tsunami” that will lead to a future where there will be a digital record on everything.

In closing Mr. Rodota underlined the fact that the EU must reflect of its fundamental rights policy and how it should become a part of the future Stockholm Programme. It is of great importance that EU should not lose this most significant feature as a worldwide political tool. EU can lead the process in giving the citizens an ambitious and visionary but also pragmatic and concrete European reality.

Working Group I¹

Asylum, Immigration and External Borders Control

Report by:

*Pascal Fendrich, Academic Assistant, College of Europe
Lars-Johan Lönnback, Counsellor, Swedish Permanent Representation*

By their very nature, EU policies in the fields of asylum, immigration and external borders' controls often have interlinked implications. This situation of interdependence or rather of reciprocal influence between the above distinct policy fields required the working group I to deal with a wide agenda. Moreover, these discussions took place in a context of increased EU activity in the policy fields under discussion. Described as a useful achievement and as a solid basis for future developments, the European Pact on Asylum and Immigration was endorsed by the Heads of States and Governments in autumn 2008. The European Commission furthermore launched recently a process of upgrading already existing tools in the field of asylum policy. Aiming at higher harmonisation, the initial stage of this process will entail a recast of the Council Directive 2003/9 laying down minimum standards for the reception of asylum seekers as well as a recast of the Dublin and Eurodac regulations.

In such a context, the discussions of the working group proposed on the one hand to review some of the already achieved results, assess their quality and identify persisting shortcomings. On the other hand, discussions also shed light on what should be the new priorities for the incoming period and how the latter should be included in the incoming multi-annual programme. In fact, the concrete substance of the discussions underlined the need for the next multi-annual programme to be built both on a sense of continuity and on a search for useful adaptation or innovation.

¹ The working group was chaired by Jean-Louis DE BROUWER, Director at the European Commission. The speakers were: Ola HENRIKSON, Director General within the Swedish Ministry of Justice, Ilkka LAITINEN, Director of Frontex, Professor Elspeth GUILD from the University of Nijmegen and the London School of Economics and Professor Philippe DE BRUYCKER from the Université Libre de Bruxelles.

Given the above outlined context, various dimensions will need to be taken into account when designing the Stockholm Programme. The next programme should first complement and finalise the targets set up in Tampere and The Hague and set the framework of new objectives and policies to be agreed on and implemented. This concretely means the coming phase will need to make the tools already available more efficient and facilitate their implementation. The incoming programme will in this respect need to go beyond defining objectives and propose concrete measures to put into practice the tools and policies already agreed on. This possible first priority of the next multi-annual programme would imply a slight change in its nature when compared to its predecessors as it shall aim towards implementing policy and concepts developed in the prior programmes.

The necessity to upgrade and streamline the analysis on the dynamics at stake in asylum, immigration and border controls may represent a second component of the programme to be designed. The discussions of the working group in fact insisted on the necessity to analyse the outcomes of the previous multi-annual programmes and to understand if relevant lessons need to be taken into account both in terms of policy outputs and methods of integration. Improved analysis should in this respect help appropriately design future or adapt current EU policies. Increasing our knowledge about certain trends we currently know little about what would further serve to identify the priorities that shall be added to the Stockholm Programme.

The two above described necessities for the new Programme would complement and strengthen one another. These efforts should be pursued bearing in mind the interdependence and mutual influences of the policies to be developed. In this sense, careful attention on how policies interact with one another will avoid contradictions and imbalances and increase the chance of creating positive synergies.

Taking into account the wide implications of the topics under discussion as well as the limited time available for discussion, the identified needs as well as the measures summarized below are not meant to propose an exhaustive set of measures to be included in the multi-annual programme soon to be designed. The observations and propositions that are summarized below rather summarise the priorities identified by the working group's participants.

Identified Needs and Shortcomings

Overall, the working group's contributions allowed to identify some obstacles that still remain pending in the field of EU asylum, immigration and integrated border controls policies. Rather than simply providing a list of the policies that still need development and/or implementation, the working group focused on some general patterns and shortcomings that will need to be corrected in the years to come.

a) The compartmentalisation of policies

As pointed out by some of the interveners, the implementation of The Hague Programme has revealed uneven results. While rapidity could characterise the developments of certain policy fields, the fulfilment of other objectives is still lagging behind. The rapid developments that have characterised the field of the Common European Asylum System (CEAS) currently remain unmatched by developments in the field of EU migration policy. Bearing in mind the links and mutual influences developments in one specific policy field may carry for the other policies, this multi-speed development may carry significant consequences for the coherence of the system as a whole. Discussions in this context insisted on the necessity to carry out the further elaboration of the CEAS in parallel with the development of a comprehensive European approach towards migration. The development of an integrated or common management of EU external borders also needs to be counterbalanced by concrete measures to ensure asylum seekers can access the application procedures. In the overall, the discussions stressed the risks attached with the process of designing and implementing policies in autonomy from the others.

The necessity to avoid compartmentalisation of policies but rather work on defining ways for them to usefully complement one another was made further obvious when referring to the various information tools the EU currently disposes of. EURODAC, the SIS or the VIS already provide an impressive amount of information and data. Efforts to streamline all these sources of information and to see how they potentially could complement other policy tools or objectives have so far remained too weak and should be enhanced.

While not the central focus of the working group, some contributions in this context nevertheless underlined the persisting difficulties attached with what was described as the “multitudes of EU foreign policies”. Concrete links or mechanisms that would permit the systematic consideration of Justice and Home affairs aspects in EU foreign policy remain absent. Effective measures to articulate EU migration and asylum policies within the realm of EU external policy still need to be defined. Discussions underlined the need for introducing permanent links between EU foreign policy and Justice and Home affairs concerns, whose aspects could in addition serve or complement the purposes of EU external development policy.

b) *The functionality of policies*

An additional shortcoming identified by working group I relies in the persisting abstract nature of some of the policies and concepts to be developed. While consensus has over time emerged about the use of certain policy tools, concrete measures regarding their practical and systematic implementation are still lacking. In the field of migration policy for instance, concepts such as “circular migration” or the notion of “mobility partnerships” are usually referred to as offering great potential for creating the necessary links between the EU’s economic needs and its external development policy objectives. The tools and the procedures channelling their use however still need to be defined further. The European Resettlement Scheme in the field of asylum reveals similar problems. The latter concept needs to be better defined. The conditions under which it could emerge as an appropriate tool as well as the precise means that shall be made available for its practical implementation for instance still need to be further developed.

One understands from the above that the Stockholm Programme will need to address these remaining shortcomings and entail provisions that shall both give concrete meanings to concepts already developed over the years and prepare the ground for their practical and systematic use.

c) *A lack of knowledge and analysis*

Finally, most interventions insisted on the persisting lack of knowledge available on certain of the issues that need to be addressed. There is first a necessity to review the already adopted legislation and measures. In this sense, lessons to be learned from the implementation of the Tampere and Hague Programmes still need to be identified in order to clearly understand where potential problems are and what methods can be used to address them.

In addition, and as a result of European integration, certain phenomena still need to be analysed. While the situation of interdependence between Member States' national systems and policies is today acknowledged, only limited analysis is available as regards the concrete implications and impacts of this interdependence in the field of asylum and migration for instance. The current separation of information sources constitutes an additional obstacle in such a context.

I. Horizontal Priorities

1. Methods of cooperation – modes of integration

The discussions allowed to identify some horizontal principles that should guide the EU and its Member States actions for the incoming period.

In this respect, the discussions insisted on the key principles that shall influence *cooperation* in the coming period. Bearing in mind the different geographical situation of EU Member States and therefore their different exposures to phenomena such as immigration and asylum as well as their different levels of available resources, **solidarity** emerged as a key word during the discussions. Solidarity both between Member States as well as towards third countries should govern the design of the Stockholm Programme.

In a similar vein, many contributions reemphasized the importance of **trust** between Member States to be preserved and promoted. With **mutual recognition** expected to represent the key facilitator of further integration in the policy fields of asylum, immigration and external borders control, trust emerged both as a precondition for further progress as well as the guarantee for the sustainability or as the “life insurance” of the achieved results. Discussions however underlined the fact that trust as such is not automatic and emphasised the need for flexible and realistic approaches of cooperation.

In this sense, if the need for further harmonisation of Member States' legislations and the application of mutual recognition (where appropriate and possible) was emphasised, these methods of cooperation should be complemented by increased practical cooperation between Member States' authorities in all aspects where common action or cooperation would clearly represent an added value. This once again underlined the need for the coming efforts to be led by pragmatism and flexibility in terms of its working methods.

2. Evidence Based Approach – Analysis

As indicated above, participants of the working group underlined the remaining lack of available knowledge on certain of the issues the EU is expected to work on. The origins of these “black spots” are multiple. They first result from the “compartmentalization” of policies which means that knowledge accumulated in one particular policy field is not made transferrable to other areas of involvement. They further result from a lack of review of the legislation already in place as well as from the new dynamics that the process of integration as itself created and that still remain to be examined. In this sense, the members of the working group clearly underlined the need for an **evidence based approach** of policy-making. Analysis of the policy fields at stake shall be targeted according to the needs and directly linked with the development and implementation of policies. Such an approach would further serve the functionality of the policies to be elaborated and would help ensure they meet the agreed objectives.

3. Clarity over the objectives and responsibilities

With certain policies still defined in abstract or broad terms, the discussions emphasized the need to make the concepts and policies already developed fully operational and to translate them into concrete measures. The Stockholm Programme is therefore expected to reflect a slightly different nature than the two preceding programmes as it will have to prepare for the translation of already established concepts into concrete actions. With such a result-oriented approach, the **definition of the concrete mechanisms** that should govern the use of the European resettlement scheme or of the procedures that would frame circular migration will have to be included as objectives. In a similar vein, the working group's participants also insisted on the need to clearly circumscribe the responsibilities of each policy's stakeholder.

The process of “**operationalisation**” of certain policies shall thereby also entail a **clear division of labour** and responsibilities between the institutions involved. For instance, participants’ interventions underlined the need for FRONTEX or for the European Asylum Support Office to act within the boundaries of clearly defined mandates. This clear definition of mandates should also be followed by measures that will promote effective articulation and coordination between the actors involved in a particular policy field.

II. Policy Related Measures

I. Asylum

Whereas **mutual recognition** is currently only of limited use in the field of EU asylum policy, it shall be considered as a method for furthering the establishment of the CEAS. The potential for asylum decisions or of decisions on returns to benefit from mutual recognition should be envisaged.

These developments should be complemented and favoured by increased efforts for **practical forms of cooperation** between Member States’ institutions in all issues related to asylum. As a priority, Member States should ensure the growing pooling of their resources when it comes to analyses of third countries situations and risk assessments. Exchange of information on practices and criteria applied in asylum procedures should also be pursued. The European Asylum Support Office should play a particular role in these efforts aimed at convergence of Member States practices. The creation of a European curriculum on processing asylum applications was mentioned as one possible concrete measure that could be implemented in the short run.

With the aim of strengthening available policy tools, the **European resettlement scheme** was described by the working group’s participants as underdeveloped. The conditions and procedures for its operation as well as the resources attached to it should be further elaborated and the relevance of linking it with the European Refugee Fund should be envisaged. Both the resettlement scheme and the Fund also need to be thought of as policy tools of external policy.

Finally, interventions underlined the necessity to ensure the proper coordination of the development of the CEAS with the elaboration of contingent policies. Access to asylum applications must be ensured, and measures providing for it will necessarily need to adapt to new initiatives relating to the management of the EU's external borders. In this context, the possibility to establish **common application centres** in EU Member States' external representations could be further envisaged based on the approach currently developed as regards the EU visa policy.

2. Migration Policy

As in the field of asylum policy, discussions underlined the need for both **harmonisation and mutual recognition** to make further progress on issues linked with both legal and illegal migration. Common standards when it comes to integration or regularisations need to be arrived at. An initial priority in this context could be to ensure **mutual recognition of Member States' decisions regarding third countries' nationals' right to residence**.

Most of the contributions however underlined the need for significantly *upgrading our knowledge* of the various implications and dynamics linked with migration. The concrete links between Europe's ageing population, Member States' specific economic needs and migration need to be further investigated. How can migration into the EU answer these demographic and economic needs? What are the conditions for this in terms of labour market or integration related national or European policies? How do European citizens perceive such a trend? Discussions also underlined that we still lack sufficient knowledge on the potential implications of EU integration on migration movements. How do migrants select their countries? How does one Member State's integration policy impact on its neighbours? Therefore there is a clear need to further analyse migration related dynamics, to connect or pool our information resources together and to make ready to use information available.

A concrete understanding of the implications outlined above should lead to the setting-up and better definition of policies to be implemented in order to facilitate migration, integration and potentially the adaptation of our labour markets. In this context, the working group insisted on the necessity to further detail the procedures that shall govern **circular migration or the so called "partnership for mobility"**. In a similar vein provisions of the European Pact on Asylum and Immigration shall be further elaborated.

For instance, if the Pact discourages Member States to proceed with **generalised regularisations**, the former document remains silent as to what alternatives Member States should use. EU policies and instruments should in the future be given a more concrete substance in order to become operational. Finally, the working group's discussion underlined the relevance of establishing **common visa application centres**.

3. External Borders Controls

On the questions related to EU's external borders management, the discussions centred on the responsibilities of *FRONTEX* and on its potential future developments. While participants insisted on *FRONTEX* representing the backbone of the European integrated system of border management, emphasis was drawn on the necessity to **clarify the present and future mandate** of the agency. Clarifying the task of *FRONTEX* should contribute to improve the way the agency interacts with other institutions and in particular with Member States and how the latter shall complement and support its efforts.

On *FRONTEX* specifically, participants underlined the need to provide the agency with **operational competences** and capabilities. The creation of an operational command structure was in this regard envisaged by participants. Providing *FRONTEX* with its **own equipment** was further referred to as a necessary and initial step in the perspective of giving the agency operational competences. The added value of *FRONTEX* in terms of **risks' analysis** and provision of **training** to national border forces, as well as the need to strengthen the agency's capabilities in these fields, were also emphasized.

Working Group II²

Civil Justice Cooperation

Report by:

Elisa MOLINO, Academic Assistant, College of Europe

Jonas HÖGSTRÖM, Counsellor, Swedish Permanent Representation

Introduction

In the field of Justice and Home Affairs, the area of civil justice cooperation might sometimes be seen as neglected but it is, in fact, extremely relevant for European citizens and for the effective functioning of the internal market. Moreover, through its incorporation into the “first pillar” of the EU legislation since the Amsterdam Treaty, it is an area where many steps have been taken in order to ensure more legal certainty both for individual citizens and for business actors, when they are confronted with family and commercial matters with cross-borders implications.

With the increasing mobility of people and assets within Europe, it becomes extremely important to eliminate the existing barriers, which arise not only from the existence of different and conflicting legal frameworks, but also from the lack of information and knowledge on the part of the stakeholders.

In this respect, civil law cooperation encompasses both an immediate goal and a more long-term goal. As regards the former, there should be no obstacles to proper recognition and enforcement of judgements across borders. The latter could, according to the findings of the working group, be to create a European Judicial Area, where citizens could act in a similar way in a cross-border procedure as they would have done in a purely national context.

² The working group was chaired by Francisco Fonseca Morillo, Director at the European Commission. The speakers were: Fernando Paulino Pereira, Head of Unit at the Council of Ministers; Irene Lambreth, from the Permanent Representation of Belgium to the EU; Professor Maria Teresa Bendito Canizares, from the University of Madrid; Professor Michael Hellner, from the University of Uppsala.

As a matter of fact, the Hague Programme has tackled relevant issues and proposed a wide range of tools. During the seminar the working group tried to analyse what has been done so far and what difficulties still remain. On the basis of this analysis, the participants of the group also tried to draw some conclusions to guide the way forward.

Main challenges in the field of civil law cooperation

Setting the priorities for the following five years, the Hague Programme put the main emphasis on the need to complete the mutual recognition programme³. The general objective was, in fact, to set out **procedural rules and define minimum standards** for applicable law in areas that affect the everyday lives of individual citizens and business actors. However, despite the fact that several EU regulatory provisions have already come into force, such tools need to be looked into in order to identify the deficits that still exist, especially as regards recognition and enforcement of judgements and their actual effectiveness.

In the area of **family law**, for instance, the Brussels II and IIa regulations and the newly adopted regulation on Maintenance obligations have created a more secure legal environment on matters concerning matrimonial issues, parental responsibility and maintenance obligations. However, not the least in the perspective of a **general abolition of the exequatur**, some work still needs to be done. At the same time it was acknowledged by the working group that some areas of family law are, indeed, particularly sensitive because of the cultural differences between Member States.

As far as matters of **matrimonial property regimes** are concerned, the Commission might, it seems, in the future bring forward a relevant proposal which underlines a new approach to the issue, as the usual principle of habitual residence is coupled with the one of the choice of the applicable law. And in the field of succession and wills the Commission will present a proposal soon. Such a proposal was warmly welcomed by the participants, even though some argued it might be too narrow in scope; for instance, the draft European Certificate of Inheritance still does not guarantee equal treatment for all status cases of couples.

³ European Commission, Communication from the Commission to the Council and the European Parliament. The Hague Programme: Ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice, COM (2005) 184 final, 10.5.2005

In the area of **contract law**, attention has been drawn since 2005 to the drafting of a “Common Frame of Reference”, whose final version could be released in the end of 2009 or in the beginning of 2010. Its purpose and content have been a matter of discussion ever since the task of providing an academic base for the exercise was given to a group of European academic experts⁴. Nonetheless, the frame of reference could become a useful toolbox for improving Community law as it relates to contractual law issues. Moreover, by setting up a **range of common principles**, the frame of reference could become a tool to reinforce the creation of a European Judicial culture, both at the scholars’ and practitioners’ level.

Beyond these areas in which actions have already been foreseen, there are other matters that civil law cooperation could cover, provided that the Treaties enable the Union to do so. Among other issues, it was underlined that there are still very few Community rules on **capacities, property law and no straightforward rules on applicable law for companies**.

On a more general level, there was a widespread agreement on the need to improve the **efficiency and the effectiveness** of the instruments already in place. In fact, also in the areas where EU legislation exists, difficulties still arise that hamper the trust-building among Member States which is necessary for the system of mutual recognition to progress. These difficulties stem both from the EU and the national level, and they are sometimes generated by the lack of knowledge of the stakeholders.

Even more importantly, inefficiencies arise in the **development and implementation** of the aforementioned instruments. Despite the satisfactory level of implementation⁵ at the EU level in the area of civil law cooperation thus far, many actions still need to be put in place and correctly implemented at the national level.

⁴ C. Von Bar, ‘A Common Frame of Reference for European Private Law - Academic Efforts and Political Realities’, in *Electronic Journal of Comparative Law*, vol. 12.1, May 2008, <http://www.ejcl.org/121/art121-27.pdf>

⁵ European Commission, Communication from the Commission to the Council and the European Parliament. Report on the Implementation of the Hague Program for 2007, COM(2008) 373 final, 2.7.2008, Brussels

Finally, when considering the stakeholders in the field of civil law cooperation, the EU lacks a **coherent and consistent approach to third countries**. Effective relations with non-EU countries constitute a growing necessity for the European Union, and the EU does not have a clear and systemic approach to the use of bilateral (EU-third country and Member State-third country) and multilateral agreements.

The way forward – Proposals for the Stockholm Programme

On the basis of the above, consensus seemed to emerge in the group that the Stockholm Programme could be inspired by the following broad principles and objectives:

1. Putting the citizen at the centre by ensuring legal certainty for all actors and stakeholders,
2. Pursuing the mutual recognition programme, by accomplishing the actions previously set before moving forward,
3. Reinforcing the effectiveness of the instruments already in place,
4. Removing the barriers arising from lack of knowledge of instruments and practices.

The aforementioned principles and objectives should be achieved both through regulatory and non-regulatory instruments, and several specific actions are probably required for each civil justice matter covered by judicial cooperation.

1. Putting the citizen at the centre by ensuring legal certainty for all actors and stakeholders

Indeed, putting the citizen at the centre should be a paramount objective, as EU institutions have committed themselves to give shape to an “area of freedom, security and justice”. As was said in the introduction, the long-term objective of the civil law cooperation should be to create a European Judicial Area, where citizens can be granted the same conditions they have in their national territory when they are faced with civil issues of a cross-border nature.

When speaking about the citizens, we need to widen this definition to include **all actors and stakeholders potentially involved**. Within the area of family law, the interests of the child should generally be put in the forefront. Here, a general long-term objective could be the abolition of the *exequatur* for all matters concerning parental responsibility in order to ease the currently cumbersome procedures. The same principle of simplification and clarification should drive any provision which touch upon business actors' interests. Finally, **effective tools** should be given to national practitioners, in order for them to learn to work in the European Judicial Area. Therefore, additional steps should be undertaken in order to **reinforce the training** for national judges and other practitioners and to put into place the necessary instruments to create a **European judicial culture**. Despite the fact that many steps have already been taken, a more in-depth common understanding and learning is needed, for instance through the elaboration of **handbooks**.

2. Pursuing the mutual recognition programme, but this by accomplishing the actions previously set before moving forward

There is indeed a need to go further with regulatory instruments to accomplish the mutual recognition programme in order to abolish the obstacles that stand in the way of recognition and enforcement of judgements. The mutual recognition approach has already shown its relevance for overcoming the difficulties linked to the existence of different judicial systems in the EU. In this framework, the objective of a **general abolition of *exequatur***, already existing in the Hague Programme, should be pursued further in the framework of the Stockholm Programme. The group acknowledged that there is in fact a widespread agreement, especially among academics, on the necessity of abolishing the procedure of *exequatur*, an objective that will however encounter political and technical obstacles which need to be addressed.

On a wider level a **real system of mutual recognition** should be put into place. This latter should be based on a reconsideration of the existing *acquis* which would allow us to determine in which areas, within the limits given by the Treaty, we should pursue the path of mutual recognition. In addition, several objectives of the Action Plan set out for the period 2005-2010 still need to be accomplished. In some areas, as for instance matrimonial property regimes and divorce law, there is still a lack of substantial and procedural rules, which need – sooner or later – to be filled by means of regulatory instruments.

The proposal of the Commission on successions and wills should create the basis for applicable rules in this field, especially with the creation of a European Certificate of Inheritance. This certificate should be recognised as the only applicable inheritance document for citizens in order to create a legally secure environment and avoid parallel procedures.

Having completed the set of regulatory provisions that had been previously foreseen, civil law cooperation under the Stockholm Programme could go forward and **explore other fields**, both as far as regulatory and procedural aspects are concerned. Among the former, the matters of company law and property law still need to be looked into.

More horizontally, the **approximation of procedural rules** should be considered, as the differences among national systems still pose obstacles to the proper recognition and enforcement of judgements. Especially, the general abolition of exequatur may raise a need for such approximation. However, this exercise should be carefully conducted to be in line with the requirements of the Treaty.

3. Reinforcing the effectiveness of the instruments already in place

It was insisted above on the need to accomplish in the first place what has been spelled out in the Action Plan of the Hague Programme. Further to this, an **enhanced system of evaluation and verification of implementation** should be put in place. Consensus seemed to emerge in the group on that before EU action in new fields were considered, it was necessary to ensure higher efficiency and effectiveness of the instruments already in place. This would probably be possible only if comprehensive evaluations were conducted, which would involve an analysis of the action at the EU level and at the Member States' level.

By the same token, both for present and future provisions, the principle of **quality of legislation** should be kept in mind by the EU legislators. This would help to simplify the regulatory instruments and make them more understandable, rejoining in this way the objective of removing the barriers that arise from the lack of knowledge.

On a more theoretical and general level, the question was also raised about the relevance of a “**constitutionalisation**” or **codification of the EU civil law material**. Maybe an EU Private International Law Code could be a feasible project in the long term?

4. Removing the barriers arising from the lack of knowledge of instruments and practice

This last objective is closely linked to the first one identified above, and should apply horizontally to all concrete measures that we have described above. Several non-regulatory instruments have been put in place in order to ensure correct and timely information of citizens and other stakeholders. These are mostly based on the use of information technology which, indeed, is important for the way forward. The relevance of enhancing the instruments and the access to justice has been stressed both by academics and practitioners, and it constitutes a growing necessity in order to make citizens aware of the legal framework the EU has built up. It was recognised by the working group that **the e-justice projects** are very important keys in this respect.

The efforts made regarding the **European Judicial Network in Civil and Commercial Matters** should also be further enhanced in order to allow the judiciary as well as the citizens and business actors to take full advantage of the Network. As for the law practitioners, better access to case law and EU provisions should be granted, this together with more comprehensive training and a more effective exchange of information and best practices. With the expansion of the *acquis* in civil law matters, which touches upon citizens’ everyday lives, the information and empowerment of the actors should be a primary concern. Only in this way, in fact, can we ensure a proper implementation of the regulatory tools.

WORKING GROUP III⁶
CRIMINAL JUSTICE COOPERATION

Report by:

Francesco Napolitano, Academic Assistant, College of Europe

Åsa Webber, Counsellor, Swedish Permanent Representation

Introduction

The discussion in the Working Group on Criminal Justice Cooperation stimulated the reflection on the aims of the Area of Freedom Security and Justice and generated some ideas regarding the priorities in the field of criminal justice which could be included in the Stockholm Programme. It took into account the experience gathered at the EU level with the implementation of the Tampere Programme (1999) and of the Hague Programme (2004) as well as the new legal and institutional framework of the Lisbon Treaty. The panel further elaborated and enriched the elements contained in the report presented in July 2008 by the High-level Advisory Group on the Future of European Justice Policy.

Upgrading cooperation in the field of criminal justice was seen as essential in order to attain the wider objective of creating a real Area of Freedom, Security and Justice. In its latest evaluation report on the implementation of the Hague Programme in 2007 the Commission had clearly stated that “the rate of achievement in this policy field has been rather low”.

The contributions of the panel allowed to identify the current deficits and the main challenges for EU action in the area of criminal justice. The necessity to improve the effectiveness and the efficiency of the cooperation in the area as well as of the instruments adopted was highlighted. Remarks concerning the decision-making method were formulated, some of which were seeking a more comprehensive approach. The assessment was followed by concrete proposals on how to tackle the present situation and the definition of priorities for the Post-Hague programme beginning in 2010.

⁶ The Working Group was chaired by Julian J.J.E. SCHUTTE, Director at the Council General Secretariat. The panel included Daniel FLORE, Conseiller général at the Ministry of Justice of Belgium, Daniel LECRUBIER, Head of JHA Counsellors at the Permanent Representation of France to the EU, Professor Valsamis MITSILEGAS, London and Professor Joachim VOGEL, Tübingen.

I. Current deficits and challenges ahead

The EU has set the ambitious objective of creating a **common judicial area** in the field of criminal justice. An analysis conducted from a quantitative point of view would lead to a positive balance sixteen years after the entry into force of the Maastricht Treaty. In terms of approximation it was affirmed that all the fields explicitly mentioned in the treaties have been covered, and that, as far as mutual recognition is concerned, there are instruments of recognition for almost all sorts of decisions relating to criminal justice.

However, in the discussions the question was raised whether we can also affirm that the instruments adopted have also created an **effective form of mutual recognition**. It was asserted that the European Union appears far from having created an ideal criminal justice system. Structural problems concerning the length of trials, long-term pre-trial detention, overcrowded prisons as well as evidence of malfunctioning and corruption were mentioned. The discussions in the Working Group identified three major shortcomings in the EU action:

I.a) Lack of clarity and effectiveness

The success of mutual recognition was considered to be based on elements such as direct contacts between judicial authorities without interferences from central administrative bodies, the setting of well-defined time constraints for the executing authorities to execute foreign decisions and the presence of only a well-defined number of grounds for refusal. If the European Arrest Warrant is generally perceived as a success, it is also true on the other hand that other instruments such as the European Evidence Warrant present considerable shortcomings.

Some experts argued that these **texts remain difficult to apply** due to an increasing number of conditions and grounds for refusal. Others observed that many measures are not actually necessary, as they **duplicate** other instruments existing in European and international law or are too complex. It was claimed that if the measures adopted are not evidence based and if they are not responding to a clear justification, they will never be effectively implemented. This was considered to be the case even if under the Treaty of Lisbon the Commission will be invested with the right to bring infringement proceedings before the European Court of Justice.

Moreover, the need was recognised for **more accurate legislative drafting and more precise definitions**. There is pressure on the governments to take political initiatives, but legal certainty especially in the field of criminal law should remain a priority. Otherwise both national courts and the European Court of Justice will be in a very difficult position when it comes to interpretation.

Finally, clarity and effectiveness of EU action could be hampered by having operating bodies with **overlapping or unclear tasks**. Europol and Eurojust are constantly evolving and this is a positive development. Nevertheless, what these bodies do, what their mandates are and how they could better cooperate should be reviewed. Increasing effectiveness and efficiency requires making better use of the instruments at our disposal such as Europol, Eurojust, and the European Judicial Network.

II.b) Lack of legitimacy and mutual trust

The method chosen for furthering European integration in the field of criminal justice was debated. Mutual recognition has been proclaimed as the cornerstone of European cooperation in the field of criminal law, but is there real mutual recognition and is it the only solution to make progress in the Area of Freedom Security and Justice?

The rationale of mutual recognition is to recognise with a minimum of formalities the standards of another jurisdiction. This way of proceeding generates concerns relating to the degree of legitimacy, transparency and trust in judicial cooperation. Can the citizens, the practitioners and the judges understand and support EU action under these conditions?

In the discussion a **deficit of consultation and of public debate** was emphasised. It was considered urgent to **promote a debate on common standards, common values and common direction**.

There was general consensus that the principle of mutual recognition needs to be supported by further work in order to promote and further build mutual trust among the Member States and between the relevant authorities. Introducing common minimum standards for **procedural rights** was considered an essential element in order to establish a better basis for mutual trust. This was clearly considered an area in need of further elaboration in the field of criminal justice.

II.c) Lack of vision

The dynamic observed in the EU up to now corresponds to some sort of managerial logic of policy-making, with each presidency striving to make some progress in the negotiations in order to achieve some of the objectives set. By contrast, the needs to assure effective implementation and a comprehensive approach have been neglected.

In order to pursue a global approach to criminal justice the EU should aim at intervening at three distinct levels: **sustaining cooperation** among Member States, **furthering approximation** based on common standards and values, and conceiving a **common justice** at the European level. The third of these levels, the one of a true European dimension of justice, is where we experience a real lack of reflection.

The existence of powerful trans-national criminal organisations acting in the area of e.g. trafficking and terrorism was acknowledged as a major element of concern. For trans-European crimes national judges have to deal with situations going well beyond their traditional field of action. Mutual recognition remains at the level of cooperation between national authorities and typically serves more the needs of national justice than those of a broader European justice. It was suggested that for complex criminal situations we need to move to a **higher level of ambition and action** in order to combat criminal networks, given that criminal organisations already operate following a global logic. The exchange of information and the execution of foreign judicial decisions are not enough. **Common policies and action** leading to common investigation and prosecution in trans-national cases is essential for effectively combating the sources of crime.

Europol, Eurojust and in the future the European Public Prosecutor may start introducing **an embryonic dimension of European justice** existing beyond national boundaries. Further reflection was needed concerning the necessity of common action in the field of judicial cooperation in criminal matters at the European level. Progress would presuppose accepting the idea that common action is useful and that it provides an added value. It was pointed out that these are elements of the cooperation which would clearly **benefit European citizens** directly.

Political objectives have to be set, and European citizens should be involved in the process by letting them better understand what is at stake. One speaker quoted an ancient European philosopher, “If one does not know to which port one is sailing, no wind is favourable”.

II. Priorities for the future and instruments for their achievement

The analysis carried out by the Working Group allowed to identify general priorities as well as to single out some concrete proposals, which could be included in the Stockholm programme. The main solutions offered to respond to the challenges illustrated in the previous section can be summarised in the following five thematic categories:

II.a) Completing and complementing the Mutual Recognition programme

A priority for the future of the Area of Freedom Security and Justice should be the implementation, review and possible improvement of the instruments adopted in order to promote mutual recognition. Progress is badly needed in the field of evidence. The new European Evidence Warrant has been described as useless and difficult to use for practitioners. Further work would necessarily need to be more ambitious. A hypothesis mentioned in the Working Group was the setting up of a **European Letter Rogatory**. The issue of **trans-border telecommunication surveillance**, which is not included in the European Evidence Warrant, should be addressed as well as questions relating to the **admissibility of evidence**.

On the one hand, it has been observed that Mutual Recognition in itself produces a positive spill-over. It generates in fact a pressure for convergence of national criminal justice systems. By implementing mutual recognition and recognising foreign decisions we improve the knowledge and understanding of the way other countries operate, which leads to recognition of best practices. This process of practical convergence should be supported and assisted.

On the other hand, it is important to consider alternative options and measures complementing and supporting mutual recognition like harmonisation and judicial cooperation. In particular, the **list of offences** for which the requirement of double criminality for mutual recognition has been abolished is a natural candidate for legislative intervention. These offences could indeed be better defined. This could give rise to substantial harmonisation processes.

As far as judicial cooperation is concerned, as it has been mentioned by Minister Luc Frieden in the plenary session, progress could be achieved with regard to the **principle of availability**, rendering the exchange of information more effective in line with what has been achieved in the area of police cooperation. For instance in order to act effectively in the area of orders freezing property, it is necessary to improve the exchange of information concerning bank accounts.

The external dimension of judicial cooperation should also be strengthened. There is an urgent need to arrive at **judicial cooperation in crime-related tax issues** involving third countries in Europe, such as Switzerland and Lichtenstein. We cannot tolerate criminal tax heavens in Europe. We should also enhance cooperation with the states viewed as a basis for various sorts of trafficking, such as drug trafficking. Cooperation should always be based on the respect of rule of law and of fundamental rights. Therefore, we should contribute to strengthen the rule of law in the countries concerned.

II.b) Involving practitioners and providing them with better guidance

The view was expressed that the way forward in the field of criminal justice is not only to promote trust via more legislation. The opportunity to make appropriate use of **soft governance and soft law** instruments should also be considered. This means promoting knowledge and understanding of different national systems at many levels via training and exchange of best practices. Such an approach would better respond to the lessons drawn from past mistakes. The priority should be to better involve the practitioners in the implementation.

Firstly, it is necessary to explain well how to use EU instruments and to define common practices. Apart from the harmonisation of criminal offences, there has to be legislative guidance on the interpretation of EU instruments. Common understanding includes not only the final objectives, but also the operational concepts we refer to. It was argued that we should come to a common definition of concepts and principles (such as the “Ne bis in idem” principle). A step forward in this direction could be represented by the adoption of a Codex on **Mutual Recognition in criminal matters**.

Secondly, it is important to **actively involve judges and practitioners, such as lawyers, through training in European law and practices and evaluation**. The European dimension shall be considered as an opportunity not as a hindrance. In this way national judges could develop more the feeling of being also European judges which would promote a European judicial culture that the Hague Programme speaks of. Moreover, a European common training could also promote mutual trust.

II.c) Developing an evidence-based criminal policy approach

The need was expressed for an evidence-based criminal policy approach in order to effectively solve real problems through suitable measures and instruments. We have to go beyond symbolic and superfluous action focusing on issues that are relevant for the citizens and practitioners. In the case of the Framework Decision on execution of orders freezing property or evidence of 22 July 2003, for instance, it has become clear that few practitioners actually use it, since traditional mutual legal assistance in criminal matters is sufficient.

An effective **evaluation mechanism** has to be established. This was considered an important element in the building of mutual trust. Evaluation should take place once EU instruments have become operational. The view was presented that we also need an **overall evaluation on three levels**: of national criminal justice systems as well as of horizontal and of vertical (via Europol and Eurojust) cooperation at the EU level. The Commission should be mandated to initiate evaluation and to identify appropriate indicators, in order to guarantee fair and true results unaffected by political considerations.

II.d) Increase efficiency and coordination at the institutional level

We need to define tasks and priorities for **Europol and Eurojust** together with real and enhanced coordination powers. In cases of terrorism, for instance, we have been able to impose a real step forward by providing that from now on all dossiers dealing with terrorism will have to be submitted to Europol and Eurojust, giving these institutions concrete coordination powers. Europol is already in charge of analysing in a regular report (the European Organised Crime Threat Assessment – **OCTA Report**) the threats which Europe faces as a whole in order to define major priorities for the future.

The judicial sector as well has to become part of this process started by the Ministers of Interior in order to define also specific priorities for the domain of justice.

According to the Treaty of Lisbon, the **European Public Prosecutor (EPP)** is envisaged to emerge from Eurojust. Its remit is initially designed to deal only with the financial domain, i.e. fighting fraud relating to the EU budget. One speaker suggested that this is perhaps the right moment to set up this body. From an ethical as well as from a political point of view, we need effective instruments for the control of the way in which EU money invested in the framework of the current recovery efforts is spent and to reduce the risks of fraud.

Besides this objective, considering all the challenges faced in the field of justice and crime, it was recognised by a speaker that it could be even better to make direct use of those provisions in the Treaty of Lisbon that provide for the extension of its mandate to other domains. This would however be very difficult to attain, given that unanimous agreement in the Council of Ministers is required.

Finally, another concern expressed was that of assuring that the European Court of Justice will be able to shoulder the increasing workload due to the number of preliminary rulings referred to by national courts. It was therefore observed that the Stockholm Programme should strive to establish **judicial panels in the Area of Freedom Security and Justice** at the ECJ as provided for by Art. 225a of the TCE in order to deal with the interpretation questions regarding EU instruments.

II.e) Better protection of citizens rights, including victims, suspects and defendants

The necessity to improve the protection of individual rights in the field of judicial cooperation in criminal matters can be identified at different levels:

First of all, there is scope for increasing the mutual trust on which the principle of mutual recognition is based. We have been experiencing for some years a sort of crisis of mutual trust. There is a need to establish a **common set of minimum procedural guarantees in criminal proceedings** in order to reinforce the basis of mutual confidence between national judicial systems.

It was widely held from the panel that deepening common action in this field is required. The respect of fundamental rights and freedoms represents the strongest asset when dealing with sensitive issues such as terrorism. One speaker suggested that in order to overcome the obstacles encountered in the adoption of the Framework Decision on certain procedural rights proposed by the Commission in April 2004, we should start with an evaluation of real human rights problems and try again to adopt a substantial instrument in this area. This instrument should embody a more fundamental approach. The right to access to defence counsel after arrest was mentioned as one issue of particular importance.

Secondly, in order to safeguard citizens' rights, EU intervention should always be proportionate and accountable. It has now become clear that the EU Institutions have the possibility to accompany instruments adopted in various policy domains by provisions for **criminal sanctions**. Attention should be paid to make reasonable and proportionate use of this prospect.

As far as the **exchange of data** is concerned, this shall always be developed preserving individual freedoms and respecting the right to privacy. Therefore, in developing further cooperation in this area, the ministries of justice should guarantee that the information flow takes place in a legitimate and proportionate way.

Thirdly, it has been recognised that blind trust cannot be the basis of mutual recognition, since even the best criminal justice system can always fail in individual cases. Clear and effective safeguards must continue to exist. We should **systemise the grounds for refusal contained in mutual recognition instruments** developing the notion of a European public order in order to guarantee the respect of fundamental principles, such as legality, proportionality and culpability. Judicial authorities should deny mutual recognition, if there is evidence for a possible breach of these principles.

Fourthly, efforts are also required at the institutional level in the area of defence rights. The Stockholm Programme should include recommendations for a rapid and effective implementation of the decision on Eurojust reform and for the reshaping of Europol. Investigating and prosecuting institutions (Europol, Eurojust and the prospective European Public Prosecutor) would thus be strengthened and streamlined.

Some sort of institutional counterweight should be created in order not to neglect the European dimension of defence. Associations of practitioners like Council of Bars and Law Societies of Europe (CCBE) and the European Criminal Bar Association (ECBA) can be very active in promoting trans-border cooperation, but this is not sufficient. A positive step further would be represented by the creation of a **European Criminal Defence Ombudsman** or by **the financing of a European Criminal Defence Network**.

Conclusion

The debate in the Working Group took into account the fact that the Treaty of Lisbon could enter into force towards the end of 2009, implying a change of the legal framework with increased opportunities to improve work in the area. Moreover, the abolition of the distinction between first and third pillars provided for by the Lisbon Treaty, was also seen as a chance for a comprehensive approach in developing criminal justice in the EU.

In the discussion **consensus emerged** on significant points:

A priority for the future of the Area of Freedom Security and Justice should be to promote and further develop mutual recognition. However, there was strong convergence of views that the principle of mutual recognition needs to be supported by further work regarding substance, increased training and evaluation in order to promote and further build mutual trust. The need was expressed for an evidence-based criminal policy approach in order to effectively solve real problems through suitable measures and instruments. The necessity to improve the protection of individual rights in the field of judicial cooperation in criminal matters was strongly emphasised.

Additional issues were raised by the audience. In particular, the need to consider the potential role of enhanced cooperation was evoked. The outcome of the debate was that this would not be desirable, though not avoidable to a certain extent. Enhanced cooperation has brought results in the field of policing where trans-border cooperation was involved. However, as far as common values and procedural guarantees are concerned this could be counterproductive. It could probably constitute an intermediary solution as far as mutual recognition is concerned.

Working Group IV⁷

Police Cooperation and Data Exchange

Report by:

Ewelina Boguslawska, Academic Assistant, College of Europe

Nils Hänninger, Counsellor, Swedish Permanent Representation

1. Introduction

Achievements in the field of police cooperation and data exchange are a reality. In their institutional dimension, they are reflected in the creation and functioning of such entities as the European Police Office (Europol), the European Police College (CEPOL), the European Anti-Fraud Office of the Commission (OLAF) or the Police Chiefs Task Force, all structures designed to promote and streamline cooperation at both supranational and intergovernmental levels. There is, moreover, progress in the legal dimension (such as the implementation of the principle of availability through the 2006 Framework Decision on improved information exchange, also called the Swedish Initiative and the 2008 ‘Prüm Decision’), in the development of target-specific databases (SIS II, VIS, EURODAC), in cooperation networks (JIT, special intervention units), as well as in external activities (such as executive police missions under the second pillar – EULEX Kosovo).

The above is undoubtedly a positive perspective, and a praiseworthy one. However, developments and instruments in police cooperation have been small-scale and conditioned by a variety of factors (political, structural, etc.) which has slowed down major progress. Even though substantial achievements have been reached there is still **considerable room for improvement**, especially with regard to **police operations and data sharing** which are an important element of providing security to EU citizens. In general terms, the main obstacles are of a legal and practical nature.

There are also a lot of challenges, such as those relating to technical progress, which often render existing operational tools insufficient to deal with crime-related issues.

⁷ **Panel:** Roland Genson, Bengt Svensson, Therese Mattson, Peter Michael, Cyrille Fijnaut, Dirk van Daele The Working Group was chaired by Julian J.J.E. SCHUTTE, Director at the Council General Secretariat. The panel was chaired by Roland Genson, Director at the Council Secretariat, and speakers were Bengt Svensson, National Police Commissioner of Sweden, Therese mattson, Director of the National Criminal Police of Sweden, Peter Michael, Secretary to the Joint Supervisory Board of Europol, and Professors Cyrille Fijnaut and Dirk van Daele.

This is partly reflected in reports such as the 2008 Commission evaluation of the implementation of the Hague programme⁸, which states that the results in the aforementioned domain were unsatisfactory. While the opportunities to discuss possible improvements in the field are many, their follow-up is often found lacking.

It is therefore important to consider what the current and most imminent challenges in the discussed field are and what measures should be adopted to remedy the shortcomings. The considerations listed hereafter are largely conditioned by an ever-growing **mutual interdependence of operations** and activities of different services, such as police forces, customs, intelligence services and military. In this respect, primary importance should be attached to strengthening the already existing cooperation between the police and judicial authorities. Thus, a **new strategy needs to incorporate policies, law enforcement frameworks as well as procedures and an adequate, comprehensive information management strategy**. This is even more important if one considers that the strategy in question should go beyond the next five years and provide windows of opportunity for further programmes and initiatives, thus building solid ground for future advancements in the domain of police cooperation and data sharing.

2. Main challenges to be addressed

a) Police cooperation

Without doubt, the need for reinforced cooperation emerges from the daily activities of police forces across the EU. The challenges arising out of these activities can in particular be observed in cross-border operations whose legal and practical corollaries often constitute interrelated hurdles over which actions stumble.

⁸ Communication from the Commission to the Council and the European Parliament : Report on the Implementation of the Hague Programme for 2007, COM(2008) 373 final, Brussels. 2.72008, p.9

A. From a legal point of view, it is common knowledge that police officers in different countries are vested with very different competences and tasks which determine the scope of their activities and margins of manoeuvre. On the EU level this translates into operational obstacles: when it comes to cross-border operations, procedural loopholes, legal uncertainties or even contradictions come to light, all of which impedes a smooth flow of investigations. Furthermore, on the macro level, it seems that the principle of mutual recognition is not applied to the same extent in all member states. Procedural standards take too long to harmonise and can have negative implications for tight cross-border cooperation of officers, usually brought together in special cooperation centres.

B. From a more pragmatic point of view, a substantial lack of low-level cooperation mechanisms and institutions can be ascertained. The creation of CEPOL should be perceived as an unquestionable advancement in developing standards of police training and sharing best practices. Yet, it is accessible only to high-rank officers, and thus brings together only police ‘elites’. There is not enough effort put into establishing corresponding forums on the lower level. Cross-border cooperation centres (usually of a regional dimension) are not enough in quantity, and, although their *raison d’être* and *modus operandi* are logically conditioned by various necessities arising in different border regions, they seem to face similar structural challenges. **These involve access to sophisticated technical equipment, access to information needed to conduct research and undertake actions** (see also point 2.b on data sharing) and the **lack of proper training**, both as regards the handling of equipment and in developing communication skills, so necessary to interact with other countries’ officers. The elements mentioned here also carry concrete financial implications.

b) Data Sharing

From an operational perspective, data sharing forms an integral part of police activities. However, it deserves particular attention, for it goes beyond the strict framework of policing operations, and as such represents a mechanism used also by other services to fight organised crime. It also represents a highly sensitive issue, as it touches upon different aspects of personal data protection and thus of fundamental human rights.

C. The previously mentioned variety of systems governing police regimes in individual member states is naturally reflected in the differences in the ways data are stored. Here, different standards apply, ranging from the type and degree of precision of the information to the tools used for the purposes of storing and transmitting data. There is a clear lack of coherence, which renders quick **transmission of data** for operational purposes cumbersome, if not impossible. **IT support** for individual countries is very limited, there is no deeply ingrained culture of information exchange among police services of different countries. Also, knowledge at the disposal of state organs is all too often not reliable, but stored (and ultimately used) with the hope that it might one day be relevant for operational purposes.

In this respect, Europol, which was initially meant to serve as a database centre and an intermediary facilitating the circulation of investigation-sensitive data, has encountered structural shortcomings and still needs to improve its systems. From a technical point of view, data forwarded according to national standards require further processing before being operationalised (language problems set aside). Moreover, it was then, and still is, the case that Europol is forced to refuse sensitive data because of inherent limitations in its rules.

Another issue is the **sensitivity of national data**. Although some caution can be justified (but not necessarily approved of) on the grounds of vital interests of the state and its willingness to protect sovereignty, the fact that information crucial for international investigations is withheld has a counter effect on the operations.

Also, the plethora of different databases created leads to a very disquieting phenomenon of multiple registrations of the same type of data, which risk to blur the picture instead of clarifying it.

3. Possible solutions and future priorities:

A. The challenge raised in point A of the section 2 point A calls first of all for a **more substantial effort to harmonise police officers' rights and standards of proceedings**, as well as to apply mutual recognition in a more consistent way. As new challenges appear on the horizon, the EU internal security architecture needs to be reformulated.

Therefore, **convergence principles** (which can have the potential to reinforce mutual cooperation) should be elaborated, based on the **simplification of rules** (*inter alia*. limiting convergence to most important elements, elaborating broader guidelines instead of detailed measures of procedure that significantly impede progress). Among the top priorities in this respect one could indicate common rules on detention, as well as principles applicable to forensic evidence – especially needed in border regions.

There is a common agreement that further regulation should be simplified over time, accompanied by an ever closer cooperation of national agencies. In recent discussions the necessity of **common standards** for such ‘common’ actions as hotel registration rules has been flagged up as the results of police activities are very often dependent on details of the operation. In the long run, all those elements can not only contribute to the development of solidarity among member states but also have further effect such as the spread of best practices (which eventually could for instance guarantee a better protection of the right of the individual when it comes to such aspects as detention, retention, fair trial, etc.).

On a more pragmatic level, harmonisation of procedures and empowerments can lead to the development of better means to combat cross-border crime and an increase in operational efficiency.

B. Challenges of a more pragmatic dimension defined here above (section 2B) could be addressed through several ways. First of all, there is a visible need for a **clear political message** that would support and encourage the creation of cooperation networks. These could allow to exchange experiences between **regional centres** of cooperation (leading to the elaboration of best practice schemes and minimum standards, which can be all the more successful as they touch upon very day-to-day demands of collaboration for specific, ‘down-to-earth’ purposes) and to organize conferences and **common training**. Undeniably, international crime requires a variety of common actions, which should first and foremost have their roots in interventions at the local level. In this respect awareness needs to be raised among police officers as to the benefits of this type of cooperation. Proper **operational targets** need to be set out, and the priorities established in this regard should be translated into practical dimensions, such as for instance proper allocation of manpower and technical devices.

Financial support is indispensable. Investment should be increased not only in technical devices supporting operations, but also in training of police officers. **Training schemes** should consist of different layers ranging from the acquisition of languages and (broadly understood) computer skills to exchange programmes and sharing of best practices. Such schemes and programmes need to be customised to the needs of particular regions, thus recognising the variety of problems to be faced across the EU.

C. In order to address the most significant challenges linked to the issue of **data protection**, it is highly recommended to undertake steps which would harmonise the systems of data storage and transmission. This could be obtained by developing common standards, as well as sharing best practices among national agencies responsible for this. The first step towards this is the encouragement and promotion of the *Analytical Working Files*, a very useful tool developed by Europol to enhance and ensure data sharing, which already proved its value on a number of occasions. One of its added values relies on the principle that no direct access to data is provided: according to experts direct access to information is sometimes more of a problem than a benefit, as it influences the type of information member states are willing to share and extends the data retrieval process in time. The **functioning of Europol** can and should undergo improvements.

However, it needs to be borne in mind that Europol might run a risk of turning into a platform of simplification of ‘low level’ national investigations.

Furthermore, it cannot be stressed enough how important it is to develop **mutual trust**. Here once again the **creation of platforms of cooperation, meetings** etc (conferences, seminars, exchange programmes) can be useful, as this can already be observed in the field of cooperation among judicial authorities across the EU.

The **principle of availability** requires particular strengthening of regional cooperation. Based upon past and present experience, one idea is to consider a solution which would allow sharing data spontaneously and not upon request. In fact, the principle of availability has already partly been enlarged/implemented with the transposition of the Swedish Initiative adopted in December 2006 and a large part of the Prüm Treaty into the institutional mechanisms of the EU (the 2008 Prüm Decision).

Information related to i.a. DNA, fingerprints and vehicle registration data can now be transmitted in a supranational context and this with both preventive and repressive objectives. This is quite an innovation that could set a trend for future developments. There is an obvious need to develop data sharing among different national structures of all member states, which would provide quick access to reliable operational information.

Conclusion

In broad terms, one major claim emerges from the suggestions presented above: rather than inventing sophisticated new solutions, **more emphasis and efforts** should be put on current frameworks, institutions and mechanism and their potential to streamline and improve their overall functioning. There is a strong need for the **simplification** of certain rules, accompanied by a gradual development of **minimum common standards**, which would bring major positive effects in the long run. Also, the need for a more **bottom-up approach** to developments in police cooperation seems to have been underestimated so far and requires further consideration.

The Lisbon Treaty in its current wording provides room for progress of police cooperation. This is expected to be achieved through the shared competences between the member states and the European Union in what we now know as the third pillar. Moreover, a lot of expectations are linked to the fact the qualified majority voting will be dominant in the decision-making process, currently subject to unanimity.

Further points of potential improvement can be seen in the operational and strategic guidance provided by the Council, the creation of the **Committee for Internal Security** as well as reinforced mechanisms of **monitoring** of implementation.

Obviously, there needs to be a common readiness to improve and advance. To answer the question ‘How far are we actually ready to go?’ there should be more **public debate** on the issues covered by this report.

Working Group V⁹

External aspects of Justice and Home Affairs in the Stockholm Program

Report by:

Adina Crisan, Academic Assistant, College of Europe
Michael Carlin, Counsellor, Permanent Representation of Sweden

In an increasingly interconnected world, five factors can be considered to have triggered the development of the external dimension of Justice and Home Affairs (JHA), namely (1) the emergence of new routes of different forms of trafficking due to historical and political changes in the world, such as the fall of communism, (2) the growing globalization of organized crime, (3) the massive increase in migration flows, (4) the facilitation of movement of organized crime due to the removal of EU internal borders, (5) the 9/11 terrorist attacks. Faced with such global challenges, supranational cooperation between EU Member States has been strengthened in order to ensure further protection to EU citizens. Now, more than ten years after the Amsterdam Treaty, the external dimension of the JHA has developed significantly, both thematically and geographically. Nevertheless, a qualitative leap is needed in order to improve the effectiveness of the Area of freedom, security and justice.

1. The main challenges and deficits of EU action

The Area of freedom, security and justice has to face a whole range of horizontal challenges which originate within the EU. Five horizontal deficits have been identified by conference speakers. All these weaken the EU's action as a global actor:

⁹ Speakers: Luigi Soreca (Chair, Head of Unit, DG Justice, Freedom and Security, European Commission), Wouter van de Rijt (Coordination Team, DG H- Justice and Home Affairs, General Secretariat of the Council of the European Union), Philippe Rio (Counsellor, Justice, Freedom and Security, Permanent Representation of France), Prof. Dr. Sandra Lavenex (University of Lucerne), Prof. Dr. Dr. Jörg Monar (College of Europe).

- a. The **continuity** deficit, which has its origin in the institutional structure of the EU. As every six months the Presidency of the Council changes, the continuity deficit is double, both in terms of representatives and program. Not only do ministers in charge of Justice and Home Affairs change, but also the priorities of each Presidency whereas the external partners are stable both in terms of goals and representatives. Thus, EU's message is often not clear enough in international negotiations.
- b. The **coherence** deficit, as all external elements of the area of freedom, security and justice are not yet addressed horizontally in one context.
- c. The **coordination** deficit between JHA's external dimension and the whole external action of the Union. Some JHA external elements, such as the fight against organized crime and drug trafficking, are intrinsic to the external dimension of EU action and should not be treated in a differentiated way. Now, these issues are treated separately, as in the case of Kosovo. A common approach of JHA and ESDP mission is needed and therefore an "inter-pillar" coordination between the Council and the Commission.
- d. The **leadership** deficit. There are significant shortcomings in the internal decision making, including a fragmentation of actors and tasks. There is no clear center of leadership regarding external JHA policy. Several institutions try to keep their competences and make the coordination even more difficult. Furthermore, it has been claimed that a rather bureaucratic internal organization may block the EU from quickly coping with needs and demands of the developments abroad.
- e. The **solidarity** deficit: The nature of JHA being very close to the sovereignty of the Member States, some of the latter tend to favor their own national interest and not the EU common lines of action. Furthermore, the principle of availability of data needs to be further developed between Member States to ensure higher protection to citizens by exchanging relevant information on criminals. National security services of Member States are more inclined to change data with third countries, such as Russia, than with other EU countries because of EU high requirements in terms of respect of the confidentiality principle. Thus, at least some experts believe that the right balance between security of EU citizens and protection of their individual liberties and rule of law may need some readjustments.

Nevertheless, some important progress has been made recently to tackle these deficits, especially those regarding coherence and coordination. The current French-Czech-Swedish Trio Presidency program is a first step towards more synergy at EU-level, being based on a common strategy and common priorities. Moreover, the coordination deficit has been addressed by the creation of an ad hoc JAIEX Council working group. The latter meets once a month and allows the focusing on specific external issues and spreading JHA's interest outside the Troika. Thus, JAIEX addresses horizontally both the issue of coherence and coordination.

2. Proposals and future priorities

To achieve more continuity, cooperation, coordination and solidarity, it has been argued that the following issues must be focused on first:

- With whom is the EU working?

Some external relations should have the Union's priority. Comprehensive relations with Western Balkans, Russia and Mediterranean countries should be encouraged to secure stability, support the reform process and to contribute to the progress of good governance and the rule of law in the EU's neighborhood. Furthermore, the EU should develop single-issue agreements focused on the fight against terrorism, illegal immigration and drug trafficking with Pakistan and Western African countries to ensure a more effective area of freedom, security and justice. Also, the nature of the relations with the US is to be clarified. The modalities of a stronger and structured security transatlantic partnership with the United States are to be thought about. Moreover, EU should reflect on the nature of its relations with India and China. These two countries comprise more than 37% of the world population and are both confronted with major issues of migration, counterfeiting *and organized crime*.

It is clear that the EU should establish geographical priorities in the next program in accordance with the EU's special relations with certain regions and non-EU countries. Yet, the list of priority countries in the next Program should not be cast in stone, as the international environment is changing very quickly and the EU should be able to adapt fast to different threats and enemies in order to ensure its internal security.

- What issues at what level?

The Commission should list a number of substantive political priorities to provide the general basis for EU relations with non-EU countries. Human rights, institution building and good governance, the fight against illegal immigration, organized crime and terrorism should be priorities for the Commission. The endorsed approach on all these issues should be horizontal and holistic.

Furthermore, the Commission should focus more on cooperation on civil law, and not only on criminal law, which has been privileged till now. The right balance between criminal and civil law is still to be found.

- How to implement the strategy?

The way to implement the defined priorities is very important for the effectiveness of the policy at a whole. The EU has a broad range of instruments at its disposal such as bilateral agreements, EU neighborhood policy and Action Plans, external aid programs, regional cooperation and individual arrangements with particular countries. They should place an emphasis on institutional, legal and administrative reform in non-EU countries, on training the personnel responsible for action to combat organized crime and drug trafficking.

Secondly, the EU can rely on Europol and Eurojust to establish agreements and working partnerships with non-EU countries. The EU and its Member States are important players in international organizations such as the Council of Europe, the OECD, NATO, and the United Nations which allow them to promote actively EU values, strategies and goals.

The EU has at its disposal an additional external leverage linked with a policy-related conditionality. EU can offer more relaxed travel conditions to non-EU citizens in exchange for the signing of an EC readmission agreement and in-depth reform of JHA at a domestic level by pursuing a policy of promotion of the rule of law, human rights and fundamental freedoms.

3. Future priorities to be defined in the Stockholm Programme

The EU in the Stockholm Program should be responsible, credible and open to the outside world. External relations should be a priority of the new Programme.

The main priorities of the Stockholm Programme should be the following:

3.1 Closer cooperation with relevant third countries

The cooperation should follow a geographical prioritization and a political differentiation. EU should better prioritize its partners, on the ‘more and better’ model.

The EU should deepen its **partnership with the USA** to ensure more efficient fight against terrorism, greater cooperation in international fora and wider implementation of international instruments. The aim of this reinforced partnership could be the creation of a Euro-Atlantic area of cooperation in the field of Freedom, Security and Justice. This reinforced partnership should be clearly stated in the Stockholm Programme and it should also include Canada.

Intensified **cooperation** should be developed **with regions that** are considered to **lack the means to effectively fight against terrorism**. As the nature of terrorism and of terrorist’s threats is changing very fast, there is no need to explicitly list countries which should retain EU’s attention. The cooperation with third countries should aim at training the personnel responsible for action to combat organized crime and drug trafficking as well as at an intensified exchange of best practices.

The EU should deepen the **regular dialogue with the Russian Federation** in the framework of a new Partnership and Stability Agreement. This new dialogue could be trilateral, with the US at the table when matters discussed are of common interest, such as terrorism.

3.2 Define a new holistic approach of external relations

There is a growing interdependence between internal and external security. The Stockholm Programme should define the main features of a holistic approach of external relations as well as the way to effectively put it in practice. Every thematic chapter should be addressed from an internal and an external point of view.

Thus, intensified and coordinated cooperation between ministers of Home Affairs, Foreign Affairs, Development and Defense in the EU is needed to tackle all the external aspects of internal policies. Moreover, the closer cooperation between different Council structures should involve a prior consultation as well as a post-evaluation of missions. This kind of new coordination should be effective both in political terms and in technical dimensions. CFSP/ESDP mission tasking needs to be able to respond flexibly when there is an overlap between police and military issues in crisis regions.

3.3 Define ways to enhance continuity at EU-level

Some organizational changes are needed to promote JHA's overall interests. A common program of the Trio Presidency on the model on the existing Franco-Czech-Swedish one should be established. The latter would allow to ensure a continuity of goals at EU level and to overcome the discontinuity of national priorities incumbent to each new Presidency.

3.4 Ensure more solidarity between Member States

The high level of exchange of information between in particular security services of Member States should be further improved. The right balance should be found between the 'principle of availability' and the 'principles of confidentiality', essential for the exchange of information by national intelligence services. Data protection should be standardized in order to fill the gap that exists now between the EU-level and some Member States' level. Both the EU and the Member States should be aiming at the same goal, which is protecting EU citizens in the most efficient way possible, also when it comes to exchanging data with third-countries. Transparency, coordination and information flow between all national security services and others should be achieved.

3.5 Ensure a more effective implementation

EU is spending considerable budgetary means for the implementation of its external strategy, but the latter lacks effectiveness in some countries. Lacking enough personnel, EU tends to delegate implementation tasks to other organisations with the result that the EU is less visible. The sometimes mediocre results obtained in some regions may have created a loss of esteem for the EU.

Not only has the image of the EU suffered externally, but also internally to the eyes of the taxpayer. To ensure a more effective implementation, new targeted financial instruments are needed to fund capacity-building projects in third countries and to ensure the necessary expertise to implement such projects in a proper way.

3.6 Define conditionality in a harsher way

Conditionality should be used in a harsher way in relations with non-EU countries, especially in regions where corruption is an important plague. Reducing corruption and fostering the rule of law is a major scope of the external dimension. An efficient fight against both organized crime and drug trafficking require to stay active against corruption. Weak conditionality is not effective enough.

3.7 ‘Speak with one voice’

Duplication of leadership should be avoided. EU should find the way to ‘speak with one voice’ when it comes to its external policy. Also, the effectiveness of administrative structures, both at EU- and national-level should be improved.

In the final session of the conference the conclusions drawn from the discussions of the past two days were summarized by Lars Werkström, Director General in the Ministry of Justice in Sweden. The rapporteurs of the different working groups were also present and gave a brief summary of the discussions and conclusions reached in their groups.

The summaries of the working groups were followed by a panel discussion on the priorities of the Stockholm Programme. Jonathan Faull, Director General of the European Commission, Gilles De Kerchove, Counter-Terrorist Coordinator of Council and Professor Henri Labayle took part in the panel discussion. Their interventions can be summarized as follows.

Jonathan Faull, whilst acknowledging that JHA co-operation had reached a level of maturity since 1999, identified several issues. There was a growing desire among justice ministers to have the full range of their subjects in the Council, yet there were still difficulties when it came to co-ordination among ministries. On evaluation, he noted that the concept meant different things to different people. Yet the Commission had trouble finding evidence in support of what they were told needed to be done. For example, they needed to know from the policy what they need to do their job better. In the civil law area, they needed to know precisely what obstacles people faced in the family and commercial areas.

Giles De Kerckhove, laid stress on several areas. Training was important, and a European school for judges was desirable. The police, too, needed European training. He also highlighted assessment/evaluation, solidarity and the importance of the European Charter for fundamental rights. On security, he called for an in-depth debate about the level of protection we wanted. Did we want to try to guard against any level of threat, or should we accept some level of risk and be a more resilient society? There was a need for a real strategy on data protection, defining limits beyond which we do not wish to go. He raised three other issues. What did Article 73 mean? On Schengen, should the UK re-integrate whilst keeping control of internal borders? And he noted that the European Parliament would need to be better informed if it has co-decision in security areas.

Lastly, Prof Henri Labayle, bemoaned that ambitions in the Stockholm Programme were not as high as at Tampere, and hoped that the Irish referendum would produce an outcome that permitted the Lisbon Treaty to come into force. This would hopefully turn the political direction of the European project. Prof. Labayle also emphasised the importance of finding a balance between, on one hand, legislative harmonisation, and on the other, mutual recognition and operational cooperation. In this context of Justice and Home Affairs the democratic transparency becomes vital. Furthermore Prof. Labayle emphasised the importance of a unified Europe especially at an intense and politically uncertain year as the current.

The session ended with a final discussion chaired by Magnus G. Graner, State Secretary and overall responsible for the Stockholm Programme. The theme of the discussion was "A Stockholm Programme for the Citizens" and the closing speeches were held by Jérôme Déroulez on behalf of French Minister for Justice Rachida Dati and Tomas Bocek, Czech Deputy Minister for Justice.

In the intervention of Mr. Déroulez the importance of a Stockholm Programme for the citizens was stressed. The sensation and the consciousness of a European Citizenship must therefore become more concrete and real in the manner that the European Union becomes a Europe of Justice for the citizens with clear and visible priorities. This entails the simplification of the daily life for the citizens. Mr. Déroulez also emphasized the importance of finalizing the goals of the Hague Programme in the area of successions and wills as well as in matrimonial law. Another area where concrete progress is vital is the improvement of the conditions for vulnerable subjects, i.e. victims of crime. Mutual recognition in all areas of judicial cooperation was stressed as an overall important factor in Justice and Home Affairs.

Mr. Bocek commenced by stressing the importance of creating a Stockholm Programme that has realistic and tangible goals. The new programme must also be something for the citizens - something that can be easily explained among people. E-justice will play a significant role in this connection. Mr. Bocek also highlighted three important issues of relevance in this context. First of all, mutual trust must be enhanced. Secondly, there is a need for practical measures as a counterweight to legislation. Thirdly, non-action should be considered as an option, in a climate where there is a tendency to continuous legislation. That can in the end contribute to too much legislation and as a result an alienation by judges, legal professionals and the public.

In connection to this Mr. Bocek stressed the importance of letting all proposals become subject to impact assessments.

Furthermore, Mr. Bocek emphasised the importance of implementation as a key to a successful community cooperation. Mr Bocek also asked for some flexibility as regards the initiatives mentioned in the future programme in the sense that it should not be considered as a binding five-year plan where every initiative has to be realised.

Finally, Mr. Bocek emphasised the importance of further development of the area of external relations in connection to Justice and Home Affairs.

Professor Jörg Monar concluded the seminar with some final thoughts and thanked the participants for the fruitful discussions and debates throughout the two days.



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CONFERENCE PROGRAMME

Preparing the Stockholm Programme: A Strategic Agenda for Freedom, Security and Justice

Brugge, 4-5 March 2009

Provinciaal Hof

European Political and Administrative Studies, College of Europe
in cooperation with the European Commission
and the Trio Presidency France, the Czech Republic and Sweden

Day 1

Wednesday, 4 March 2009

- 13h00 Conference registration opens
- 13h30 Conference opening: Welcome address by the Rector of the College of Europe, Professor Paul DEMARET; Mr. Thierry DENYS, President of the Court of First Instance, Bruges and Mr. Philippe DE WULF, Chef de Corps, Bruges

Session 1 (plenary): Strategic Perspectives

- Chair** Professor Jörg MONAR, Director, European Political and Administrative Studies, College of Europe
- 14h10-14h30 Ivan LANGER, Czech Minister for Interior President of the JHA Council
"The views of the Czech Presidency on the content of a future programme"
- 14h30-14h50 Beatrice ASK, Swedish Minister for Justice
"Why Europe needs a forceful Stockholm Programme"
- 14h50-15h10 Jacques BARROT, Vice-President of the European Commission
"The lessons to be drawn from the Hague Programme; the Commission proposals"
- 15h10-15h30 Hervé de CHARRIERE, Head of the Private Office of the French Minister of Immigration, Integration, National Identity and Solidary Development
"A vision for a responsible and solidary Europe"

- 15h30-15h50 Luc FRIEDEN, Luxembourg Minister for Justice
"The future of a Europe of justice"
- 15h50-16h30 Break (group picture); possibility to meet the Press

Session 2 (plenary): Agenda-setting

- Chair** Hans G. NILSSON, Minister, Swedish Permanent Representation, Visiting Professor, College of Europe
- 16h30-16h50 Minna LJUNGGREN, Swedish State Secretary for Migration and Asylum
"Towards a new approach for managing the migration challenge"
- 16h50-17h10 Emilio de Capitani, Secretary of the LIBE Committee, European Parliament
"Finding the right balance between security and justice while safeguarding freedom"
- 17h10-17h30 Stefano RODOTA, Chairman of the Scientific Committee of the Fundamental Rights Agency
"Promoting fundamental rights as the core of the Area of Freedom, security and justice"
- 17h30-18h00 Discussion and comments from the floor
- 19h30-22h00 Dinner: After dinner speaker: Peter STORR, International Director, Home Office, United Kingdom

Day 2

Thursday, 5 March 2009

Session 3 (9h00-10h30): First round of parallel working-group sessions

WORKING GROUP I: ASYLUM, IMMIGRATION AND EXTERNAL BORDER CONTROLS

Chair

Jean-Louis DE BROUWER, Director, European Commission

Rapporteurs: Lars-Johan LÖNNBACK, Counsellor and Pascal FENDRICH, College of Europe

Ola HENRIKSON (Director General, Ministry of Justice, Sweden) and Ilkka LAITINEN (Director Frontex)

Professor Elspeth GUILD (Nijmegen/London) and Professor Philippe DE BRUYCKER (Brussels)

WORKING GROUP II: CIVIL JUSTICE COOPERATION

Chair

Francisco FONSECA MORILLO, Director, European Commission

Rapporteurs: Jonas HÖGSTRÖM, Counsellor and Elisa MOLINO, College of Europe

Fernando PAULINO PEREIRA (Head of Unit, Council) and Irene LAMBRETH (Permanent Representation of Belgium, Brussels)

Professor Maria Teresa BENDITO CANIZARES (Madrid) and Professor Michael HELLNER (Uppsala)

WORKING GROUP III: CRIMINAL JUSTICE COOPERATION

Chair

Julian J.J.E. SCHUTTE, Director, Council General Secretariat

Rapporteurs: Åsa WEBBER, Counsellor and Francesco NAPOLITANO, College of Europe

Daniel FLORE, Conseiller général (Ministry of Justice, Belgium) and Daniel LECRUBIER (Head of JHA Counsellors, Permanent Representation, France)

Professor Valsamis MITSILEGAS (London) and Professor Joachim VOGEL (Tübingen)

Session 4 (11h00-12h30): Second round of parallel working-group sessions

WORKING GROUP IV: POLICE COOPERATION AND DATA-EXCHANGE

Chair

Roland GENSON, Director, General Secretariat of the Council

Rapporteurs: Nils HÄNNINGER, Counsellor and Ewelina Boguslawska, College of Europe

Bengt SVENSSON (National Police Commissioner, Sweden); Therese MATTSON (Director, NCIS, Sweden) and Peter MICHAEL (Secretary to the Joint Supervisory Body of Europol)

Professor Cyrille FIJNAUT (Tilburg) and Professor Dirk VAN DAELE (Leuven)

WORKING GROUP V: EXTERNAL RELATIONS

Chair

Luigi SORECA, Head of Unit, European Commission

Rapporteurs: Michael CARLIN, Counsellor and Adina Crişan, College of Europe

Wouter VAN DE RIJT (Senior Administrator Council) and Philippe RIO (Counsellor, Permanent Representation, France)

Professor Sandra LAVENEX (Luzern) and Professor Jörg MONAR (Bruges)

12h30-14h00 Lunch

Session 5 (plenary): The way forward

Chair

Lars WERKSTRÖM (Director General, Ministry of Justice, Sweden)

14h00-15h00 Reports from the working-groups to the plenary

15h00-16h00 Panel discussion on Stockholm programme priorities

Jonathan FAULL (Director General, Commission)

Gilles DE KERCHOVE (Counter-terrorist Coordinator, Council)

Professor Henri LABAYLE (Bayonne)

16h00-16h15 Break

Chair

Magnus G. GRANER, State Secretary and overall responsible for the Stockholm Programme in the Swedish Presidency from 1 July 2009.

16h15-17h00 Closing speech by Jerome Déroulez, on behalf of Rachida DATI French Minister for Justice and Tomas BOCEK, Czech Deputy Minister for Justice
"A Stockholm Programme for the Citizens"

17h00 Word of thanks by Professor Jörg Monar
Reception
