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**COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE  
EUROPEAN PARLIAMENT**

**Report on the implementation of the Hague programme for 2005**

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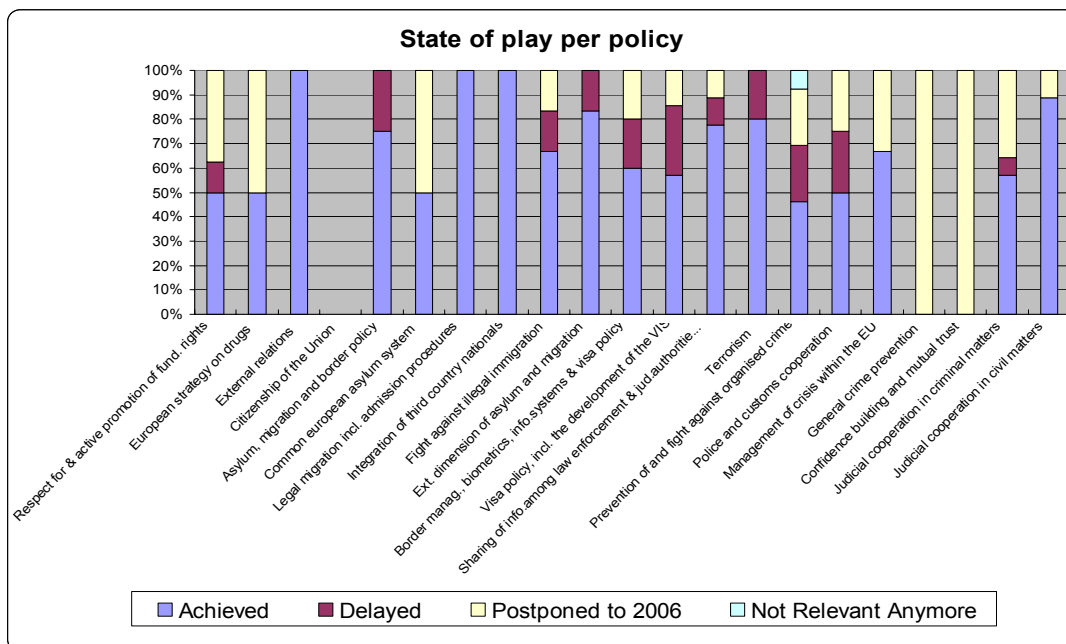
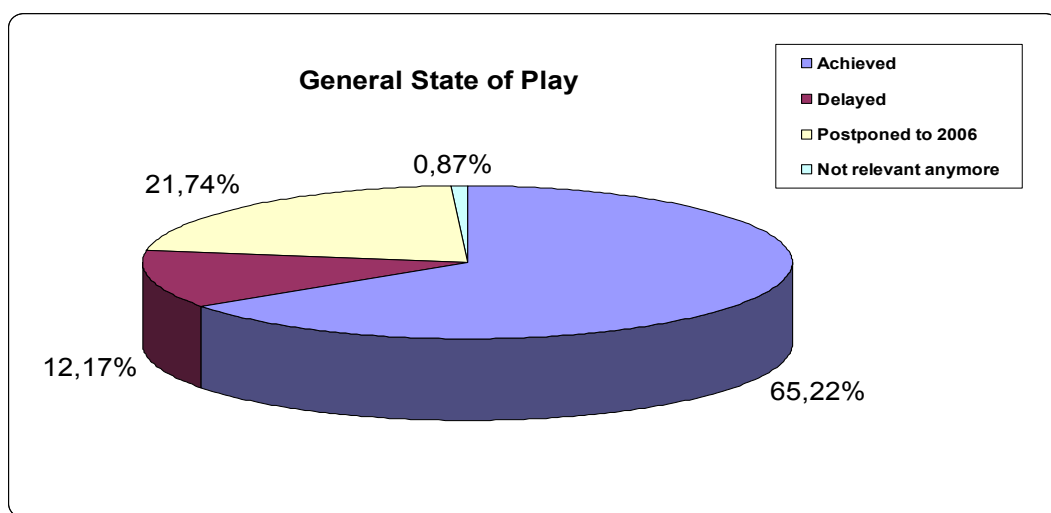
# COMMUNICATION FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN PARLIAMENT

## Report on the implementation of the Hague programme for 2005

1. This Communication is in response to the Council's call on the Commission to submit an annual report on the implementation of the Hague programme and action plan ("scoreboard")<sup>1</sup> and is the first practical instance for 2005. The methodology selected will be followed in the years' annual reports for the next four years.
  2. As with the Tampere scoreboard, the point is initially to monitor the adoption of the measures provided for in the Hague programme, including those involving the drugs action plan, the strategy on the external aspects of the area of freedom, security and justice, and the action plan on the fight against terrorism, which supplement the Hague action plan, in accordance with the set timetable. All the measures planned for 2005 are therefore reviewed in this communication. The measures programmed for 2006 and subsequent years will be examined in future annual reports (Part I and Annex 1).
  3. In addition to this monitoring of the adoption process, for the first time as part of such an exercise for Justice, Freedom and Security ("JFS") policies, this communication looks into the national implementation of these policies (Part II and Annex 2).
- 1. MONITORING OF THE ADOPTION OF MEASURES SCHEDULED FOR 2005 UNDER THE HAGUE PROGRAMME**
4. The table annexed (1) gives the state of play on each measure scheduled for 2005 or on a regular/ongoing basis in the Hague action plan. A broadly positive assessment can be reached from the following tables, even though progress was not equivalent in all areas.

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<sup>1</sup> The Hague programme: strengthening freedom, security and justice in the European Union (OJ C 53, 3.3.2005, p. 1) and Council and Commission action plan implementing the Hague programme on strengthening freedom, security and justice in the European Union (OJ C 198, 12.8.2005, p. 1).



## 1.1. General guidelines

### 1.1.1. *Respect and protection of fundamental rights*

5. Performance here is generally satisfactory. Most of the actions scheduled for 2005 have been carried out, or are being carried out in 2006, except for a proposal for Union accession to the Convention for the protection of human rights and fundamental freedoms, which is predicated on the entry into force of the Constitution. The proposals related to an overall agreement on the financial framework 2007-2013 were adopted as planned by the Commission<sup>2</sup>, and follow-up depends on the developments linked to the overall agreement.

<sup>2</sup> Proposals for specific programmes on "citizenship and fundamental rights", "combating violence (Daphne)" and "preventing drug consumption and inform the public".

6. The Commission proposal to extend the mandate of the European Monitoring Centre on Racism and Xenophobia and to create a European Union **Fundamental Rights Agency** is a substantial achievement, of the utmost importance under the Hague programme.
7. Adoption of the **Communication on the protection of the rights of the child** was postponed to July 2006 because of the need for intensive preparatory work and to ensure that all the various interests involved are fully taken into account.
8. As regards **data protection**, the Commission proposal for a Framework Decision in the context of police and judicial cooperation in criminal matters will supplement the existing legal framework. It is the essential flanking measure for the proposals to implement the principle of availability and to improve law cross-border exchange of information between the enforcement services of the Member States.

#### *1.1.2. European Strategy on drugs*

9. As provide by the Hague action plan, the Union established a **drugs strategy 2005-2012** in December 2004 and a **European Union drugs action plan (2005-2008)** in June 2005, establishing specific priorities for all stakeholders and a detailed timetable of implementation, with evaluation tools and practical indicators for each of the eighty or so proposed actions. The plan assigns the responsibility for monitoring and evaluation to the Commission, in cooperation with the European Monitoring Centre for Drugs and Drug Addition and Europol. The first annual report on the implementation of the action plan will be presented in autumn 2006.

#### *1.1.3. External relations*

10. In December 2005, in accordance with the timetable in the action plan, the Union established a **strategy for the external dimension** of the area of freedom, security and justice with the aim, in particular, of promoting the rule of law, stability and security outside the European Union.

### **1.2. Strengthening freedom**

#### *1.2.1. Union citizenship*

11. Here, the Hague programme gives priority to the implementation of Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which will be the subject of a later evaluation, since its transposal deadline has only just expired.
12. The **reports on the application of Directives** on the right of residence for pensioners, students and inactive persons and on voting at European Parliament elections are being finalised.

#### *1.2.2. Asylum, migration and border policy*

13. To improve the coordination of national policies and boost cooperation and regular information exchanges between the Member States and between them and the Commission, the Commission has presented a proposal on the establishment of a

**mutual information system concerning Member States' measures** in the areas of asylum and immigration.

14. Substantial progress has been achieved in the crucial field of information gathering to improve the analysis of the phenomenon of migration. On 28 November 2005 the Commission adopted the **Green Paper on the future of the European migration network** to provoke reactions from interested parties, and at the same time presented a proposal for a Regulation on **Community statistics on migration and international protection**, now under discussion.

#### *1.2.3. A common European asylum system*

15. There are mixed results here.
16. The adoption of the Directive on **minimum standards on procedures in Member States for granting and withdrawing refugee status** on 1 December 2005, after more than four years of discussions, completed the first phase of development of an asylum policy. In the future, such measures will in theory no longer be subject to the unanimity rule but will be adopted by the procedure provided for by Article 251 EC<sup>3</sup>.
17. The Commission has begun monitoring the evaluation of the first phase instruments, but had to postpone to 2006 the presentation of a proposal concerning long-term residence status for the beneficiaries of international protection until the second phase of development of a common European asylum system. At the beginning of 2006 the Commission also presented its communication on the setting up of the structures needed for cooperation between Member States.
18. It was not possible to conduct the evaluation of the **European Refugee Fund (ERF I)** in 2005 as planned, and it had to be held over for 2006.

#### *1.2.4. Legal migration, including admission procedures*

19. The 2005 timetable was fully adhered to.
20. In December 2005, on the basis of the results of the public consultation on the **Green Paper on economic migration**, the Commission presented a Policy **Plan on legal immigration** with a series of operational and legislative measures to be implemented between 2006 and 2009, covering the conditions for admission and residence, the distribution and dissemination of information, integration measures and measures to be set up in cooperation with countries of origin.

#### *1.2.5. Integration of third-country nationals*

21. The Communication of 1 September 2005 on a "A Common Agenda for integration: **Framework for the integration of third-country nationals in the European**

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<sup>3</sup> In accordance with the first indent of Article 67(5), which provides for the changeover to that procedure after the first phase. In general terms, moreover, the Council Decision of 22 December 2004 providing for certain areas covered by Title IV of Part Three of the EC Treaty to be governed by the procedure laid down in Article 251 of that Treaty, as required by the Hague programme, provides for a general changeover to the adoption procedure provided for by Article 251 for policies in the field of asylum, immigration and borders, except as regards legal immigration.

**Union**", establishes common guiding principles to underpin a coherent European framework as regards integration<sup>4</sup>. This framework, approved by the JHA Council of December 2005, will serve as a basis for future EU initiatives.

#### 1.2.6. *Fight against illegal immigration*

22. In terms of partnerships with third countries, the Commission Decision on the format for report on the activities of immigration liaison officers networks and on the situation in the host country in matters relating to illegal immigration, adopted in September 2005, will make a helpful contribution to the management of immigration liaison networks in relevant third countries.
23. The **annual report on the common policy on illegal migration** scheduled for 2005 will be presented in summer 2006 as an annex to the future Commission communication on future priorities in this respect.
24. The secure web-based Information and Coordination Network for Member States' migration management services (**ICONET**) is a valuable management tool; the Commission will organise training and awareness-raising courses for the Member States' contact points to make it fully operational.
25. All the scheduled measures for the establishment of an effective removal and repatriation policy based on common standards and on closer cooperation and mutual technical assistance were accomplished. The Commission presented a legislative proposal concerning **return procedures. Preparatory actions for financial support** for the management of returns were launched.
26. Lastly, after the entry into force of the **readmission** agreements with Macao, Hong Kong and Sri Lanka, negotiations with Russia were concluded in October 2005, and with Albania on the EU side in November 2005. Negotiations continue with Ukraine, Turkey, Morocco and Pakistan.

#### 1.2.7. *External dimension of asylum and migration*

27. There were significant developments in 2005.
28. Regarding **cooperation with third countries in managing migration and asylum**, the Union agreed on operational conclusions on the management of migration with third countries and external relations. On the basis of Commission proposals, the December 2005 European Council adopted an ambitious agenda for enhanced cooperation between the Member States with the Africa and Mediterranean countries. The Commission is called on to coordinate the implementation of these priority actions in cooperation with the Member States and international organisations. It is to inform the European Council at the end of 2006.
29. The Commission proposed a framework for the development of EU **regional protection programmes** which was welcomed by the Member States. But it was not possible to launch the first pilot programmes in Tanzania and the new independent

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<sup>4</sup> These include: promotion of fundamental rights, non-discrimination and equal opportunities, for which EU legislation provides a solid framework.

countries until 2006 on account of the time needed to publish the call for proposals under the AENEAS programme.

*1.2.8. Border management, biometrics, information systems and visa policy*

30. There was substantial progress here too.
31. Regarding the removal of checks on persons at internal borders, pending the evaluation of the implementation of the *acquis* not related to the Schengen Information System (SIS II) in the new Member States, scheduled for 2006, the Commission submitted, as envisaged, a proposal on **SIS II legal instruments** in accordance with the planned timetable.
32. Regarding the management of external borders following the establishment of the External Borders Agency (FRONTEX) on 1 May 2005, new proposals in response to the evaluation of its operating procedures are not expected before 2007. The Commission already has, however, confirmed its intention of presenting a **proposal to establish teams of national experts** who can quickly provide technical and operational assistance to Member States requesting it.
33. The **Schengen acquis (SIS)** became partially applicable in the **United Kingdom** on 22 December 2004. The Council Decision on the implementation of part of the SIS by the United Kingdom will be adopted after finalisation of the necessary technical amendments in that Member State.
34. The adoption of the Commission communication relating to interoperability between SIS II, the Visa Information System (VIS) and EURODAC on 24 November 2005 was a significant step towards a coherent approach and the adoption of harmonised solutions concerning **biometric identifiers and data** in the EU. Similarly, operational conclusions were adopted in December in preparation for the adoption of minimum standards applicable to national identity cards. On the other hand, the proposal amending the Common Consular Instructions concerning standards and procedures for taking biometric data was presented only in 2006 as discussions on the necessary preconditions are still in progress.

*1.2.9. Visa policy, including the development of the Visa Information System (VIS)*

35. A number of priority measures under the Hague programme have been or will be adopted later than planned, in 2006.
36. Examples include the Commission proposal on the amendments needed to improve the visa policy and create common visa application centres and the draft amendment of the common consular instructions as regards visa rights.
37. But progress was made on **transit**, with the presentation of the Commission proposal, and on the regime of **local border traffic**, where political agreement was reached at first reading in February 2006.

### 1.3. Strengthening security

#### 1.3.1. *Terrorism: sharing of information among law enforcement and judicial authorities while striking the right balance between privacy and security*

38. The fact that the **Directive on the retention of data** generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC was adopted on 21 February 2006, only five months after the presentation of the Commission proposal, following the agreement reached at first reading between Parliament and the Council, was an inter-institutional success symbolising the Union's political will.
39. Most of the actions on the implementation of the **principle of availability** scheduled for 2005 were accomplished. The Commission presented a proposal on exchange of information under the establishment of the principle of availability , with a parallel proposal on appropriate guarantees and rights of effective remedies for the transfer of personal data processed in the framework of police and judicial cooperation in criminal matters, already mentioned<sup>5</sup>. Following the presentation of a general proposal on the principle of availability, the adoption of the proposal specifically concerning DNA was postponed to 2006. An agreement was reached on the Swedish initiative on simplifying the exchange of information and intelligence between law-enforcement authorities of the Member States in December 2005. The Commission presented a proposal giving law-enforcement services access to VIS.
40. Concerning the **exchange of data on air passenger name records (PNR)**, the Commission adopted on 16 June 2006 two initiatives to put a legally sound framework in place for the transfer of PNR data to the United States. These initiatives are the first European answers to correct the legal basis for the Agreement with the US that was struck down by the European Court of Justice on 30 May 2006.
41. The Union made efforts to continue with the adoption of an **overall approach to combating terrorism** in line with the schedule. The Commission adopted the financing decision for the pilot project on the fight against terrorism, which provides among other things for the establishment of an information and crisis centre in DG JLS. It presented proposals aiming to improve the safe storage and transport of explosives and guarantee the traceability of industrial and chemical precursors. And a strategy as regards radicalisation and recruitment was agreed in December 2005.
42. At the same time, since all the Member States failed to complete the full and correct transposal of the Framework Decision on terrorism within the time allowed, it was not possible to launch the review and adaptation of it with the planned second implementation report.
- #### 1.3.2. *Prevention of and fight against organised crime*
43. The Commission communication developing a strategic concept on tackling **organised crime** is a flagship measure adopted on schedule, but many of the

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<sup>5</sup> Paragraph 8.



measures to improve knowledge about organised and serious crime and to strengthen the collection and analysis of information had to be postponed to 2006.

44. The Council delayed the adoption of the legislative mechanism relating to the fight against **counterfeiting**.

45. On the other hand, the plan to develop common standards, practices and mechanisms to prevent **trafficking in human beings** was adopted on schedule.

#### *1.3.3. Police and customs cooperation*

46. Efforts to give **Europol** the means of playing a central role in the fight against serious (organised) crime continued with ongoing discussions in the JHA Council. Together with the amendments of the decision establishing the European Police College (**CEPOL**), the discussions on the definition of the role of the security committee (**COSI**) and the coordination to be established between the various internal security agencies (and services), they are evidence of the will to give a new impetus to the operational dimension of police cooperation.

#### *1.3.4. Crisis management in the European Union*

47. On 17 November 2005 the Commission issued a Green Paper on the **protection of critical infrastructures**. A legislative proposal, comprising the creation of a critical infrastructures early warning information network (CIWIN) will follow in 2006, to take account of reactions to the Green Paper.

#### *1.3.5. General crime prevention*

48. Following internal reflection on the organisation of the European Crime Prevention Network (**ECPN**) in 2005, an initiative to reinforce and professionalise it will be presented in 2006.

### **1.4. Strengthening justice**

#### *1.4.1. Confidence building and mutual trust*

49. Following discussions with the various interested actors in autumn 2005, the Commission will present a communication on **judicial training in the EU** in 2006. The programme of judicial exchanges will continue in the context of a preparatory action in 2006, before being incorporated into the criminal justice component of the framework programme on justice and fundamental rights.

#### *1.4.2. Judicial cooperation in criminal matters*

50. The timetable for measures expected from the Commission for the continuation of the **implementation of the mutual recognition principle** in 2005 was adhered to. Examples include the communication on mutual recognition, which renews the general context, the legislative proposals on taking account of convictions in the course of new criminal proceedings and the organisation and content of exchanges of information extracted from the criminal record, or the reports on the implementation of the Framework Decision on the European Arrest Warrant.

51. **Major delays**, however, sadly arose with the adoption of two flagship measures: political agreement on the Framework Decision on the **evidence warrant** was reached only in June 2006, and the one relating to certain **procedural rights** is still under discussion. Neither of them was adopted in 2005 as planned in the Hague programme.
52. As regards **harmonisation**, the Green Paper on conflicts of jurisdiction and the *ne bis in idem* principle was indeed adopted in December 2005, thus launching the debate to evaluate the need for Union action, but the Green Paper on the presumption of innocence was deferred. So was the second report on the implementation of the Framework Decision on the status of victims in criminal proceedings, the Member States having failed to supply sufficient information.

#### 1.4.3. *Judicial cooperation in civil matters*

53. The achievements in the area of judicial cooperation in civil matters in 2005 were quite remarkable, since all the actions scheduled to be taken were taken. A particular example is mutual recognition, where new developments are on the way in the years to come, in particular in family law, following the adoption of the Green Papers on succession and on conflicts of law and jurisdiction in divorce matters, or the proposal for a Regulation on maintenance obligations, which the Commission would like to see adopted by the co-decision procedure.

## 2. MONITORING NATIONAL TRANSPOSAL

### 2.1. Methodology

54. This exercise concerns first of all the legislative instruments that require transposal by the Member States – Directives and Framework Decisions. The average transposal deadline is such that it is not yet possible to monitor the instruments provided for by the Hague action plan, since at the time of writing no one of them is due to be implemented yet<sup>6</sup>. For the purposes of this 2005 report, however, it is worth analysing and evaluating the Member States' implementation of JFS instruments in general terms on a cut-off date which, for the purposes of this report, is 31 March 2006.
55. The table at Annex 2 covers all the instruments with a transposal deadline that had expired at the time of writing. It extends beyond Directives and Framework Decisions to include legislative instruments that have been followed up in Member States with a deadline for application or implementation that has also expired at the time of writing. This concerns certain Regulations and action plans adopted under the EC Treaty and certain decisions based on Title VI of the EU Treaty. Table 2 also covers Article 22 EC, the application of which has been covered by a series of detailed reports.
56. In the search for a consistent methodology for the purposes of evaluating the implementation of JFS policies by the Member States, it must be borne in mind that

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<sup>6</sup> Monitoring the national transposal of the Hague programme can begin only with the reports on implementation of the programme for 2007/2008.

the data available will vary depending whether the instruments were adopted on the basis of the EC Treaty or Title VI of the EU Treaty.

57. One common factor is that the Member States are required to transpose the measures provided for by Directives or Framework Decisions and to **notify** the Commission or, in certain cases, the General Secretariat of the Council, of them. Compliance with the duty to notify is accordingly taken as one of the relevant factors for the purposes of evaluating national implementation. But it was found impossible to monitor compliance with the duty to act within the time scheduled in the instruments concerned since it is exceptional for the deadline to be met by one or the other Member State as regards Framework Decisions. It may still be possible to use this criterion to evaluate the monitoring of the national implementation of the measures provided for by the Hague programme/action plan in the future, but for the moment it was felt preferable to monitor compliance with the duty to notify transposal measures by 31 March 2006, the cut-off date adopted for this report.
58. The second common factor, beyond this formal transposal and notification obligation, is that Member States are required to **transpose and apply Community and Union legislation correctly** in terms of substance.
59. The Commission has opportunities to evaluate the quality of national implementation when answering letters from citizens and questions or petitions from the European Parliament. Given their nature and great diversity, it is not possible to make an exhaustive list of these elements, which are not therefore included as information sources in the table annexed (2). These elements are often, however, used and incorporated in the reports containing the overall analysis of the implementation of each instrument.
60. Framework Decisions adopted on the basis of Title VI of the EU Treaty routinely provide for at least one Commission report. This report generally serves as a base for a final report by the Council, which only rarely comes up for real discussion. Certain Framework Decisions which provide for differing deadlines for implementation are covered by successive reports (e.g. the crime victims Framework Decision). More and more often the Commission presents a fresh update report (e.g. the Framework Decisions on the European Arrest Warrant or terrorism), in particular when the first reports date from before the most recent enlargement (e.g. the 2001 Framework Decision on money-laundering). The Commission sometimes also takes the initiative of making such a report for instruments which do not oblige it to do so (e.g. the Eurojust decision or the instruments for the protection of financial interests). No such initiative was taken for the first joint actions, such as the one on participation in a criminal organisation. Common positions on the other hand, just like Framework Decisions, also provide for a report on national implementation<sup>7</sup>.
61. The position is not quite the same for instruments based on the EC Treaty. While most of them also provide for a report monitoring national implementation, it is symptomatic that this is not the case as regards illegal immigration. Of the four

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<sup>7</sup> Lastly, and again exceptionally, certain instruments are subject to national peer review under the joint action of 1997. Such an exercise should thus be conducted for the Framework Decision on the European Arrest Warrant in 2006. These evaluations are not taken into account in this report, as they either date from too long ago or are too general in nature.

Directives here with transposal deadlines and obligations to notify national transposal measures by the cut-off date of 31 March 2006, not one provides for such a report. Similarly, in the area of judicial cooperation in civil matters, the legal aid Directive 2003/8/EC does not provide for a report.

62. But the fact that there is no report does not have the same effect for instruments adopted under the EC and EU Treaties. The implementation reports are the only public record of the quality of national transposal of the instruments for police or judicial cooperation in criminal matters. For those instruments for which there is no duty to notify transposal measures, there is absolutely no indication of the effectiveness of the measures adopted. A case in point is the joint action on participation in a criminal organisation. This, incidentally, is one of the grounds for the proposal for recasting of this instrument.
63. In the case of the Community instruments, on the other hand, infringement proceedings are a clear deterrent to Member States in default, facing the risk of negative publicity and possibly even of periodic penalty payments, as can be seen from the monitoring of the quality of transposal in the table in Annex 2.

## 2.2. Monitoring policy by policy<sup>8</sup>

### 2.2.1. General guidelines

64. As regards fundamental rights, only Directive 95/46/EC on **personal data protection** is concerned for the moment. The Directive has met its objective of ensuring a high level of protection of the citizen's right to privacy and removing the barriers to the free movement of personal data in the Union. All the Member States complied with their transposal obligation, considered **generally satisfactory** in the first implementation report even though some cases of incorrect application were detected.
65. Moreover, the Commission's evaluation of the 2000-2004 action plan in 2004 on the basis of data provided by the European Monitoring Centre for Drugs and Drug-addiction (EMCDDA) and Europol comes to **mixed results** as regards the national application of the European strategy and action plan on **drugs**.

### 2.2.2. Union citizenship

66. Experience from Commission reports and infringement proceedings prompts a **satisfactory** assessment regarding the application of Part II of the EC Treaty. All the Member States generally complied with their duty to notify national measures transposing secondary legislation by the cut-off date of 31 March 2006. The implementation of the Directives on the right of residence of pensioners, inactive people and students is generally satisfactory. The same applies for the current Directives on the right to move and reside freely on the territory of a Member State, though there are a few cases of incorrect application.
67. Directives on voting rights at municipal and European Parliament elections have been transposed satisfactorily, even if the public make insufficient use of their rights.

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<sup>8</sup> For the sake of consistency, the nomenclature of the Hague action plan is followed.

### 2.2.3. *Asylum, immigration, borders*

68. Apart from the Commission reports that show very satisfactory results on the activities of EURODAC, the **first phase of the asylum system** is in the process of evaluation. As can be seen from the table in Annex 2, it can be concluded from certain persistent gaps in the notification of transposal measures that the rate of implementation is not yet ideal.
69. European policy on **legal immigration** is still in its infancy, and there are as yet no reports allowing a general evaluation. But it can be seen that application is incomplete from the significant number of Member States which have not notified measures transposing the Directives on family reunification and the status of long-term resident third-country nationals, where infringement proceedings are in motion.
70. As regards **illegal immigration**, in spite of the absence of implementation reports, the other indicators available reveal a **relatively satisfactory** transposition level of the least recent instruments, except in one Member State in particular.

### 2.2.4. *Security*

71. Apart from the Framework Decisions, the implementation of the instruments for the fight against organised crime and for police and customs cooperation, and in particular the conventions and protocols adopted on the basis of Title VI of the EU Treaty, are difficult to evaluate because of the very nature of the instruments concerned, which make no provision either for a formal duty for the Member States to notify or for reports monitoring national implementation. Their speedy ratification remains the first priority.

### 2.2.5. *Justice*

#### 2.2.5.1. Criminal justice

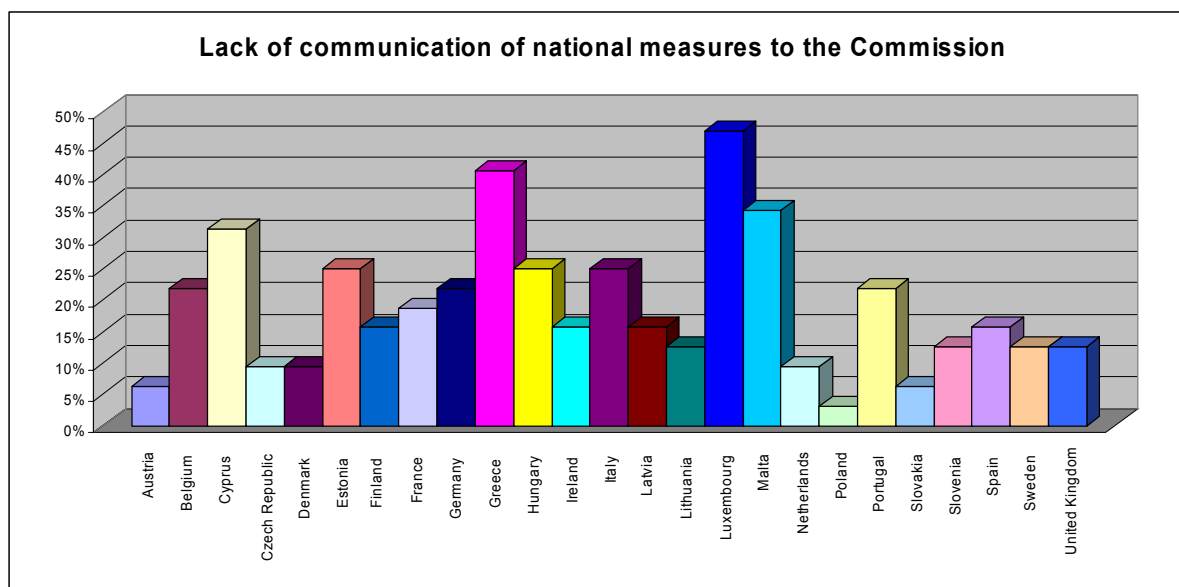
72. The **European Arrest Warrant**, instrument of mutual recognition *par excellence*, despite initial transposal delays in about half the Member States, is now operational throughout the Union, subject to some efforts to be made by certain Member States to comply fully with the text, and despite constitutional difficulties in several Member States.
73. Concerning the **harmonisation** instruments, many of which are relevant to the fight against terrorism, the overall evaluation of implementation is particularly **disappointing**, even though the Commission's practice of presenting successive implementation reports reveals a positive trend. Instruments are very often incompletely transposed, and sometimes with considerable delay, depending on the Member States.
74. None of these failures is likely to give rise to infringement proceedings as the Treaties stand.

## 2.2.5.2. Civil justice

75. The evaluation appears difficult at this stage for the two instruments concerned<sup>9</sup>, since the time allowed for transposal of all the provisions had not expired at the cut-off date of 31 March for one of them and had only just expired for the other. It is clear from the only report currently available to date on the application of the Regulation on the service in the Member States of judicial and extrajudicial documents in civil and commercial matters that there is room for improvement. On 15 July 2005 the Commission accordingly adopted a proposal to amend this Regulation, now under examination in the Council and Parliament.

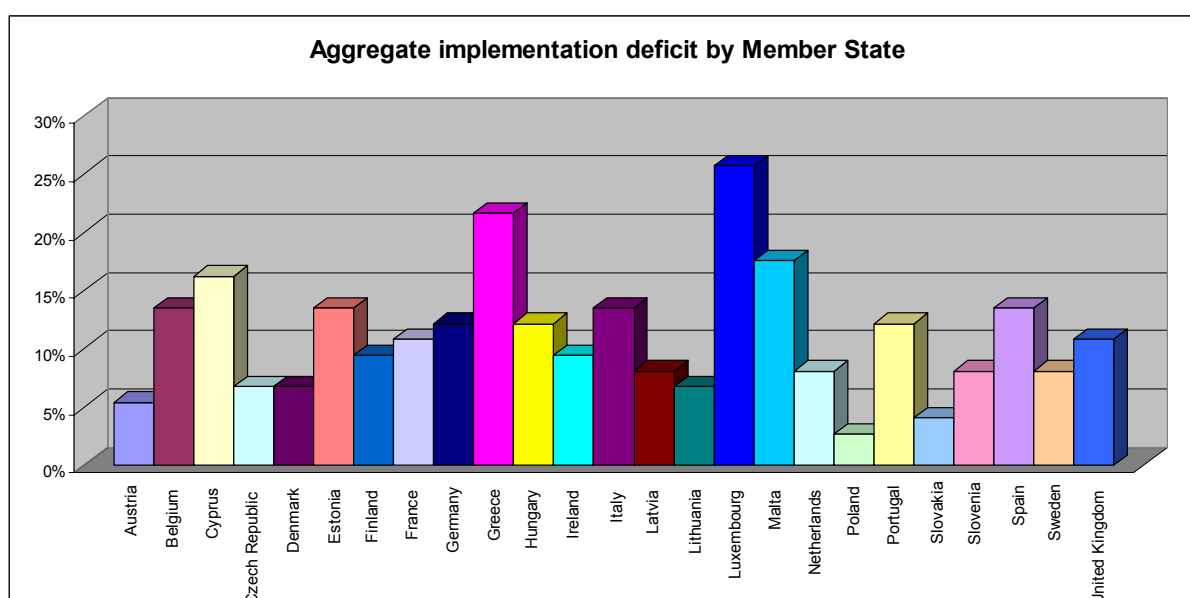
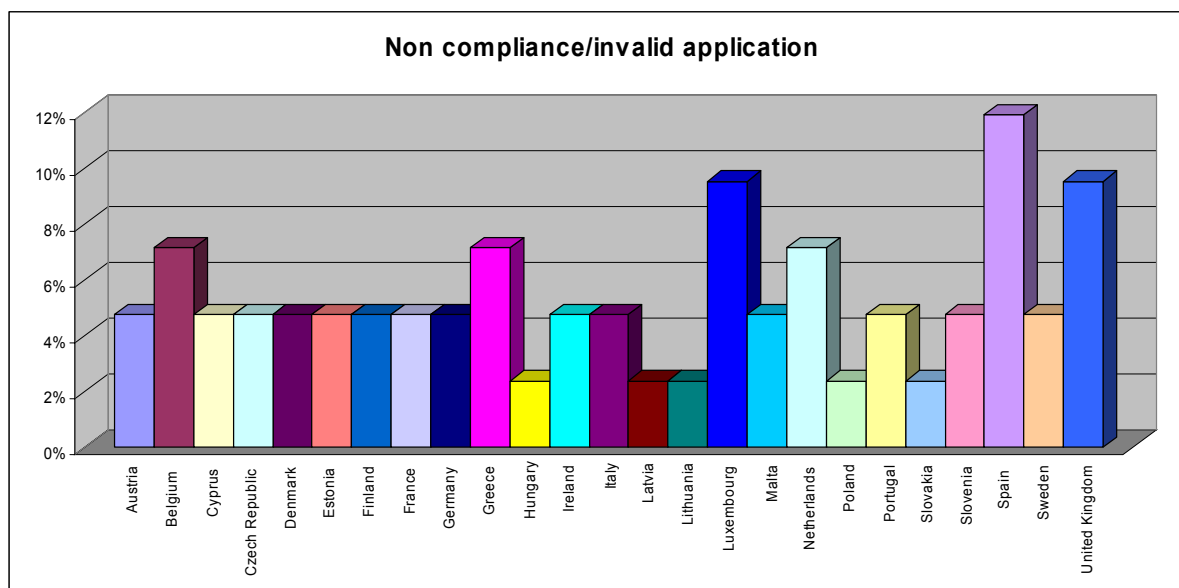
## 2.3. Monitoring by Member State

76. The following overall data, all instruments combined, can be derived from the two indicators<sup>10</sup> appearing in the table at Annex 2. The first two tables reflect Member States' failures to notify transposal measures and cases of incorrect transposal or application respectively. The third table gives aggregate figures for the two categories.



<sup>9</sup> Directive 2003/8/EC relating to legal aid and Directive 2004/80/EC relating to compensation for victims of crime.

<sup>10</sup> Indicators described in paragraphs 57 to 63 of this Communication.



### 3. CONCLUSION

77. At the end of this first Hague programme monitoring exercise, it is noteworthy how sharply the **generally positive assessment of the adoption timetable** for 2005 contrasts with the **much more mixed results of the monitoring of the national implementation** of the instruments adopted.

78. It emerges from the monitoring of the adoption of the measures scheduled for 2005 in the Hague programme that the **institutional mechanism** functions satisfactorily in JFS matters involving the **EC Treaty**. The progress achieved in *judicial cooperation in civil matters* and *citizenship* testifies to this. But the fact remains that, even here, when unanimous voting was provided for, it was a brake on the adoption process, which probably contributed to delaying progress in priority policies under the Hague programme. The first phase of the European *asylum* system is a case in point. In contrast, the inter-institutional dialogue in the co-decision procedure proved

particularly profitable and made it possible to reach agreement in a few months on such important instruments as the Directive on *data retention*, the **border code** or the **local cross-border traffic** Regulation.

79. There are various reasons for the slow progress in matters involving **Title VI of the EU Treaty**. The unanimity requirement for *police and judicial cooperation in criminal matters* slowed the adoption of flagship measures such as the evidence warrant and the Framework Decision on procedural rights. The Council's uncertainty and hesitations regarding the choice of legal bases is another source of delay which this year again slowed down the adoption process, despite the judgment given by the Court of Justice on 13 September 2005 in Case C-176/03.
80. The very first evaluation of the monitoring of the national implementation of JFS policies appears largely **compartmental, and certainly insufficient** at this stage, though this observation should not be taken as relieving the Member States of responsibility for the shortcomings that have been observed.
81. Moreover, given that many JFS policies are still in their infancy, the evaluation of national implementation is still often premature. Such is the case for asylum, legal immigration, mutual recognition in criminal matters and civil justice, but also for drugs, where there is a specific monitoring mechanism in the EMCDDA context.
82. But the most striking **deficiencies in both quantitative and qualitative terms** regarding the general rate of transposal concern instruments under **Title VI of the EU Treaty**. For example, there is no apparent national equivalent of the Union's determination in the fight against terrorism, to which the monitoring of this policy in the first part of this communication testifies.
83. This report reveals that there is room for improvement in the existing framework, in particular regarding the decision-making process in the areas of police and judicial cooperation in criminal matters. That is the purpose pursued, on the basis of the current Treaties, by the Communication on implementing The Hague programme: the way forward, which accompanies this report.