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- Proposed Solutions for the Future EU Justice Programme

Delegations will find attached the report from the High-Level Advisory Group on the Future of European Justice Policy.

High-Level Advisory Group on the
Future of European Justice Policy

**Proposed Solutions for
the Future EU Justice Programme**

June 2008

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I. INTRODUCTION

1. Starting Point

More and more citizens are taking advantage of the new freedoms in Europe. They become active beyond the borders of their own country. They expect an area of freedom, security and justice when they move, when they buy, when they marry across borders.

The Tampere Programme 1999 has put in place the first major agenda for moving ahead in the area of justice. It was a good step for the future of Europe and for our citizens. The Hague Programme (2004) and the Action Plan thereto (2005) have followed this same path. Fundamental principles have been developed – in the area of judicial cooperation in criminal and civil matters. The European Union has already made major steps forward with regard to closer judicial cooperation and the approximation of national laws. The European Arrest Warrant and Eurojust on the one hand and the different instruments in civil procedures for cross-border cases like the European Payment Order on the other hand are good examples of substantial progress.

2. New Challenges and the Way Ahead

We are now reaching the end of the Hague Programme. It is therefore a good time to analyse what has been achieved and what the new challenges are in the area of justice.

We should aim to find solutions for citizens despite the fact that there are like relating differences between the legal systems which operate in the Member States. This is particularly the case with regard to the Common Law and Civil Law systems.

A Post-Hague Programme has to take into consideration new challenges in judicial policy (and access to justice), among other things the possibilities and advantages of the use of information technology while taking into account at the same time the new institutional framework laid down in the Lisbon Treaty¹. The Lisbon Treaty will itself give the European Union new ways and possibilities to go ahead in order to achieve more positive results for our citizens when ensuring freedom, security and justice.

3. High-Level Advisory Group on the Future of European Justice Policy

The Portuguese Presidency has taken the initiative to set up a High-Level Advisory Group on the Future of European Justice Policy (Future Group on Justice), co-chaired by the European Commission. The Future Group on Justice should identify the new challenges ahead and define possible solutions for a future EU Justice Programme.

Members of the Group are six justice ministers on a personal level coming from the two Trio-Presidencies (Germany / Portugal / Slovenia and France / Czech Republic / Sweden) and one representative from the third Trio-Presidency (Spain / Hungary / Belgium). The Group invited Ireland as representative of the Common Law Member States to take part in the discussions.

The Group is chaired by the Presidency to the Council of the European Union and the Vice-President of the European Commission. Furthermore, the European Parliament is invited to participate in the ministerial discussions. The contributions made by members of the European Parliament's LIBE and JURI Committee have contributed substantially to the work of the Future Group on Justice.

¹ The Group note the current status of the ratification process of the Lisbon Treaty, and emphasise their readiness to work constructively for a smooth and functioning way forward, in line with the relevant conclusions of the European Council on 19/20 June 2008, and any future European Council conclusions on the Lisbon Treaty. Those parts of the report which refer to the Lisbon Treaty, should be read in this light.

The Group has started work in September 2007. The first ministerial meeting took place on 26/27 November 2007 in Cascais (Portugal) and the second will follow on 19/20 May 2008 in Portorož (Slovenia). The meetings have been prepared by a series of by Sherpas designated by each participant.

Transparency and openness have been prerequisites of the Group's work. Therefore the Portuguese and the Slovenian Presidency have laid much emphasis on an open course of discussion. Justice Ministers of the JHA Council not taking part in the Group have been briefed about the work and the results during the Portuguese Presidency in the JHA Council in December 2007. A first summary of discussions has been distributed for that meeting.

In addition the Slovenian Presidency has put the work and the topics to be dealt with in a future programme on the agenda of the Informal Meeting of the Justice and Home Affairs Ministers in Brdo on 25/26 January 2008. For that meeting the other Member States have been asked to put forward their own ideas for a future Justice Programme for the Group's work. In the meantime Finland, the United Kingdom, Estonia, the Netherlands and the Visegrad States have presented very substantial contributions which have been very welcomed by the Group.

4. Main Objectives

A lot of the Hague Programme has already been achieved; a lot is still to be done. Thus, before starting to define a new programme stock-taking was the first task. In a second step the Group identified new challenges and possible solutions.

During the work of the Future Group on Justice it became clear that drafting a new Programme needed a thorough analysis of the status quo of current justice policy on a European level – with regard to the evaluation of the existing legal framework in the area of justice policy and with regard to the more technical but important question of effective working methods of the JHA Council.

In a second part main challenges have been identified where current policies should be pursued or new policies should be developed. The Future Group on Justice has identified five clusters:

- Better protection of citizens (Improve the protection of citizens),
- Increase legal certainty in family, commercial and civil law,
- Access to Justice (Enhance access to justice in EU, e.g. the use of information technology),
- Fight against organised (Improve the fight against organised crime),
- The external dimension of the European area of justice (Future challenges in external dimension of justice policies).

There may be further topics to be discussed. However the Group believes that these objectives are the main issues for a future justice policy after 2009.

5. Time Frame

The Future Group on Justice presents this report to the Member States for discussions. The reports should be a starting point for defining the objectives of a future Justice Programme beginning 2010.

In the area of home affairs the High-Level Advisory Group on the Future of European Home Affairs Policy has been set up in the beginning of 2007.

The results of the work of both groups will be presented under the incoming French Presidency during the Informal JHA meeting on 7/8 July 2008. During the incoming French Presidency the report shall be discussed in a formal JHA Council meeting in order to start the discussion about the main elements of a future JHA Programme beginning 2010. The European Commission has indicated that it will take into account of the reports when putting forward the draft of the new JHA programme for the years ahead.

II. HORIZONTAL ISSUES

There are a number of issues of a horizontal character that are of importance for the further development in the justice and home affairs area. One of these issues is the future role and working methods of the Justice and Home Affairs Council (JHA Council). A renewed institutional context would present a good opportunity to again discuss the working methods of the JHA Council. Other issues are the importance of communicating the achievements to the public in a more positive and convincing way, the importance of quality of legislation and a clear language, better implementation and impact assessment and, finally, the financial conditions.

1. The role, structure and working methods of the Justice and Home Affairs Council

1.1. The situation as it stands

The overall responsibility for developing and managing the Justice and Home Affairs area rests with the Justice and Home Affairs Council (JHA Council). The JHA Council currently meets three times per Presidency. Usually there is also one informal meeting of the Council under each Presidency.

The supporting structure within the JHA area was decided by COREPER in 1999 following the entry into force of the Amsterdam Treaty. It agreed that work should split between three main high-level committees; Strategic Committee on Immigration, Frontiers and Asylum (SCIFA), Committee on Civil Law Matters and Article 36 Committee (CATS). Both SCIFA and CATS have a coordinating role within their respective areas of competence, which in practise means that proposal pass through these committees before submission to COREPER, thereby creating a four tier structure. In the area of civil law there is a three tier structure, with the Committee on Civil Law Matters meeting in different formations as working group but also as steering group according to subject matter and reporting directly to COREPER.

It is however obvious that the current structure and working methods could be improved to achieve better results. Council Meetings foreseen for two days are often reduced to one day due to lack of items for discussion.

Experience also shows that at least the first Council meeting of each Presidency rarely has a full agenda. Efforts have been made to streamline the agendas of the Council's meetings. But there is still a tendency for Presidencies to include points on the agenda, sometimes of less political interest, just to secure a full agenda.

The Council meetings are sometimes considered inefficient. Issues discussed at different levels are the same without differentiation of technical, coordination and political functions. Council agendas often include files that are not mature enough for political discussions that would lead to approval.

It happens too often that files are discussed in COREPER, at the JHA Counsellors or even at Working Group level just one or two days before the Council meeting. Documents intended for the Council meeting are therefore distributed very late. The situation creates problems for the delegations when preparing the Council meeting and could also result in a decreased possibility to reach an agreement at the Council meeting, thus making the whole decision making procedure more inefficient than it could be.

Attendance by Ministers at the Council meetings is not always encouraging. It is possible that the lack of possibilities to discuss real political issues at stake could be one reason for the situation. Another reason could be the sometimes somewhat confused planning of the Council meetings where it happens too often that the order of agenda points, or topics for lunch discussions and so on are being changed at a very late stage causing problems and irritation in the Capitals when making preparations at home.

The JHA Council's work is sometimes also artificially divided between civil and criminal questions and between Justice and Home Affairs questions causing unnecessary tensions within the Council. Some also think that the Justice Council has been losing powers in favour of other Council formations. Provisions on criminal law and civil liability are today being discussed in other Council formations. A situation that could lead to lack of coherence if coordination is not secured.

The structure of the Working parties in the area of JHA does not always function well. The function differentiation between some of the present groups are not clear. Coordination between some groups can sometimes be lacking. The "broader picture" is sometimes lacking in the groups.

1.2. Proposals

Some ideas and proposals of how to improve the situation in the future have occurred during the discussions in the Future group.

Proposals to increase efficiency:

- The number of formal meetings of the JHA Council per Presidency should depend on the actual workload and not follow an automatic periodicity of meetings.
- The planning and preparations of the Council meetings need to be improved. The Presidencies must plan work in a way which secures enough time between the last COREPER and the Council meeting so that national preparations and trans-national consultations can take place. Accordingly documents must be distributed well in advance. Practical issues such as the order of agenda points, points to be discussed during lunch and the division between Home Affairs and Justice issues during a two day meeting should be communicated as early as possible. Late changes of plans should be avoided.
- There is a need to "clean up" in the present structure, to reduce the number of working groups and possibly arrange them by general topics irrespective of the different legal basis.
- There is a need to reconsider how certain subjects can be treated when they touch upon the remits of several Council formations. Several coordination models exists today e. g. the model of consultations between working parties or the model of horizontal groups and so on.
- Political priorities of each Presidency should be better coordinated, including through trio - presidencies, and planning should improve, the five-year planning tool having proven sometimes not flexible enough to react to unexpected events.
- Once citizens and businesses' needs have been clearly identified the legislative procedure's delay should be shortened.

Proposals to increase the political role of the Council:

- The agendas of the JHA Council need to be even more streamlined and more concentrated on political issues and files that are of importance and interest for the Ministers.
- Council agendas should only include files that are mature enough for political discussions. Pure technical issues and drafting should not be on the Ministers table. JHA Council should focus more on political discussions and be more deliberative. More thematic Council meetings could be considered in order to increase the focusing on important political topics that could engage the Ministers more than today.
- Documents presented to the Council should more clearly than today identify political issues to be discussed.
- The Informal Ministerial Meetings remain a very useful tool for political discussion on certain important topics in a less formal atmosphere. But only if the informal atmosphere could prevail.

2. Communication to the public

2.1. The situation as it stands

The achievements in the JHA area are generally of real importance for the citizens, businesses and the professionals. However, they are not properly communicated to them in a satisfying way. The awareness of what the EU is doing and have already achieved in the JHA area is simply not good enough. This could partly be explained by the fact that many of the files, even though they intend to solve very factual difficulties in today's society, are based on technical legislations and therefore the communication on the achievements on these files sometimes tends to focus more on the judicial, technical aspects than on the factual problems the legal act is intended to solve. There is also a "language problem" where sometimes the "EU jargon" is used instead of a clear and understandable language.

2.2. Proposals

- The responsibility for communicating the achievements on the JHA area to the public is shared between the Member States and the EU Institutions.
- The achievements in the area need to be presented in a more convincing way using a clear and understandable language.
- The rights and gains conferred on citizens and businesses when new legislation is adopted could be explained in a cover note to the act.
- A possibility could be to create a function on the European Justice Portal for "achievements on making citizens and businesses' lives easier".

3. Quality of legislation and the need of clear language

3.1. The situation as it stands

The JHA acquis has become increasingly difficult to manage, with overlapping and no coherence in specific areas as a result. At the same time the quality of the EU legislation and the language used in some of the legal acts could be improved. Legislative acts, in particular, must be concise and their contents must be as consistent as possible, in spite of the challenges posed by inter-institutional negotiations and bargaining. Efforts should be made by all Institutions to have, at the end of the process, texts which are clearly, simply and precisely drafted. Openness and transparency within the public administration can be greatly improved if official documents are written in clear and user-friendly language, so that they can be understood by the citizens. Of course, it should be a natural aim in a democracy to want to ensure openness and clarity in the public administration. The principle of public access to documents functions less well if documents are difficult to understand. One could say that plain language is one of the core prerequisites for openness.

3.2. Proposals

- In the drafting phase of new legislation more attention should be paid to analysing the existing law as well as new initiatives with the aim to consolidate, where possible, instruments with similar content and therefore avoid over-legislation. The aim should be to simplify regulation by harmonising procedures included in the existing provisions and by streamlining fragmented legislation.
- A horizontal review of the instruments adopted should be considered, in appropriate cases, in order to emphasise legislation consistency. Consolidation should be promoted. A conceptual and legal coherence should be the aim.
- Better regulation and lawmaking principles should be strengthened throughout the entire decision making process. The inter-institutional agreement on simplification reached between the three EU institutions should be fully applied.
- Efforts should be made by all Institutions at all stages of the inter-institutional procedure so that EU legislation is drafted in clear language comprehensible to citizens.

4. Implementation, impact assessment and evaluation

4.1. The situation as it stands

The development of the JHA area is indeed impressive, but it has its shortcomings. Consecutive scoreboards show insufficient implementation of EU legislation by the Member States. It has also been indicated that there is an "implementation fatigue" being felt nationally due to the high number of legislative acts adopted in recent years, given the growing development at EU level of this relatively new policy area.

Some have referred to the need for a "time out" period to evaluate what has been achieved so far and that new legislation should not be sought until a comprehensive assessment of the state of play is made. Added value should continue to be the criterion to assess the need for action at EU level.

Due to the changing landscape, there will still be a need for new initiatives, and looking forward. Legislation is not perpetual and sometimes becomes inadequate after a few years. Review clauses are not always enough. It is necessary to check whether the conditions that lead to a certain legislation are still relevant.

The guiding principle should be to further improve upon existing cooperation, one necessary element in that process is to develop knowledge-based policies. As already stated in 2004 in the Hague programme, evaluation of the implementation as well as of the effects of measures decided by the Council, is essential for the effectiveness of EU action.

Building on the consensus that the EU must be fully committed to consolidate, implement and evaluate achievements so far, the Commission in 2006 presented a Communication suggesting the establishment of a coherent and comprehensive evaluation mechanism. That mechanism would incorporate established procedures for monitoring implementation as well as developing qualitative and quantitative indicators for measuring the results (impact and effectiveness), thus making it possible to evaluate measures taken, as a basis for further developing policies.

The Treaty of Lisbon envisages a new horizontal instrument which should be the basis for an overall approach also for JHA area. In addition, evaluation and consolidation should be pursued in close cooperation with the Member States which can produce a lot of practical input during the evaluation process. Results should be presented to the JHA Council to be discussed politically.

An approach where money spent is always monitored and evaluated would respond to citizens' demands for accountability and tangible results. Policy decisions should be carefully weighed and based on citizens' perceived needs as well as on objective knowledge on the problems at hand and the possibilities to curb them. New proposals should, to an even larger extent than now, be justified by practical needs and how well it fits with existing initiatives.

Existing evaluation mechanisms need to be consolidated and developed. Initially, resources, both at EU and at Member State level, need to be allocated for this purpose. However, a general rule should be that evaluations should concentrate on areas perceived to be necessary for the Member States and at EU level, that they are clearly defined, and that it is not too burdensome for the Member States to gather the information.

Agreements on which factors to follow up in implementation reviews and which indicators to use to measure impact as well as effectiveness, should be an inherent part of any decision, thus avoiding spending resources on complicated discussions on ad-hoc implementation and impact assessments.

4.2. Proposals

- Increased attention should be paid to the full and effective enforcement of implementation of already existing instruments. With the Treaty of Lisbon coming into force the Commission will gain monitoring and enforcements functions in the whole JHA area and the European Court of Justice will eventually gain full competence.
- A better review and evaluation - with the involvement of the Member States - of how existing legislation works is needed, in order to better identify those areas where there is a clear and practical need for legislation at EU level. Considering the results of evaluation the areas should be defined, in which supplementary legislation is needed, on the basis of their added value, their necessity in order to ensure a single European area of justice and its capacity to meet with political consensus. Reaction time to citizens and businesses' needs has to be shorter.
- Appropriate impact assessments should as a general rule accompany proposed legislation. Such impact assessments should satisfactorily demonstrate the need and added value of the legislation proposed. With major changes during the legislative negotiations, re-assessment could be required. Legislation should, in principle, incorporate a detailed reference to the ex-post evaluation to be done and its aim and the methods and indicators to be used to measure the implementation, the results and the effectiveness of the legislation, and including an obligation for Member States to deliver the necessary basic data.
- One of the main aims must be to develop a comprehensive evaluation mechanism – including information on the implementation and on the results and efficiency of measures - for the JHA area. The effectiveness of EU level action can only be improved by taking practical level experiences into account in the future decision making.

5. Financial conditions

5.1. The situation as it stands

Justice, Freedom and Security (JLS) is a relatively new set of policies, which is still establishing itself at EU level. JLS policies have developed rapidly in the recent years, responding to increased demands and sometimes tragic external events.

Funding instruments need to effectively support policy priorities, and adjust to their development.

Cross-border cooperation and projects at European level have increased by using resources of the financing framework programmes Fundamental Rights and Justice, Security and safeguarding Liberties and Solidarity and Management of Migration Flows for the period of 2007-2013.

The framework programme Fundamental Rights and Justice, in particular the special programmes Criminal Justice and Civil Justice, focuses on judicial cooperation and issues on victims of crime, judicial training and exchange and the use of information technology. The annual work programmes are essential/crucial for identifying and setting main (thematic and special) priorities for the cross-border cooperation and the initiatives of the Commission.

According to Art 14 of the Criminal Justice programme and Art 16 of the Civil Justice programme, the Commission shall submit to the European Parliament and the Council an annual presentation on the implementation of the respective programme and an interim evaluation report on the results obtained and the qualitative and quantitative aspects of the implementation of the programme concerned no later than 31 March 2010 (Criminal Justice)/ 2011 (Civil Justice).

In addition to the JHA programmes, the 7th Framework R&D Programme could be mentioned as a possible funding for big research projects, up to now not much utilized.

In parallel with the development and evaluation of the JHA programmes, the overall review of the EU budget will start in 2009.

5.2. Proposals

- The forms of cooperation between the Commission and the Member States on the annual work programmes should be developed to enhance implementation of the Hague programme, a post-Hague programme and cross-border projects in general.
- The R&D programme could play a major role to facilitate especially horizontal and long term research projects also in the area of justice.
- Both the annual presentations and the interim evaluation reports should be useful instruments in analyzing the impact and the efficiency of the programmes. They will also provide a basis for consideration on how the resources could be better absorbed, easier access and simplified applications could be allowed, the turnaround time could be reduced etc.
- Experiences at both European and national level should be taken into account to provide the best information and support as possible to applicants and others concerned on the financing programmes.

III. CHALLENGES

1.1. 1. BETTER PROTECTION OF CITIZENS

1.1. Citizens' Rights in the European Union

1.1.1. The situation as it stands

The Common goal for Europe is to become a coherent area of freedom, security and justice. This is what our European treaties say; this is what our citizens expect; and this is the focus of our political efforts for a post-Hague programme beginning in 2010.

Since the adoption of the Tampere Programme in 1999, the primary focus of work in the field of justice has been on developing the European framework for the civil and commercial matters with cross border impacts. As regards the European area of criminal justice, the spotlight has been on harmonising certain criminal law provisions and enhancing cooperation between judicial authorities. The Hague Programme (2004) accorded equal weight to a focus on securing citizens' rights. Equally important as safeguarding freedom and security is preserving the rule of law – which specifically includes protecting and guaranteeing citizens' rights.

As Justice Ministers of the European Union, one of the primary tasks is to strengthen the protection of citizens' rights. Securing citizens' rights involves many different aspects:

- Ensuring a high degree of protection for their rights in criminal investigations and proceedings throughout Europe, whether they are involved as victims or suspects or witnesses.
- Improving citizens' access to justice by enabling them to effectively assert their rights across national borders.
- Protecting fundamental rights through the European Court of Justice.

1.1.1.a) Current difficulties

Work in the area of police cooperation seems to be progressing much more rapidly than in the field of judicial cooperation in criminal matters. One of the reasons for this may be that in the case of police cooperation, the impact on national legal systems seems to be far less than in judicial cooperation, particularly in criminal matters. In the former, the focus is on the broadest exchanges of information possible; but judicial cooperation poses more fundamental questions, for which Member States have found extremely varying responses. One example is the admissibility of evidence in court proceedings following exchanges of information and the rights of witnesses and the accused in investigation proceedings.

Securing citizens' rights is the foundation of our basic orders under the rule of law – both at the national and European level. As such, it is apparent in practically all life situations, but particularly in the area of state interference – for example in criminal investigation proceedings – and in the area of establishing judicial procedures to assert private-law claims, as well as to ensure protection of fundamental rights by the courts.

At the European level, we have had success in only some areas with regard to protecting citizens' rights: The successful, yet very difficult, completion of work on the Framework Decision on combating racism and xenophobia sent a politically important signal. But the consultations on the Framework Decision to strengthen the rights of the accused in criminal proceedings showed that we are still a long way from our goal of securing for our citizens an effective minimal standard of protection in criminal proceedings throughout Europe.

1.1.1.b) Where are we now?

Until now, at the European level we have focused on implementing the principle of mutual recognition as the basis of judicial cooperation. To date, we have created a unique area where the judgements and judicial decisions in civil and commercial matters are being recognised and enforced, and thus can circulate freely.

We have found solutions to the questions of applicable law through recent Community instruments. A number of important procedures have been adopted - the European payment order procedure and the small claims procedure, for which an electronic platform is now to be created.

These are significant achievements. As regards criminal justice, the Framework Decision on the European arrest warrant is probably the most important example of the progress made by European justice policy. Work in the area of (minimum) harmonisation has been limited to defining a few criminal offences and determining minimum thresholds for maximum penalties for such offences.

Although we all believe that we have guaranteed citizens' rights to a fair trial in our countries to the greatest extent possible, we have not been successful in reaching an agreement on the Framework Decision on minimum rights in criminal proceedings – including the right to an interpreter or defence counsel. At the moment, we do not have any established canon of procedural rights determined by the European Union, which should and must be granted to every citizen of Europe as a minimum. On the other hand further EU-instruments on mutual recognition in the future are expected which will cover additional sensitive areas such as the transfer of electronic data. The Hague Programme (2004) had outlined a series of specific endeavours in this area. Not a single dossier from that list has yet been adopted; many have not even been submitted yet because the Council was unable to achieve agreement on the Framework Decision on certain procedural rights in criminal proceedings.

In the meantime, it has become clear that the mere application of the principle of mutual recognition of judicial decisions or those of investigative authorities is not sufficient to create a true area of freedom, security and justice:

- Of what use is it to effective law enforcement to have information exchanged as quickly and freely as possible among investigating authorities, if the evidence is subsequently declared inadmissible in the court proceeding due to a violation of principles of the respective national code of procedure?
- Of what use is it to allow citizens to travel across borders if, in an investigation proceeding, they are not even able to quickly obtain information about defence counsel who speak their language?
- Of what use is it if goods are purchased in another Member State, but the assertion of warranty claims in other Member States remains difficult?

1.1. 2. Value added of European Action

The post-Hague programme beginning in 2010 should continue to enhance mutual trust in the legal systems of other Member States by establishing minimum rights – this is the basis for the principle of mutual recognition.

We should determine concrete steps to strengthen citizens' rights at European level for 2010 and the following years – particularly following the adoption of the Lisbon Treaty. Otherwise, our citizens will often perceive the European Union only as an institution that curtails rather than guarantees rights.

Creating mutual trust also means continually reflecting on the principle of mutual recognition and how it is put into practice. For example, practice has shown that the list of offences for which an assessment of double criminality is no longer undertaken is subject to interpretation. This is even more astonishing given that we are dealing with an area which involves the most grievous interference in the rights of citizens – depriving individuals of their liberty. But every citizen must be able to recognise in advance the offences for which he may be extradited and detained without an assessment of double criminality. This lack of clarity is both theoretical and practical; it may thus lead to mistrust among judicial authorities as well. We must work to minimise this.

We have achieved substantial progress in the area of civil law cooperation – the focus now will be on continuing to facilitate citizens' ability to assert their claims across national borders. A good example of this could be to create a European certificate of inheritance to secure the legitimacy of heirs in all Member States.

The consistent past decisions of the European Court of Justice have recognised an obligation on the part of the Community to respect fundamental rights as they are guaranteed in the European Convention on Human Rights and as general principles of Community law derived from the constitutional traditions common to the Member States. Based upon that formulation, which can be found in Article 6 (2) of the EU Treaty, the Court of Justice, in its judicial decisions, has developed these fundamental rights as general legal principles.

With the Lisbon Treaty, the European Union's Charter of Fundamental Rights is to become binding law. With this, the fundamental rights proclaimed in the Charter will be binding not only for the bodies of the European Union and of Member States when implementing Community law; they will also be applied and interpreted by the Court of Justice. This will contribute to an intensification of the European protection of fundamental rights.

As such, with respect to the uniform area of freedom, security and justice, the Court of Justice might address issues involving fundamental rights both more often and more rapidly. In extremely urgent cases, this will require quick decisions, particularly in preliminary decision proceedings. Precautions must be developed for these situations as well. With Article 104 b of the rules of procedure of the European Court of Justice precautions have been developed for these situations.

The added value of a European rule includes:

- Guaranteeing citizens a minimum degree of uniform protection in criminal and investigation proceedings, and allowing a cause of action at the European level to protect these rights.
- Making available uniform proceedings to simplify to the extent possible the assertion of claims in cross border cases, for example by way of a “European certificate of inheritance”.
- Guaranteeing effective protection of citizens rights in particularly urgent cases by way of a rapid and effective accelerated submission procedure.

1.1.3. Recommendations

1.1.3.a) Strengthening citizens’ rights in the law of criminal procedure

The Lisbon Treaty now provides for a basis for further action also in the field of minimum standards in the law of criminal procedure. We all agree that this should not involve full harmonisation of national criminal procedural rights, and certainly not their abolition. Rather, the goal should be to provide all citizens of the European Union with a basic set of rights as minimum guarantees if citizens are subjected to a criminal investigation. We should therefore undertake the following steps and examine:

as a first step, to include at least the rights arising from the proposal for a Framework Decision to strengthen the rights of the accused in criminal proceedings (Right to information with regard to procedural rights, Right to defence counsel, Right to an interpreter and to a translation of the relevant procedural documents), and to address additional steps, for example, minimum rules in terms of the presumption of innocence, in order to secure citizens’ rights.

1.1.3.b) Improving the assertion of claims across national borders

A decisive criterion for the assertion of rights under private law is whether citizens are facilitated in asserting their rights across the borders of the EU Member States. The EU has already attained significant progress in this area; examples of future steps include:

- Creation of a uniform European certificate of inheritance;
- Creation of a network of existing national databases for wills and testaments;
- The opportunity to submit claims across national borders via electronic means.

When harmonizing the rules on applicable law we should continue to explore the possibility of creating a limited choice-of-law opportunity for parties without neglecting the protection of those affected; this is particularly important in matters pertaining to family law.

1.1.3.c) Strengthening the protection of fundamental rights by the European Court of Justice

The Lisbon Treaty will strengthen the relationship to the European Charter of Fundamental Rights. The accession of the European Union to the European Convention of Human Rights (ECHR) will also serve to enhance the protection of fundamental rights in Europe.

This will not only strengthen the protection of human rights in the direct activities of EU and EC institutions. Another important aspect is to monitor the actions of the Member States when they implement Community and Union law. As such, in the future the European Court of Justice will be asked to decide on the application and interpretation of the European Charter of Fundamental Rights – for example, within the scope of preliminary decision proceedings. In urgent cases, it is particularly important to enable quick decisions by way of such proceedings.

Courts will now be in a position to bring particularly urgent cases to a decision as soon as possible – in a manner which preserves the rights of all parties who are to be involved pursuant to the Treaties. At the same time, an intensive dialogue between the Court of Justice and the national courts, for instance at the level of the highest specialised courts or the constitutional courts, should be continued in order to accelerate motions in urgent cases for preliminary decisions relevant to fundamental rights.

1.2. Child Protection within the European Union

1.2.1. The situation as it stands:

Ensuring child protection is one of the important challenges facing the European Union and its Member States.

This aim, which reflects the growing concerns of their citizens who require ever-greater guarantees of enhanced protection, is one shared by all Member States.

Ensuring an effective and operational system of protection for children involves various aspects of both civil and criminal law. It is thus an issue that requires a horizontal, all-round approach far removed from the habitual distinctions between these fields of law.

The Commission presented in June 2006 a communication, “Towards an European Strategy on Children's Rights”.

All Member States agree that promoting further legislation is not an answer to the problem. Community instruments must be applied and the relevant conventions adopted within the framework of the Hague Conference on Private International Law or Council of Europe must be signed and ratified. They should, within the framework of a global Union policy, be brought to the notice of those neighbouring countries which are unaware of their existence, with if necessary, the enjoyment of certain financial, commercial or political benefits being dependant upon attaining such awareness. Europe needs to demonstrate in practical terms that the measures it has decided to introduce are implemented daily in the European Union Member States.

The responses which the law should offer over the coming years should focus on four main elements:

I. Greater security through common cooperation tools

We know that the mistrust felt by European citizens as regards Europe and its institutions can be dispelled through concrete measures whose impact all can assess.

a) Possibility of a child alert network system:

Developing a "Child alert network system" of throughout Europe could offer the opportunity for such cooperation, involving as it does police and judiciary, the media and members of the public owing to their participation. In addition the system of central authorities under the Hague Convention should be strengthened in case of child abduction by a parent.

This does not however mean introducing complex and weighty mechanisms when, on the contrary, pragmatism and flexibility should be the order of the day. The most recent launching in France of the child abduction alert offers an excellent illustration of the problems encountered. A child had disappeared in Roubaix, three kilometres away from the Belgian border. It is difficult to understand and accept a situation where messages cannot be broadcast in neighbouring countries, and police forces, gendarmerie and judicial authorities cannot avail themselves of some form of cooperation.

If progress can be made towards enhancing regional and cross-border mechanisms making it possible to carry out searches for a kidnapped child in two or three neighbouring countries, if messages can be broadcast on either side of a border, we will have shown our political will to move forward. Synergies among existing information systems should be used.

Such political will implicitly requires States to set up some form of "Child alert network system" and then to cooperate in one form or another with the closest neighbouring countries.

b) Eurojust: Fighting paedophilia by dismantling networks

Greater cooperation requires the role of Eurojust to be strengthened in order for this organ of judicial cooperation to combat paedophile criminal networks effectively, in particular those who operate through the Internet.

Eurojust could pinpoint in its Annual Report specific areas, such as fighting child grooming (where children are enticed into agreeing to meet people in various places through contacts made on the Internet) to which all States could contribute by giving their best practices in that field.

II. Exchanging of experiences: fighting habitual sexual offenders

It's clear that there is a similarity of situations confronting Union Member States when sexual offenders are released from prison after serving their sentence. They may remain dangerous to society after their release. All Member States are anxious to avoid such persons re-offending, to protect society and in particular children from further abuse at their hands. Member States are already practicing or experimenting with various monitoring systems, and are aware that such issues are at the junction of medicine and law. They know that whatever solutions already implemented or that may be put forward have led and will lead to debate in society, in particular on the issue of respecting individual freedoms guaranteed by States respectful of the Rule of Law and the need to protect society, ensuring that adequate measures are provided to deal with dangerous individuals.

The Commission has indicated that it intends to draw up an inventory of the various measures implemented by Member States to deal with this problem. This is an important step to provide Member States with the information needed to examine and possibly improve their systems.

The results of the survey of the Commission should be evaluated carefully in order to show Member States possibilities of improvements for their national systems.

III. How to encourage children to feel that they belong to the Union? By making them play a part in building Europe

Children are often better than their parents where knowledge of Europe is concerned. They have grown up as the Union itself has grown through successive waves of enlargement.

Concrete measures are needed to encourage our children to see themselves as part of the great family of Europe. To this end, emphasis should be placed on the new technologies of which they are prime users in order to help them learn about the legal system of their own countries together with its European counterparts, and show them what an area of security, freedom and justice actually means.

The strategy on children's rights envisages setting up a child friendly website.

Use should be made of this child friendly website linked to the portal of the European Union; young people should be encouraged to log onto the site.

Ensuring greater protection for children within the European Union is first and foremost the task of their parents who should be vigilant when confronted with today's many dangers threatening their offspring. It is also the duty of politicians to make their own contribution to such an end.

IV. Fighting child sexual abuse in the Internet environment

Child protection and the fight against child sexual abuse material play very important roles in the Commission's general policy on the fight against cyber crime. The globally positive rapid development of Internet and other electronic communication systems has unfortunately also had the negative effects that child sexual abuse material has become increasingly accessible and that paedophiles have found a new and simple way of contacting children with the purpose of sexually abusing them (so called child grooming).

In cooperation with Member States, Europol, international organisations and private operators, the Commission is actively supporting the development of instruments to improve exchange of information and best practices on the fight against child sexual abuse material and child abuse, rapid cross-border law enforcement cooperation (including with third countries) as well as law enforcement cooperation with Internet Service providers and other private operators against such illegal content.

1.3 Duties of Law Enforcement Authorities and Protection of Personal Data

Protection of personal data and the right to private life is a fundamental issue in a democratic society. The need for public authorities to step up their vigilance regarding the protection of these right increases as information technology continues to develop and makes it possible to collect, store and exploit an increasing variety and amount of personal information revealing the characteristics, habits or one-off behaviour of individuals. Electronic media enables information to be stored for an almost unlimited amount of time as well as cross-referencing with other databases.

This, together with increased use of biometrics and video surveillance may facilitate the work of law enforcement authorities. At the same time the use of the information for purposes other than that for which they were collected as well as the unlimited cross-referencing represent a threat for individuals and for society as a whole. We therefore have to respect the principle of proportionality and a high level of protection of fundamental rights when collecting data for law enforcement purposes.

This situation responds, on the one hand, to the need of law enforcement services for modernised means of action and, on the other hand, to the need for appropriate responses to new forms of criminality. Practice has shown that these methods can constitute, in particular, a pertinent response to the terrorist threat and to the soaring level of large-scale crimes. If protecting the security of citizens is recognised as an essential contribution to the stability of democratic values, then the legitimate use of information technology to obtain this goal must be recognised unequivocally.

However, public authorities are responsible for ensuring, on an ongoing basis, an effective balance between the security mechanisms that they authorise and the effective protection of fundamental rights and liberties, including protection of personal data and the right to private life.

The increase in police and judicial cooperation between EU Member States progressively implementing the principal of information availability lies within the scope of this demanding concept.

An instrument harmonising national protection laws applicable to personal data collected or exchanged between Member States is being adopted in the framework of this cooperation and will represent an important step. The effort to align national legislations and practices can and should be continued in order to progressively improve their compatibility while adapting them to current realities. This can be done without hindering the performance of law enforcement authorities in the framework of legitimate duties. The protection given to citizens living in the European Union will be reinforced regardless of where their personal data is processed. Similarly, by increasing the transparency with regard to how the data is processed and to the applicable protections in place, a common legislation will reinforce its legitimacy.

Effective protection of data in this context includes, in particular, five key requirements:

- Data protection rules are required for each specific area.
- Data protection rules must be proportionate and as precisely formulated as possible. In particular, these rules must appropriately take account of the particular intrusiveness that interference with basic rights entails in cases of data collection and data use for law enforcement purposes.
- Furthermore, it must constantly be ensured that the persons affected have effective rights to information, correction, deletion, blocking and compensation.
- An independent data protection supervisory authority exists with appropriate staffing and equipment resources as well as effective powers.
- Lastly, these requirements shall include effective protection of personal data to prevent unauthorized access and use by third parties.

Moreover, the global dimension of the security concerns has led the Union on the one hand, and the public authorities and private bodies of the Member States on the other to increase, sometimes dramatically, the transfer of information to third countries. Given this context, the Union should pay particular attention to the effective protection of citizens living in the European Union against the risk of excessive or illegitimate use of their personal information.

Ensuring the security of citizens living in the European Union while guaranteeing them a high level of protection of private life is, without a doubt, one of the major challenges that the JHA Council must face in implementing the Treaty of Lisbon.

In this regard, it is urgent that this major issue be the object of a collective, thorough and methodical reflection in close cooperation with the European Commission and the European Parliament with the aim of establishing an inventory of the measures to undertake in establishing progressively appropriate European legislation, including cooperation with third countries.

The right to privacy, including the specific field of data protection, should not be erased by the necessities of law enforcement. The basic principles stipulated in Convention 108 of the Council of Europe, the Directive on Data Protection and in the Framework Decision on Data Protection should not be excluded from the legal system because of the need to confront global threats posed by terrorism, and organised crime. The true challenge is to prevent and combat crimes within the context of a democratic society. The introduction of new security tools is accepted by democratic institutions under close scrutiny from judicial, legislative and independent supervisory institutions.

The quest for the effective balance between fundamental rights principles and security rules and principles must find an answer on a case by case basis, according to a common principle: solutions that involve a weak protection of privacy and data protection should not be implemented. The right balance between rights doesn't mean a zero based legal protection under certain circumstances defined by law.

1.4 Rights of Victims

The issue of addressing the needs of crime victims at EU level was acknowledged 10 years ago, but we still have a long way to go.

The Council Framework Decision of 2001 on the standing of victims in criminal proceedings ("the Framework Decision") was a first step. The aim of that Framework Decision was to lay down requirements for Member States to improve the services to victims of crime and their families. An innovation in the Framework Decision was the duty for Member States to provide protection to the "most vulnerable" victims. In 2004, the Council adopted Directive 2004/80/EC relating to compensation to victims of crime in cross-border situations ("the Directive"), setting out a system of cooperation to ensure that crime victims in the EU are entitled to fair and appropriate compensation, regardless of where in the EU the crime was committed, and that they have access to support in applying for compensation from an authority in their Member State of residence.

The Commission is assessing the implementation of the Framework Decision; a comprehensive report will be issued this year, but based on the available information, it already seems that implementation of the Framework Decision is poor. Further information on the legal and on the practical implementation of the Framework Decision as well as on national legislation, policies and practices will be provided by two currently ongoing studies funded by the Commission. The Commission is also analysing the application of the Directive and will adopt a report by January 2009. If implementation of the Directive proves to be inadequate, action to oblige Member States to comply with their obligations should be envisaged. It could even be desirable to consider the possibility of extending the scope of the Directive by way of a new instrument.

In any event, EU support to crime victims should be given a higher priority. One of the primary tasks of a State is to guarantee the safety of citizens. If we fail to do this, it must be our political priority to ensure that we do everything in our power to help those subjected to crime as much as possible, by providing assistance and taking protection measures before, during or after any trial, and outside the trial process itself. The most vital thing is to try to repair the harm caused to the victim by addressing their needs in the best possible way, including by way of offering compensation for the losses suffered.

Second, we should avoid having procedures in place that make the situation worse for victims than it need be and protect people from becoming victims again. Particular attention should be paid to the problem of multiple victimisations. There is a small proportion of the population that is victimised more often and thus needs special attention.

Third, we should give victims the assistance they need during proceedings. In this respect we should pay special attention to the most vulnerable groups. We should give everybody the possibility to be heard in the proceedings and this all the more so for those who have difficulty having their voice heard, such as children. Our preference would be to promote concrete, technical measures such as hearings by videoconference so as to avoid contact with the offender/public or the provision of child friendly rooms.

Another important issue is the creation and further development of victim support. We should help national victim support organisations to offer a good service throughout the European Union. We should also provide training to judicial and police personnel to deal with victims as well as raise public awareness in general.

Also the potential role of restorative justice in criminal proceedings should be taken into due account. The framework decision of 2001 provides an obligation for Member States to promote mediation for offences which they consider appropriate and to ensure that agreements between the victim and the offender reached in the course of such mediation can be taken into account. The effective implementation of this provision by Member States seems to be still questionable and subject to further improvements.

In general, revision and consolidation of legislation in this area should be considered. New legislation should enhance the victim's position during the entire judicial process, including pre- and post-trial measures, and address the following issues:

- Compensation, (*inter alia* by considering extending the scope of the Directive to provide for a more effective compensation regime);
- Protection;
- Assistance;
- Special provisions for vulnerable victims, with particular attention to child victims;
- Support for the activities of victim support organisations acting at national or regional level, such as training of judicial, police and all other relevant personnel coming into contact with victims.

2. INCREASE LEGAL CERTAINTY IN FAMILY, COMMERCIAL AND CIVIL LAW

2.1. Family Friendly Europe

2.1.1. The situation as it stands

A particular consequence of the increased mobility of persons within an area without internal frontiers is a significant increase in marriages and other forms of unions between nationals of different Member States or the presence of such couples in a Member State of which they do not have the nationality. The number of cross-border divorce and separation cases has increased as well. The disintegration of family involves, given an international context, manifold legal problems. Besides, more and more people work in other countries and leave their children and family members behind which has contributed to an increasing number of cross-border maintenance claims. From all this follows that family law in Europe is gaining in practical significance and that solutions that facilitate our citizens' lives are needed.

In the last number of years, some progress has already been made in the field of family law. The Brussels I and Brussels IIa Regulations, adopted respectively in 2000 and 2003, provide for international procedural rules for maintenance obligations, matrimonial matters and issues of parental responsibility. Such procedural rules lead to greater legal certainty and an acceleration of proceedings. The Directive on mediation which was adopted recently is another useful instrument as it will encourage parties to resolve disputes amicably.

Two other instruments are still being discussed in the competent working parties of the Council of the EU: The Regulations proposed by the Commission in December 2005 and July 2006 on maintenance obligations and divorce law.

Amongst others, the Commission's proposals contain provisions on the unification of conflict of law rules in these areas for the first time. In addition, the proposal for a Regulation on maintenance obligations is intended to strengthen administrative cooperation between Member States and to eliminate the remaining obstacles in the procedure for recognition and enforcement (so-called abolition of *exequatur*) as well as reinforce enforcement in practice. In this respect, the Regulation is meant to go further than the Hague Convention on Maintenance Obligations and the respective Protocol on the Law Applicable adopted in November 2007.

2.1.2. Short-term perspective

Before defining the mid-term or long-term perspectives in the field of family law, it seems necessary to reflect on the short-term perspective, which includes a brief evaluation of the current stage of negotiations on the above-mentioned proposals. The outcome of these negotiations will allow a clearer estimation of what is still needed on the one hand and feasible on the other hand.

With regard to both proposals, the ongoing discussions in the Council show that there are still some outstanding problems to be solved. Those problems reflect the fact that family law is an area that is particularly influenced by the national cultures and traditions of the Member States. Sensitivities with regard to family and marriage are at the core of Member States' traditions and beliefs and it is not without any reason that in this field unanimity within the Council is still required - and will continue to be after the entry into force of the Lisbon Treaty.

From this follows that quick progress in the area of family law is difficult to achieve.

It remains to be seen what the contents of the future instruments will be. The abolition of *exequatur* envisaged in the Regulation on maintenance obligations could have a broad or a narrow scope of application. It could be restricted to decisions on maintenance claims in respect of children only or include other creditors, too (spouses, former spouses, same sex partners or spouses, parents, persons related by affinity, persons related collaterally etc.). The existing rules in the Member States with regard to the underlying question which persons can be possible creditors of maintenance claims vary considerably.

The expected proposal for a Regulation concerning matrimonial property regimes also falls in the category of a short-term perspective. Since this proposal has not yet been presented by the Commission, however, no estimation of its success can be made at the moment.

2.1.3. Further perspectives

Although it is true that family law is a sensitive area given the different moral concepts in the Member States, it is also true that those concepts change - they have done so considerably during the last decades. This in itself is reason enough to continue the work in this area of law.

At the outset, it is important to assess in which areas further legislative measures are necessary. Even more important than promoting further legislation, however, is the proper functioning of already existing instruments. Community instruments must be applied properly in the Member States and the Conventions adopted within the framework of The Hague Conference on Private International Law must, where appropriate, be signed, ratified and implemented.

Regarding future legislative work, the abolition of exequatur should be a general objective. However, the abolition of exequatur should only be extended to those areas in the field of judicial cooperation in civil matters where the rules on applicable law have been harmonised and this following thorough assessment of its consequences. Furthermore, it is essential to provide for sufficient legal safeguards e.g. the setting of minimum standards or common rules on specific aspects of civil law procedures and relevant conflict-of-law-rules.

Especially decisions related to parental responsibility handed down by courts in one Member States lead to difficulties. Therefore a thorough assessment is necessary before further steps like the free circulation of such decisions within the EU can be envisaged.

Furthermore, it should be assessed what obstacles prevent speedy recognition of marriages and other civil status acts in the Member States and what steps could be undertaken with a view to making recognition easier, taking into account the conflict of law rules and all available international instruments. This does not require harmonization of substantive law, while keeping in mind the sensitivity of this area.

However, perhaps even more important than promoting further legislation is the application and proper functioning of already existing instruments.

In particular, great importance should be attached to the instauration and supervision of common cooperation bodies (e.g. Central Authorities) introduced by EU law and/or international conventions as well as to other forms of cooperation. Such mechanisms can provide an important added value for EU citizens in general and especially in the field of family law, where the disintegration of the family unit may place spouses in a weak position and children in difficult circumstances. In such a situation, the additional problems linked with filing or facing a lawsuit in another Member State could be too much of a burden for them. Thus, based on close cooperation between Central Authorities of either State a frictionless cooperation and exchange of information between the Member States as well as between practitioners (lawyers and judges) should be guaranteed in order to facilitate our citizens' lives. Pragmatism and flexibility should be the guidelines (the SOLVIT network could be inspirational as the existing and future instruments developed by the Hague Conference: iChild, INCASTAT and iSupport).

Furthermore, judicial cooperation in family matters is not important only within the Member States of the European Union. Thus, relations with candidate countries and potential candidate countries should be, because of its perspective, seen as privileged relations.

There are high expectations on increased mobility in those countries; therefore legal basis should be examined, especially whether existing legal basis is sufficient with respect to different family law situations. Special attention should also be given to functioning of central authorities and other means of assistance in such situations.

Moreover, family law matters should be one of the important priorities in relations with third countries. Extent and means of cooperation depends on the historical, sociological, geographical, economic and political ties with the particular country. Without excluding possibilities of bilateral agreements it seems that the most appropriate framework for such relations is the Hague Conference on Private International Law with its existing and possible new international instruments that could create good grounds and bridges to other countries, especially those in other continents.

In conclusion, it should be underlined, that the development of the family law instruments and practices in Community and within Member States on the one hand and in relations with third countries on another will bring best results for citizens not only within EU but also in a broader sphere.

2.2. Better Justice for Citizens and Businesses

Europe should mean less bureaucracy in order to boost European businesses' competitiveness. EU law should be tantamount to making life easier for citizens. New technologies make it possible to drastically reduce many of the administrative obligations weighing on European businesses and citizens' daily life that result in unnecessary costs.

In the near future it should be possible to match EU legislation and information technologies in order to deliver value added solutions for citizens and businesses. Our common goal should be to bring justice to the internal market, instead of bringing the internal market to justice by relying on the ECJ case law.

We see the need for internal market friendly measures in two fields: enforcement of judgments and provisional measures and rules on conflict of law.

2.2.1. Enforcement of judgments and provisional measures

Several independent international reports have confirmed that delays in payment are an obstacle to the proper functioning of a market, generating liquidity problems and compelling undesirable recourse to credit thus increasing the overall costs of activity. (E.g. European Payment Index 2007). Effective measures on cross-border enforcement, including measures to improve information about national law and cross-border cooperation or the sensible use of E-Justice-tools may be steps to prevent insolvency.

The internal market objective will be endangered if enforcement rules applicable to a foreign decision are sometimes unnecessarily cumbersome. Presently, the fundamental freedoms allow for the swift uncomplicated transfer of assets across borders. The most unfortunate drawback is nevertheless the possibility for debtors to hide their assets and go through sometimes slow national court proceedings for enforcement. Therefore, it would be useful to address the problems related to costs and length of cross-border proceedings. Any improvements reducing the costs of proceedings making justice more efficient will directly improve the situation of the European citizens and businesses.

Although included in the 1999 Tampere conclusions and in the 2000 mutual recognition programme as part of already the second stage of implementation, matters relating to enforcement of judgments and provisional measures are still underdeveloped despite their practical importance for citizens.

The situation as it stands:

The EU has existing aquis on insolvency proceedings and on combating late payment in commercial transactions (harmonisation of substantive law).

The Commission has launched initiatives improving the efficiency of the enforcement of judgements by Green Papers on "The Attachment of Bank Accounts" and "The Transparency of Debtors assets". These will followed up as appropriate.

There are certain problems in legislating in this field. Enforcement is closely linked with the exercise of national sovereign authority. Secondly, recognition of provisional enforcement measures is a sensitive matter as before a decision is rendered there is a particular need to ensure that defendant's interests were duly and sufficiently taken into account. We have diversity of enforcement systems, national court proceedings lack the use of modern technology. Finally, data protection related issues have to be taken into account.

The way forward:

There are certain possible points of development, such as

- Promote recourse to non-legislative instruments that may expose current problems and good practices;
- Provide on-line information about national enforcement and provisional measures to practitioners from different Member States based on the content already presented on the web site of the European Judicial Network in civil and Commercial Matters(e-justice using the e-portal);
- Promote IT-based implementation of EU instruments like the European payment order regulation and the Small claims regulation for better cross border access to justice;
- Promote cooperation between judicial authorities, e.g. the European Judicial Network in Civil and Commercial Matters;
- Promote access to on-line registers in other Member States and direct cooperation between registers by electronic means (e-justice);
- Evaluate and where necessary revise existing instruments, analysing the existing law in the Member States and on the basis propose new legislative instruments (including the review clauses of the existing ones) that take into account the sensitiveness of the issue and the cross border element.

2.2.2. Rules on conflict of law

The problems in this area are for legal certainty. On the basis of the principle of freedom of establishment (Art. 49 EC Treaty), the ECJ has recognized the possibility of a company to incorporate in one country and have the head office in another.

In the specific cases analysed the court seemed to be in favour of the “principle of place of incorporation”. It is not clear if it is possible or not to maintain the principle of “real seat” as it leads to great legal uncertainty thus increasing risks and related costs for companies.

The lack of consistency between Member States' laws has had repercussions in community law in various subject-matters. As such, in different fields of law different criteria exist:

- In insolvency proceedings, a presumption is used in favour of the place of registered office through the concept “centre of main interests”.
- In the context of the law applicable to contractual and non-contractual obligations (Rome I and Rome II Regulations), the main criterion used to determine the location of the company is the place of central administration.
- As regards jurisdiction in civil and commercial matters (Brussels I Regulation), several different criteria were established allowing the plaintiff to sue the company in any one of those locations. However, the respective scope of application of the different EC regulations has been carefully and strictly defined by these regulations and eventually by the European Court of Justice case law, with the aim to ensure consistency and to avoid forum/law shopping.
- Under taxation law, with some possible exceptions, the relevant location to determine the fiscal residence of a company is in principle the place of effective management.

There are certain difficulties in legislating in this field. Each system has its advantages and disadvantages and until now Member States have not seem ready to make compromises in this field. Secondly, the issue of the transfer of seat is too sensitive and may not be possible to tackle.

The way forward

In the light of the ECJ's case law sooner or later it will be necessary to clarify whether or not, and to what extent the two existing approaches on conflict of laws may continue to apply and if so, how this could be brought in conformity with the requirements of the proper functioning of the internal market. A serious examination on the problem of the conflict of law rules applicable in this field should be undertaken. Existing studies should be taken into account.

2.2.3. Work on the Common frame of reference in the area of contract law

The area of contract law, mainly in the consumers law field, has been under serious discussion and academic examination for several years in order to find European solutions. The work should be continued with the aim of achieving greater coherence and higher quality of Community legislation.

2.2.4. Other measures

There are also come ancillary areas of the civil justice cooperation that require elaboration in the future to promote the sound environment for cross-border business such as service of documents, information and proof of foreign law and legal aid. Existing EC- instruments like e.g. the legal aid directive or international instruments like Hague Conventions or Conventions in the framework of the Council of Europe should be taken into account.

3. ACCESS TO JUSTICE AND JUDICIAL COOPERATION

3.1. EUROJUST and Judicial Networks

Fight against cross-border crime in the European Union is one of the key objectives of area of freedom, security and justice. The development of legal instruments to facilitate and enhance judicial cooperation in criminal matters has therefore been in the centre of legislative work of the European Union over the last years and while significant progress was achieved much remains to be done.

Judicial cooperation in criminal matters has traditionally been dealt with on the basis of bilateral agreements on extradition and assistance in criminal matters. Some multilateral agreements – such as the Council of Europe’s conventions – have improved the cooperation. However, by establishing the principle of mutual recognition as the cornerstone of judicial cooperation in criminal matters, the European Union has introduced radical changes in this cooperation in particular that decisions taken in the various stages of the judicial process are directly recognised and executed between EU Member States.

The first example of this new cooperation method was the Framework Decision on the European Arrest Warrant, followed by a whole series of other framework decisions, some of which have still to be implemented by the Member States.

3.1.1. The situation as it stands

European legislative work will only be successful if Member States and its judicial institutions responsible for law enforcement use the existing instruments to fight especially organised crime in Europe. In addition the principle of mutual recognition requires mutual trust between Member States.

One of the key elements to achieve both objectives was to improve communication between judicial authorities. Sometimes information such as missing addresses and telephone numbers brought judicial proceedings to a halt. For the current practical work across borders it is essential to receive necessary information quickly and to get assistance in urgent cases without going through diplomatic channels while keeping the whole process a purely judicial one.

It was the establishment of the European Judicial Network in criminal matters which enabled national contact points to facilitate mutual legal assistance through direct contacts between competent judicial authorities and thus identify the competent executing authority. The European Judicial Network is therefore a corner stone for practical cooperation especially to use European instruments such as the European Arrest Warrant.

The second column of judicial cooperation in criminal matters is Eurojust. The idea was to effectively improve judicial cooperation between Member States by facilitating coordination of action for investigations and prosecutions involving more than one Member State. Eurojust facilitates the execution of international mutual legal assistance and extradition requests and supports the competent authorities of the Member States in order to render their investigations and prosecutions more effective.

Eurojust plays a particularly important role in facilitating direct bilateral or multilateral contacts between the judicial authorities involved in cross-border cases and adds value by speeding up exchanges and finding solutions. It also helps Member States to make contacts with third States, including those with which it has concluded a cooperation agreement, as well as improves coordination with EU agencies such as OLAF and FRONTEX.

The Lisbon Treaty confirms the important role of Eurojust for judicial cooperation and possible ways forward with regard to task and structures. At the same time it states that formal acts of judicial procedure shall be carried out by the competent national authorities.

3.1.2. Problem

The European Judicial Network in Criminal matters is built on the close cooperation of contact points and their ability to react quickly when another Member State's judicial authority needs legal and practical information and assistance in a specific case. Direct and speedy cooperation is only possible if contact points may use a well functioning and secure telecommunication network and if the network provides an up-to-date background information for cross-border cooperation.

After the first difficult years of work Eurojust has now reached a position where more and more Member States and their judicial authorities acknowledge its important role for Eurojust to fight organised crime across borders. The number of cases has increased considerably (over 1,000 in 2007). Yet, Eurojust still has unused potential. It is therefore essential that Member States and their judicial authorities actually use Eurojust for coordinating prosecutors and provide Eurojust with sufficient information to enable a better coordination and communication in multi-member states cases. There still is not enough flow of information from Member States and its authorities to Eurojust and from Europol to Eurojust.

In addition work inside Eurojust should be improved. The different status of its national members and the support by Member States differs considerably. National members should be enabled to play an active and permanent role within Eurojust.

3.1.3. Recommendations

In order to facilitate an effective and – as far as possible - direct judicial cooperation between Member States the following steps may be envisaged:

- **European Judicial Network in Criminal Matters:** The EJM should be provided with the necessary resources to achieve this objective. In respect of human resources, Member States will need to ensure a careful selection and training of EJM contact points so as to enable the network to cope with the growing complexity in the field of judicial cooperation.

The secretariat of the EJM needs to be equipped with sufficient financial and technical resources to fulfill its function as a facilitator of the network. While maintaining its autonomous role and primary instrument for assisting in handling bilateral cases of judicial co-operation between Member States, an effective mechanism of communication and co-operation with Eurojust needs to be developed, that can ensure appropriate decisions on a case-by-case basis, whether Eurojust or the EJM is best equipped to handle certain cases. Sufficient information and communication systems and tools need to be in place in order to ensure an effective exchange of information between EJM contact points and Eurojust. In particular, the EJM will need to ensure that information on relevant instruments of cross-border cooperation and the information on Member States legislation and practice as well as relevant data on competent authorities are kept up-to-date on a regular basis. To this end, the EJM will need to put particular emphasis on the development of respective tools for recently adopted instruments of mutual recognition.

- **European Judicial Network in Civil and Commercial law:** The European judicial network in civil and commercial matters functions since 2001, with the main aim to improve, simplify and expedite effective judicial cooperation between the Member States in civil and commercial matters. It is composed of central contact points designated by member states, central bodies provided for community instruments, liaison magistrates and other judicial authorities.

While the work of the EJM in civil and commercial matters can be considered as success, there is always space for improvement. When we aim to consolidate the acquis and ensure its full implementation, the scope and the role of the EJM in civil and commercial matters should be extended. The Commission will issue a proposal concerning the EJM in near future.

- **Eurojust:** Eurojust should be further strengthened in order to be able to more effectively carry out its functions to facilitate judicial cooperation and to stimulate and improve coordination of criminal investigations between the competent judicial authorities in the Member States. To this end the status of national members should be improved. Member States will need to ensure that their national desks at Eurojust are fully functional on a regular basis. National members should be assisted by a deputy and further assistance in order to allow the national desk to be operational also in the absence of the national member. The schedule of appointment of national members, deputies and assistants by the Member States should ensure an effective exercise of their functions at Eurojust. Eurojust needs to ensure that all national members (or their deputies or assistants) can be reached in urgent cases on a 24/7 basis. For this purpose Eurojust shall install the necessary systems and provide the appropriate staff. Member States shall ensure that their national member (or deputy or assistant) can also in urgent cases take appropriate action or request such action by the competent judicial authorities in their Member State.

Additionally, Member States should encourage their judicial authorities to make more use of Eurojust in its capacity of coordinating body. Eurojust should receive the required information from competent judicial authorities in order to be able to fulfill its task of coordination. The objective should be to offer a forum for coordination which is accepted by national judicial authorities based on demonstrated ability of Eurojust to provide added value in cross-border cases of criminal investigations in particular in the fight against organized crime and terrorism. Additionally, the flow of information and level of cooperation between Eurojust and Europol as well as other agencies should be improved.

At national level, all Member States should ensure that one or more national correspondents are designated as facilitator of communication between competent judicial authorities and Eurojust whilst not interfering with the possibilities of competent authorities to communicate directly with the Eurojust national member of that state or his/her deputy or assistant. To this end, Member States will need to ensure at national level an effective system of coordination between competent judicial authorities, EJM contact points, the national Eurojust correspondent(s) and the national desk at Eurojust.

The role of the College should be strengthened in particular in its capacity to – when required – provide guidance in cases of conflicts of jurisdiction and apparent lack of preparedness of national authorities to provide judicial cooperation to the authorities of other Member States.

Clearly, progress needs to be made quickly on the above suggestions, many of which were included in the European Commission's Communication of 23 October 2007 on the role of Eurojust and the EJM. We should review the needs and possibilities to make use of the new legal possibilities which will become available with the Lisbon Treaty in order to further strengthen Eurojust and put it in a position to play an even more effective and pro-active role in the fight against organised crime and terrorism.

3.2. E-Justice

3.2.1. The situation as it stands

Since the Informal Council during the German Presidency, in January 2007, stressing that information technology should become a priority topic at European level several general policy lines have been agreed at Council level. One of the core issues is to create a specialized website (portal) for citizens, which would regroup all existing E-justice applications for cross-border use with other interactive applications with an added value for EU citizens. The Commission will issue a Communication in spring 2008 as a contribution to this future work.

Decentralization, development of projects on a voluntary basis, and respect of the legal context have been stressed as main principles. Project can start on basis of pilot projects which could be joined by other Member States upon their decision and preparedness.

The Council with the support of the Commission, will be involved on the development of the European E-justice Portal within the previously agreed period of approximately 24 months (since 01/2008).

In the course of establishing the content of the Portal the Commissions' Communication should be taken into consideration. The Portal should include also the project of the integrated insolvency registers. In general integrating future online registers, direct co-operation between existing registers of Member States like Business registers, or similar functionalities shall be examined in the context of the portal as well as direct access to judicial procedures.

The Council also focuses on the possible use of cross-border videoconferencing. It is currently evaluating, with the support of the Commission, possible ways of cooperation in this field and best possible interaction with the European e-Justice Portal project. The ideas include the publishing of a handbook for performing cross-border videoconferences and other ideas facilitating the use of the videoconferences facilities across the European Union.

A number of initiatives already exist at European and national level regarding e-Justice initiatives. In this context the use of modern information technologies has consistently been encouraged by the Commission and the Council, both in the civil and in criminal field. Several instruments already adopted in the framework of the judicial cooperation in civil matters foresee this possibility, such as the European payment order, the Regulation on the taking of evidence and the European small claims procedure. Furthermore, the Commission has been managing since 2003, in close cooperation with the Member States, the "portal" of the European Judicial Network in civil and commercial matters accessible to the citizens in 22 languages. The Commission has also designed and set up the European Judicial Atlas, an electronic tool at the disposal of judges and legal practitioners, which enable them to handle on-line cross-border proceedings. These two tools can be used as basic elements for future development of the European e-justice framework.

3.2.2. Value added of European Action

The general ambition is to eventually create a one-stop access point to both European and national law, also granting access to various registers or providing some filing forms for judicial proceedings. This goal is very difficult to achieve but once achieved, it presents tremendous added value to both legal professionals and European Union citizens.

The opportunity to perform various administration related actions, for example to enquire the business register of another Member State, from home or from office is without any doubt improving the quality of life of the Portal users.

3.2.3. Recommendations

The ever-growing mobility of citizens and businesses across the EU brings about an increased need for well-functioning judicial systems in the steadily growing number of cross-border cases.

To address these challenges, a better use of modern Information and Communication Technologies (ICT) can be envisaged, as has already been the case for the public administration (e-Government).

In order to be able to reach the above mentioned goal, various aspects need to be taken into account. Most of all, a maximum use needs to be made out of existing technical solutions within both individual Member States and European structures, in order to avoid duplication. . Best practices should be collected in this area also in the future.

To further facilitate the use of the Portal, the function of automatic translations should be improved and the identity management system should be created. Also, standards in data protection should be developed.

3.3. Criminal records

3.3.1. The situation as it stands

In the context of E-justice one of the important priorities is to ensure an efficient and swift exchange of information on the criminal history of convicted individuals. This constitutes one of the important priorities of the EU since the Hague Program. In order to implement such priority of the Union, the first urgent measure was adopted in 2005 - Council Decision on the exchange of information extracted from the criminal record (2005/876/JHA).

This instrument should be replaced soon (before the entry into force of the Lisbon Treaty) by the recently negotiated Framework Decision on the organization and content of the exchange of information extracted from criminal records between Member States, concluded under general approach by the JHA Council in June 2007.

3.3.2. Value added of further European action

At the end of May the Commission submitted a proposal for a Council Decision on the establishment of the European Criminal Records Information System, aiming at the creation of an electronic system that will enable fast exchanges and facilitate the subsequent use of the information transmitted by setting up common categories of crimes, penalties and types of decisions of the judicial authorities, as registered in the national criminal records systems. This will enable in particular a better legal use of the transmitted information in the course of new criminal proceedings (e.g. for the recidivism purposes). However, unnecessary duplication of work should be avoided. The progress already achieved in this field by the existing Pilot project should be fully taken into account.

In order to extend the exchange of information on criminal records to third country nationals, the creation of a specific index is to be considered; its possibility, in particular the exact structure and content, is still to be examined.

The possible decision on the creation of an EU-wide register on convicted third country nationals will therefore have to be scrutinized carefully, especially questions such as to what extent elements of biometrics (as fingerprints) will need to be included. These questions will be examined on the basis of a study which the Commission will carry out.

3.3.3. Recommendations

In the framework of the judicial cooperation in criminal matters, the EU should concentrate on the further strengthening of the mutual trust and cooperation among judicial authorities, when transmitting the comprehensive information from criminal records databases, under the parallel respect for the personal data protection and in full compliance with the legal certainty principle.

In parallel, this abovementioned legislative effort of the Council should be inspired and should take over the best practice and good knowledge, already achieved in the strong framework of the Pilot Project Electronic Interconnection of the Criminal Records.

Moreover, exchange of information on criminal records can take place not only for the purpose of judicial cooperation in criminal matters but also for other purposes like access to certain employment where the criminal background of a person is particularly relevant (e.g. work with children). A system sufficiently developed to allow exchange of information from criminal records for other legitimate and necessary purposes can be therefore considered.

All the funding possibilities, in particular the Criminal Justice Program should be used in order to improve the national functioning of Criminal records data basis with a view to achieving the interconnection and the implementation of the newly adopted legal instrument as soon as possible.

3.4. Mobilisation of Legal Actors

3.4.1. The situation as it stands

The area of freedom, security and justice has continued to grow over the last few years. Concrete achievements have given it shape, for example the European arrest warrant in criminal matters, and the Brussels II a Regulation in civil matters. Henceforth, through applying the principle of mutual recognition, the decisions of European judges are empowered to be executed in another Member State. Such a system assumes strengthened mutual trust in the respective systems of Member States.

The legal actors have committed themselves through the networks they have put in place, thereby meeting a need for operational cooperation. Expansion of these networks has been constant. For example: European judicial networks in criminal, civil and commercial matters, the network of competition judges, the Network of Presidents of the Supreme Courts, and the Judicial Training Network. Another way of working has been established, preferring direct and informal relations between legal practitioners to traditional relations based on hierarchical powers.

Beyond distinctive national features, legal actors are aware that they face common problems: congestion of the courts, delays, trying to find a balance between speed of handling cases and respect for basic guarantees, optimisation of the use of public resources. In addition, the role of judicial systems in structuring the Rule of Law has expanded taking on a European dimension. Shared values, guarantee of their independence, effectiveness of their action, and many other subjects are evidence that legal practitioners are meeting and discussing their professions, and thereby laying the foundations of a European judicial culture.

Also, the circulation of judges has continued to increase over the last few years. This operates in the form of training courses organised by the European Judicial Training Network (EJTN), which, for the last two years, has enabled judges from one national court to spend time in a court of another State and share its work. Thus a true judicial community is taking shape, through the opening up of all professions in the judicial system.

This threefold development, involving enlargement of the European area, setting up of practitioner networks, opening up of these networks to a wider judicial world including everyone that works in the judicial system (barristers, notaries, judges, staff involved in education), must be accompanied by encouragement for the mobilisation of legal actors in order to better involve them in drafting the instruments they will have to implement.

3.4.2. Dissemination of a judicial culture

The dissemination of a judicial culture shared by all Legal Professionals should be a priority objective for the future.

- Although the setting up of the European Judicial Training Network, by Decision of the Union Council of 28 May 2001 was a decisive step, it must be reinforced and further developed.

The Commission's communication of 29 June 2006 setting out three priority objectives (better understanding by professionals of the Union's legal instruments, better mutual understanding of the legal systems of Member States, improvement in language training) is part of this requirement.

Disseminating a judicial culture shared by all professionals in the judicial system means wanting to increase the mutual trust that should exist between both judges and prosecutors of Member States who work daily in the legal system, and the citizens and judicial systems of our countries.

- It is necessary above all to disseminate the judicial culture to all actors in the judicial world first of all to judges and prosecutors, but also in the long term to lawyers, notaries, educators, etc.

The development of electronic justice and all its potential is a favourable factor in mobilising legal actors, as it enables them to increase contact with one another and exchange information more readily.

- This training to achieve the objectives that have just been described should be directed towards:
 - training in foreign languages,
 - thematic sessions on practical subjects (fight against terrorism, mediation) corresponding to the implementation of instruments adopted by the European Union,
 - training of trainers in conjunction with the different schools and institutes,
 - a shared discussion on ethic matters.

4. FIGHT AGAINST ORGANISED CRIME, INCLUDING TERRORISM, WITHIN RULE OF LAW

4.1. The situation as it stands

The European Union has set itself an objective to provide with a high level of security in an Area of freedom, security and justice, even if the Member States are ultimately responsible for protecting their citizens. Today's major challenges for citizens' security include organised crime and terrorism, both of which constitute not only a direct threat to the European people but also to the values on which the European Union is founded – democracy, peace and fundamental rights.

Regarding terrorism, the European Union Counter-Terrorism strategy, adopted first in 2001 and updated most recently in December 2005, constitutes a comprehensive and proportionate response to the international terrorist threat and sets out our objectives to prevent new recruits to terrorism.

It is built around four core elements: "*prevention*", "*protection*", "*prosecution*", and "*responding if attacks occur*" (preventing new recruits to terrorism; better protecting potential targets; investigating and prosecuting members of existing networks and improving our capability to respond terrorist attacks).

Important results have already been achieved, both before and after the adoption of the Strategy (e.g. the Data Retention directive, the access to the VIS for police purposes, the decision incorporating the Prüm Treaty into the EU, the Framework Decision on data protection on law enforcement) and other initiatives are under way.

4.2. The way to improve it

The European Union should continue eliminating obstacles to police and judicial cooperation in relation to serious crime using fast, reliable and user-friendly procedures to exchange information or evidence and thus enable effective investigations and prosecutions. At the same time we have to ensure a strict respect of the principle of proportionality and a high level of protection of fundamental rights.

4.2.a) Enhanced judicial cooperation

Under The Hague Programme, the European Council underlines that an effective struggle against organised crime, including terrorism requires Member States not to confine their activities to maintaining their own security but to focus also on the security of the Union as a whole. This will require increasing the effectiveness of day-to-day police and judicial cooperation within the European Union, if necessary by improving the legal procedures and practical tools of cooperation available to them.

For example, the European Evidence Warrant (EEW), already agreed but still far from being in force, is a first step in this direction. Because of the limitation of its scope it should be examined to what extent we need to further improve our instruments in this area in particular regarding the collection of new evidence and its admissibility in court.

The financial background of organised criminal or terrorist groups must also be tackled, e.g. by enhancing cooperation with the private sector (reporting on suspicious transactions) and making use of all available administrative and judicial powers to deprive these organisations from their financing (terrorism) and ill-gotten gains (organised crime).

The potential of Eurojust, in assisting and coordinating criminal proceedings in organised crime and terrorism cases must be underlined. We should make use of the new possibilities opened by the new Treaty to reinforce the Eurojust and put the Agency in a position to play an even more effective proactive role in the fight against terrorism.

The fight against organised crime and terrorism must be led by highly specialised prosecutors and investigators. Lack of experience and technical resources to fight organised crime and terrorism are challenges to be faced. Targeted training for prosecutors and judges must be improved.

The safety of persons involved in trials, as witnesses or accused persons, is put in particular danger in case of organised crime and terrorism-related trials; adequate measures for protecting these persons should be in place.

4.2.b) Fundamental rights

Organised crime and terrorism must be fought in full respect of fundamental rights. Any measures taken should be embedded in the rule of law.

On the one hand, the rights of citizens must not be endangered by the fight against organised crime and terrorism. Protection of the individual and liberty should be at the heart of any security measure being developed. This is particularly true as far as the right to privacy and data protection are concerned.

On the other hand, organised criminals and terrorists, like anyone else, must be entitled to a fair trial within a reasonable time by an independent and impartial tribunal.

In the field of extradition and expulsion to third countries, it's essential that the respect of fundamental rights and the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular the right to life and the prohibition of any kind of torture and inhuman treatments is ensured, both during and after the procedure is accomplished. At first hand focus should be on a broader perspective including support to the rule of law and good governance in third states in accordance with international obligations on human rights. As a last resort and in very limited cases the use of agreements could be considered. In addition, the conditions conducive to the spread of terrorism need to be tackled in countries where poverty and anti-Western resentment may lead to radicalisation.

4.2.c) Solidarity with victims

Focus should be on protecting the victims while looking at the same time for perpetrators. Solidarity with victims must be promoted at the European and national levels. It is of utmost importance to show victims that they have not been forgotten by society a second time over.

Every year on 11 March, the European Union dedicates a Memorial Day expressing its solidarity to all victims of terrorism and provide programmes to provide subsidies to organisations which represents interests of victims of terrorism. The solidarity towards victims of terrorism should be a common and shared one.

4.2.d) External dimension

Terrorist organisations have proved their ability to carry out attacks against any country in any continent. The "EU Terrorist Situation and Trend Report 2007" of Europol pointed out that almost all terrorist campaigns are transnational. A lot of them are carried out from countries located both inside and outside the European Union.

Thus it is clear that internal and external aspects of the fight against terrorism are interlinked. Fighting terrorism must be a central part of the EU's relations with third countries.

Agreements should include counter-terrorism clauses and technical and financial assistance must be promoted (see general chapter on external dimension).

4.2.e) Evaluation

In June 2006, the Commission has suggested a framework on how to evaluate the policies in the field of freedom, security and justice¹. Evaluating counter-terrorism policies is particularly decisive to ensure that these policies are really efficient against the threat and to know precisely their impact on fundamental rights (see general chapter on evaluation).

4.2.f) Possible concrete actions

The EU can provide real added value in the fight against organised crime and terrorism. Among the measures that we could envisage we could:

- Put in place an effective European Evidence Warrant with a general scope, applicable to all kinds of evidence and ensuring that it is "*user friendly*" on the basis of an evaluation of the first already existing Framework Decision (i.e. easy to be issued and to be executed for our judicial authorities).
- Enhance judicial cooperation, especially by using the European Judicial Network and Eurojust to eliminate obstacles to cooperation and regularly review the need for further legislative and other measures.
- Make full use of the legal basis provided for by the Treaties to enter into discussion with specific third states. Agreements could focus on a better system of gathering admissible evidence while at the same time safeguarding fundamental rights.

¹ Communication on evaluation of EU policies in the area of freedom, security and justice – COM(2006) 332, 28.06.2008

- Grant an effective protection to the persons endangered because of their involvement in trials.

5. THE EXTERNAL DIMENSION OF THE EUROPEAN AREA OF JUSTICE

5.1. The situation as it stands

In December 2005, the Council adopted the Strategy for External Dimension of Justice, Freedom and Security. The strategy underlines the need for the EU to engage in the work of both regional and international organisations and promotes the respect of human rights, the rule of law and international obligations and the strengthening of judicial and law enforcement capacities in third countries.

Moreover, in the strategy the following guidelines were taken into account: the existence of internal policies as the major parameter justifying external action; need for added value in relation to projects carried out by the Member States; contribution to the general political objectives of the foreign policies of the Union. The link between justice, freedom and security issues, Common Foreign and Security Policy, European Security and Defence Policy and development policies of the EU were underlined.

The external dimension of the European justice area gains more and more importance in a globalize world. The ever-growing sophistication in organised crime and terrorism can only be struggled through improved judicial cooperation with third countries. European citizens or businesses are not restricted to the EU area; a clear external strategy has the potential to facilitate their situation significantly. Our *acquis* plays a vital role in the EU's external influence. The EU seeks to promote stable, prosperous and secure democracies around the world and to export the values underpinning the area of freedom, security and justice inside the EU.

This is the reason why the external dimension concerns both civil law and criminal law. The areas of private international law that fall under the European Community external competence because of internal Community legislation are increasing, with complex legal consequences necessitating solutions (e.g., the need to create a legal mechanism providing for the authorisation to Member States to conclude agreements with third states in the civil justice areas, falling under the exclusive EC competence, where the EC itself has no interest in such agreements).

This is a highly sensitive area that needs to be tackled. In the criminal law area the Union is perceived more and more as a common legal space by our international partners, both in the multilateral context (e.g. United Nations discussion on the legal definition of terrorism) and in the requests to complement or replace Member States International Agreements on Mutual Legal Assistance with single Union Agreements.

If there is a Community competence the European Union needs to speak with one voice to its partners both in bilateral and multilateral settings.

5.2. Where can we go?

The implementation of justice, freedom and security in external relations should be based on a wide range of instruments to be efficient: legal agreements with a justice, freedom and security chapter, common spaces, expert and ministerial meetings, sub-committees, declarations, action plans and agendas, monitoring and evaluation, and not least assistance programmes. The JHA external policy should be well prepared within the Council in order to define objectives and openly debated within the Council in order to achieve a coherent approach.

5.3. Thematic:

5.3.1. Judicial cooperation

As regards the judicial cooperation in civil matters with third states, the European Community will promote further its approach of judicial cooperation based on international agreements and negotiations at multilateral level (in particular the conventions of The Hague Conference on Private International Law, Council of Europe, UNIDROIT, UNCITRAL), bilateral agreements (European Union/third countries; Member States/third countries) and exchanges of the experiences and best practices. The basis for future work should be a coherent and well-balanced framework which should be prepared by the Commission and the Council, e.g. in the Civil Law Committee. The European Community in external relations will focus on cooperation with its partners inter alia as regards:

In family law area by promoting the accession to and implementation by third states of important international instruments in this area, and the supporting measures, e. g. mediation in family law matters, in particular through The Hague Conference that will deal with this subject in coming years. This area is of particular relevance to the ENP countries.

The international initiatives that are relevant to effective application of existing and future EC instruments dealing in particular with conflict of laws (the Regulations Rome I, Rome II, etc.). For these purposes the work in The Hague Conference on improving the access to the information on the content of foreign law will be important.

As regards better legal environment for its enterprises engaging in commercial transactions, the European Community itself is planning to accede to important international instruments in this area and to promote the accession to the relevant international instruments in this area by third states, in order to have stable legal framework for its business. Similarly, the European Community will support the work by The Hague Conference in order to promote the principle of party autonomy in international business transactions.

5.3.2. Geographical priorities

Bilateral and regional efforts need to be pursued. As to the latter, new regional judicial cooperation networks should be considered. Building on the positive experience with judicial networks of judges and prosecutors within the EU (European Judicial Network) and among Western Balkan countries (Western Balkan Prosecutors' Network), such networks could be launched in the Euro-Mediterranean area, building on the regional cooperation in the framework of the programme Euromed Justice, followed at a later stage by one in the South Caucasus.

As regards candidate and potential candidate countries, the dialogue, cooperation and assistance regarding judicial cooperation in civil and criminal matters in the pre-accession framework needs to be continued in order to facilitate the smooth integration of those countries upon accession to the EU.

Particular attention should be paid to the practical implementation of existing and future obligations, arising from their current or future status, to possible adaptation of the legal framework and to technical assistance for the implementation of the obligations.

As regards ENP countries, the approach will have to be more selective, both geographically and thematically, and if need be, take the form of bilateral agreements in the civil justice field. At the same time these states should be encouraged to join existing international conventions of the Hague Conference on Private International Law, Council of Europe and United Nations. The EU should advance beyond the current cooperation on the fight against drugs trafficking in Western Africa and Latin America, with a view to work toward a broader cooperation in JHA fields and promote the rule of law.

Considering the particularly close relationship with the Lugano countries (Switzerland, Norway, and Iceland), judicial cooperation in civil matters with those countries could be reinforced to other areas.

There is also scope for deepening relations with strategic partners. The protection of personal data that is exchange for law enforcement purposes is a recurrent issue in the relations between the U.S.A. and the EU. An international agreement which would provide a high level of data protection framework would be desirable and should serve to expedite future sector-by-sector agreements on information exchange. In the area of civil matters several subject matters have already been identified for the development of judicial cooperation with Russia which should be discussed within the Council to explore the future developments. The effects of globalisation and enhanced commercial ties may also require stepping up cooperation frameworks in civil matters with emerging economies such as China and India using the instruments of The Hague Conference on Private International Law.

Within the JLS policy field particular importance is attached to developing co-operation with international organisations, mostly in the fight against terrorism and organised crime, particularly supporting the key role of the United Nations. Besides the UN the EU actively supports and participates in the work of the Council of Europe and the relevant activities of the OSCE.

5.3.3. Financing

As the needs for concrete JHA intervention become more and more important it is also important to give careful consideration to an efficient use of the financing programmes within the 2007-2013 framework budget.

It would also be important to enable the Commission to contribute financially to the activities of international organizations in the area of justice, freedom and security, for instance The Hague Conference of Private international Law.

5.4. Possible concrete proposals

- Develop a consistent and coherent JHA external relations policy well prepared by the Commission and the Council. A new Trio-Presidency Programme for JHA External Policy is a first step in this direction and more steps need to be further developed.

- New Regional Judicial Cooperation Network should be considered. Such networks, based on existing positive experiences (EJN, Western Balkans Prosecutors' Network) could be launched at first in the Euro-Mediterranean area.
- Strengthen cooperation, support and assistance to candidate and potential candidate countries.
- Negotiations on bilateral agreements on judicial cooperation in civil and criminal matters could become - on a case by case-discussion in the Council - one of the tools for external relations while at the same time promoting the accession to international agreements by third states as a basis for future development.
- Agreements concluded with third States in the field of extradition and mutual legal assistance should also seek to provide maximum and binding guarantees for the fundamental rights of the persons concerned, namely the protection of personal data, preventing at the same time obstacles to the proper functioning of these mechanisms also with a view to the needs of an efficient international cooperation against terrorism.
- Encouraging and supporting Eurojust and Europol to conclude further cooperation agreements with third countries, while ensuring adequate protection of personal data.
- Increased coordination and cooperation with international organisations such as The Hague Conference on Private International Law, the Council of Europe, the United Nations and the OSCE on different thematic issues and to speed up judicial reform and capacity building.
- Promoting the development of data protection principles in order to contribute to the deepen of commercial relationships with EU partners while ensuring at the same time the protection of EU citizens.

SUMMARY

I. INTRODUCTION

The Tampere Programme (1999) has put in place the first major agenda for moving ahead in the area of justice. The Hague Programme (2004) and the Action Plan thereto (2005) have followed this same path. A Post-Hague Programme has to take into consideration new challenges in judicial policy while taking into account at the same time the new institutional framework laid down in the Lisbon Treaty.

The High-Level Advisory Group on the Future of European Justice Policy (Future Group on Justice), set up during the Portuguese Presidency, has identified the following challenges:

- Better protection of citizens
- Increase legal certainty in family, commercial and civil law
- Access to justice
- Fight against organized crime
- The external dimension of the European area of justice

II. HORIZONTAL ISSUES

There are a number of issues of a more horizontal character that are of importance for the further development in the area of justice and home affairs.

1. The role, structure and working methods of the Justice and Home Affairs Council

(number of Council meetings; planning and preparations of meetings; revision of the present structure; how to treat subjects, which touch upon the remits of several Council formations; better coordination and better planning of political priorities; the shortening of the legislative procedure's delay once citizens and businesses' needs have been clearly identified; streamlined agendas; files included only if mature enough for political discussions; clear identifications of political issues; usefulness of informal ministerial meetings);

2. Communication to the public

(responsibility shared between Member States and EU Institutions; more convincing presentations of achievements; new legislation explained; the use the European Justice Portal);

3. Quality of legislation and the need of clear language

(consistency, coherence; avoiding over-legislation; better regulation; legislation drafted in clear language comprehensible to citizens);

4. Implementation, impact assessment and evaluation

(full and effective implementation and enforcement of already existing instruments; better review and evaluation of how existing legislation works; defining the areas, in which supplementary legislation is needed; appropriate impact assessments as a general rule; developing a comprehensive evaluation mechanism);

5. Financial conditions

(forms of cooperation between the Commission and the Member States on the annual work programmes should be developed; the importance of the R&D programme; annual presentations and interim evaluation reports as instruments in analyzing the impact and the efficiency of the programmes; experiences taken into account to provide the best information and support as possible to applicants and others concerned on the financing programmes).

III. CHALLENGES

1. BETTER PROTECTION OF CITIZENS

Citizen's Rights in the European Union

The Common goal for Europe is to become a coherent area of freedom, security and justice.

Securing citizens' rights involves many different aspects:

- a) Strengthening citizens' rights in the law of criminal procedure - it is important to provide all citizens of the European Union with a basic set of rights as minimum guarantees if citizens are subjected to a criminal investigation. At least the rights arising from the proposal for a Framework Decision to strengthen the rights of the accused in criminal investigations and proceedings should be included. Additional steps could be addressed, for example, minimum rules in terms of the presumption of innocence, in order to secure citizens' rights.
- b) Improving the assertion of claims across national borders - examples of future steps include creation of a uniform European certificate of inheritance; creation of a network of existing national databases for wills and testaments; the opportunity to submit claims across national borders via electronic means.
- c) Strengthening the protection of fundamental rights by the European Court of Justice - the Lisbon Treaty will strengthen the relationship to the European Charter of Fundamental Rights. The accession of the European Union to the European Convention of Human Rights (ECHR) will also serve to enhance the protection of fundamental rights in Europe. It is important to monitor the actions of the Member States when they implement Community and Union law. The European Court of Justice will be asked to decide on the application and interpretation of the European Charter of Fundamental Rights – for example, within the scope of preliminary decision proceedings. Courts will be in a position to bring particularly urgent cases to a decision as soon as possible. An intensive dialogue between the Court of Justice and the national courts should be continued in order to accelerate motions in urgent cases for preliminary decisions relevant to fundamental rights.

Child Protection within the European Union

Ensuring child protection is one of the main challenges facing the European Union and its Member States. Over the coming years, we should focus on the following elements:

1. Greater security through common cooperation tools:

a. Possibility of a child alert network system: Developing a "Child alert network system" throughout Europe could offer the opportunity for cooperation, involving police and judiciary, the media and members of the public. In addition the system of central authorities under the Hague Convention should be strengthened in case of child abduction by a parent.

b. EUROJUST: Greater cooperation requires the role of EUROJUST to be strengthened in order for this organ of judicial cooperation to combat paedophile criminal networks effectively, in particular those who operate through the Internet. EUROJUST could pinpoint in its Annual Report specific areas, such as fighting child grooming (where children are enticed into agreeing to meet people in various places through contacts made on the Internet) to which all States could contribute.

2. Exchanging of experiences: When sexual offenders are released from prison after serving their sentence, they may remain dangerous to society. The Commission has indicated that it intends to draw up an inventory of the various measures implemented by Member States to deal with this problem. The results of the survey of the Commission should be evaluated carefully in order to show Member States possibilities of improvements for their national systems.

3. How to encourage children to believe that they belong to the Union? By making them play a part in building Europe: Use should be made of the child friendly website linked to the portal of the European Union; young people should be encouraged to log onto the site.

4. Fighting child sexual abuse in the internet environment: In cooperation with Member States, Europol, international organisations and private operators, the Commission is actively supporting the development of instruments to improve exchange of information and best practices on the fight against child sexual abuse material and child abuse, rapid cross-border law enforcement cooperation (including with third countries) as well as law enforcement cooperation with Internet Service providers and other private operators against such illegal content.

Duties of Law Enforcement Authorities and Protection of Personal Data Protection

The biggest dangers associated with electronic media are that they enable information to be stored for an almost unlimited amount of time; that their content can be cross-referenced with other databases and that the use of the information for purposes other than that for which they were collected represents a threat for individuals and for society as a whole.

An instrument harmonising national protection laws applicable to personal data collected or exchanged between Member States is being adopted in the framework of the cooperation and will represent an important step. The Union should pay particular attention to the effective protection of citizens living in the European Union against the risk of excessive or illegitimate use of their personal information, at the very least when the data is collected in or from a EU Member State. It is urgent that this major issue be the object of a collective, thorough and methodical reflection in close cooperation with the European Commission and the European Parliament with the aim of establishing an inventory of the measures to undertake in establishing progressively appropriate European legislation, including cooperation with third countries.

Effective protection of data in this context includes, in particular, five key requirements:

- Data protection rules are required for each specific area.
- Data protection rules must be proportionate and as precisely formulated as possible. In particular, these rules must appropriately take account of the particular intrusiveness that interference with basic rights entails in cases of data collection and data use for law enforcement purposes.
- Furthermore, it must constantly be ensured that the persons affected have effective rights to information, correction, deletion, blocking and compensation.
- An independent data protection supervisory authority exists with appropriate staffing and equipment resources as well as effective powers.
- Lastly, these requirements shall include effective protection of personal data to prevent unauthorized access and use by third parties.

Rights of victims

EU support to crime victims should be given a higher priority. In general, revision and consolidation of legislation in this area should be considered. New legislation should enhance the victim's position during the entire judicial process, including pre- and post-trial measures, and address the following issues: (1) compensation, (2) protection, (3) assistance, (4) special provisions for vulnerable victims, with particular attention to child victims, (5) support for the activities of victim support organisations acting at national or regional level, such as training of judicial, police and all other relevant personnel coming into contact with victims.

2. INCREASING LEGAL CERTAINTY IN FAMILY, COMMERCIAL AND CIVIL LAW

2.1. Family friendly Europe

In the last years, some progress has already been made in the field of family law. The Brussels I and Brussels II a Regulations, adopted in 2000 and 2003, provide international procedural rules for matrimonial matters, issues of parental responsibility and maintenance obligations. The discussions in the Committee on Civil Law Matters regarding the regulations proposed by the Commission in December 2005 and July 2006 on maintenance obligations and divorce law show that quick progress in the field of family law is difficult to achieve. It remains to be seen what the contents of the future instruments will be. The expected proposal for a Regulation concerning matrimonial property regimes also falls in the category of a short-term perspective.

Further perspectives:

- it is important to assess, in which areas further measures are necessary and to insure the proper functioning of already existing instruments;
- regarding future legislative work, the abolition of exequatur should be a general objective, under the condition of provided sufficient legal safeguards;
- before a free circulation of decisions related to parental responsibility handed down by courts in Member States can be envisaged an assessment of the actual difficulties is necessary;

- it should be assessed what obstacles prevent speedy recognition of marriages or other civil status acts in the Member States and what steps could be undertaken with the view to making recognition easier, taking into account the conflict-of-law-rules and all available international instruments;
- the application and proper functioning of already existing instruments is important;
- particular importance should be attached to the installation and supervision of common cooperation bodies (e.g. Central Authorities) introduced by EU law and/or international conventions as well as to other forms of cooperation;
- family law matters should be among the most important topics in relations with third countries.

2.2. Better Justice for Citizens and Businesses

Europe should mean less bureaucracy in order to boost European businesses' competitiveness. Our common goal should be to bring justice to the internal market, instead of bringing the internal market to justice by relying on the ECJ case law.

Enforcement of judgments and provisional measures: There are certain possible points of development, such as

- Promote recourse to non-legislative instruments that may expose current problems and good practices;
- Provide on-line information about national enforcement and provisional measures to practitioners from different Member States based on the content already presented on the web site of the European Judicial Network in civil and Commercial Matters;
- Promote IT-based implementation of EU instruments like the European payment order regulation and the Small claims regulation for better cross border access to justice;

- Promote cooperation between judicial authorities, e.g. the European Judicial Network in Civil and Commercial Matters;
- Promote access to on-line registers in other Member States and direct cooperation between registers by electronic means (e-justice);
- Evaluate and where necessary revise existing instruments, analysing the existing law in the Member States and on the basis of assessments that show actual and practical need for action, propose new legislative instruments (including the review clauses of the existing ones) that take into account the sensitiveness of the issue and the cross border element.

Rules on conflict of law: Member States' laws follow different approaches: the principle of "the place of incorporation", according to which the company is governed by the law of the country where it is incorporated/registered; or the principle of "the real seat" according to which the company is governed by the law of the country where its effective management/head office/principle place of business is located. In the light of the ECJ case law it will be necessary to clarify the two existing different approaches on conflict of laws may continue to apply even in detriment to the proper functioning of the internal market.

Common frame of reference in the area of contract law: Further work on the Common frame of reference could contribute to greater coherence and higher quality of Community legislation.

Other measures: There are also come ancillary areas of the civil justice cooperation that require elaboration in the future to promote the sound environment for cross-border business such as service of documents, information and proof of foreign law and legal aid, taking into account international instruments like the Hague Conventions and the Council of Europe.

3. ACCESS TO JUSTICE

3.1. EUROJUST and EJM

Possible concrete proposals:

European Judicial Network:

- careful selection and training of EJM contact points;
- sufficient financial and technical re-sources of the Secretariat of the EJM;
- development of an effective mechanism of communication and co-operation with EUROJUST;
- sufficient information and communication systems and tools need to be in place in order to ensure an effective exchange of information between EJM contact points and EUROJUST;
- development of respective tools for recently adopted instruments of mutual recognition.

EUROJUST:

- the status of national members should be improved;
- Member States need to ensure that their national desks at EUROJUST are fully functional on a regular basis;
- EUROJUST and Member States need to ensure that national members (or their deputies or assistants) can be reached in urgent cases on a 24/7 basis;
Member States should encourage their judicial authorities to make more use of EUROJUST in its capacity of coordinating body;
- EUROJUST should receive the required information from competent judicial authorities in order to be able to fulfil its task of coordination;
- the flow of information and level of cooperation between EUROJUST and Europol as well as other agencies should be improved;
- Member States need to ensure at national level an effective system of coordination between competent judicial authorities, EJM contact points, the national EUROJUST correspondent(s) and the national desk;
- the role of the college should be strengthened in particular in its capacity to – when required – provide guidance in cases of conflicts of jurisdiction and apparent lack of preparedness of national authorities to provide judicial cooperation to the authorities of other Member States.

3.2. E - justice

E-justice should become a priority topic at European level. The general ambition is to eventually create a one-stop access point to both European and national law, also granting access to various registers or providing some filing forms for judicial proceedings. The ever-growing mobility of citizens and businesses across the EU brings about an increased need for well-functioning judicial systems in the steadily growing number of cross-border cases. To address these challenges, a better use of modern Information and Communication Technologies (ICT) can be envisaged. A maximum use needs to be made out of existing technical solutions within both individual Member States and European structures, in order to avoid duplication. Best practices should be collected. To further facilitate the use of the Portal, the function of automatic translations should be improved and the identity management system should be created. Standards in data protection should be developed.

3.3. Criminal records

The European Union should concentrate on further strengthening of the mutual trust and cooperation among judicial authorities, when transmitting the comprehensive information from criminal records databases, under the parallel respect for the personal data protection and in full compliance with the legal certainty principle. The best practice and good knowledge, already achieved in the strong framework of the Pilot Project Electronic Interconnection of the Criminal Records, should be taken over.

A system sufficiently developed to allow exchange of information from criminal records for other legitimate and necessary purposes can be considered. All the funding possibilities, in particular the Criminal Justice Programme, should be used in order to improve the national functioning of Criminal records data basis with a view to achieving the interconnection and the implementation of the newly adopted legal instrument as soon as possible.

3.4. Mobilisation of Legal Actors

The dissemination of a judicial culture shared by all Legal Professionals should be a priority objective for the future. Disseminating a judicial culture shared by all professionals in the judicial system means wanting to increase the mutual trust that should exist between both judges and prosecutors of Member States who work daily in the legal system, and the citizens and judicial systems of our countries. The development of electronic justice and all its potential is a favourable factor in mobilising legal actors, as it enables them to increase contact with one another and exchange information more readily. The training should be directed towards:

- training in foreign languages,
- thematic sessions on practical subjects (fight against terrorism, mediation) corresponding to the implementation of instruments adopted by the European Union),
- training of trainers in conjunction with the different schools and institutes,
- a shared discussion on ethic matters.

4. FIGHT AGAINST ORGANISED CRIME

The European Union has set itself an objective to provide with a high level of security in an Area of freedom, security and justice, even if the Member States are ultimately responsible for protecting their citizens. Today's major challenges for citizens' security include organised crime and terrorism, both of which constitute not only a direct threat to the European people but also to the values on which the European Union is founded – democracy, peace and fundamental rights.

The EU can provide real added value in the fight against organised crime and terrorism. There are following possible concrete proposals for such measures:

- Put in place an effective European Evidence Warrant with a general scope, applicable to all kind of evidence and "*user friendly*" on the basis of an evaluation of the first already existing Framework Decision (i.e. easy to be issued and to be executed for our judicial authorities;

- Enhance judicial cooperation, especially by using the European Judicial Network and Eurojust to eliminate obstacles to cooperation and regularly review the need for further legislative and other measures;
- Make full use of the legal basis provided for by the Treaties to enter into discussion with third states. Agreements could focus on a better system of gathering admissible evidence while at the same time safeguarding fundamental rights;
- Grant an effective protection to the persons endangered because of their involvement in trials.

5. THE EXTERNAL DIMENSION OF THE EUROPEAN AREA OF JUSTICE

The implementation of justice, freedom and security in external relations should be based on a wide range of instruments to be efficient: legal agreements with a justice, freedom and security chapter, common spaces, expert and ministerial meetings, sub-committees, declarations, action plans and agendas, monitoring and evaluation, and not least assistance programmes.

Possible concrete proposals:

- Develop a consistent and coherent JHA external relations policy well prepared by the Commission and the Council. A new Trio-Presidency Programme for JHA External Policy is a first step in this direction and more steps need to be further developed;
- New Regional Judicial Cooperation Network should be considered. Such networks, based on existing positive experiences (EJN, Western Balkans Prosecutors' Network) could be launched at first in the Euro-Mediterranean area;
- Strengthen cooperation, support and assistance to candidate and potential candidate countries;
- Negotiations on bilateral agreements on judicial cooperation in civil and criminal matters on a case by case-discussion in the Council could become one of the tools for external relations;

- Encouraging and supporting EUROJUST and Europol to conclude further cooperation agreements with third countries, while ensuring adequate protection of personal data.
 - Increased coordination and cooperation with international organisations such as the Council of Europe, the Hague Conference, the United Nations and the OSCE on different thematic issues;
 - Promoting the development of data protection principles in order to contribute to the deepening of commercial relationships with EU partners while ensuring at the same time the protection of EU citizens.
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