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Vedr.: Rapport fra Fremtidsgruppen (politi og indvandring)

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Formandskabet tilsender Rådet rapporten fra Fremtidsgruppen (politi og indvandring), der er gengivet i dokument 11657/08 JAI 373, idet det anmoder Rådet om at gøre sig bekendt med denne og fremsende den til Kommissionen, for at Kommissionen kan tage hensyn til denne rapport ved udarbejdelsen af det program, der skal følge efter Haagprogrammet for perioden 2010-2014.

Den sammenfattende note fra gruppen, som formandskabet forelagde på det uformelle minister-møde den 7. juli 2008 i Cannes, fremsendes ligeledes.

I bilaget følger til Rådet de bidrag, der er modtaget fra de forskellige medlemsstater. Formandskabet anmoder Rådet om ligeledes at gøre sig bekendt med disse og fremsende dem til Kommissionen, for at den også kan tage hensyn til dem ved udarbejdelsen af det program, der skal følge efter Haagprogrammet for perioden 2010-2014.

I forbindelse med fremsendelsen af rapporten fra gruppen til Rådet understreger formandskabet, at der i rapporten henvises til de nye muligheder for handling, som kunne overvejes inden for en ny juridisk ramme. Denne henvisning foregriber naturligvis på ingen måde resultatet af processen med ratifikation af Lissabontraktaten.

**Sammenfattende note, der blev forelagt af formandskabet**  
**på det uformelle ministermøde**  
**den 7. juli 2008 i Cannes**

# Réunion informelle des ministres de l'Intérieur et de l'Immigration

## Cannes, 7 juillet 2008

### *Déjeuner de travail*

## **Présentation du rapport final des travaux du Groupe du futur**

En janvier 2007, notre collègue Wolfgang Schäuble a proposé la création d'un groupe informel de haut niveau chargé de réfléchir à l'avenir des politiques de justice, de liberté et de sécurité dans l'Union européenne. L'objectif de ce groupe était de rassembler des idées susceptibles de nourrir le programme de travail de l'Union pour la période 2010-2014.

Depuis, le Groupe du futur s'est réuni à six reprises, sous la présidence successive de l'Allemagne, du Portugal puis de la Slovénie, ainsi que de la Commission. Ses travaux ont débouché sur un rapport final, présenté aujourd'hui à l'ensemble des Etats membres. Ce rapport rassemble l'essentiel des idées ayant été discutées lors des réunions du groupe. Il doit permettre à chaque Etat membre de prendre connaissance de ces réflexions et, le cas échéant, d'y réagir. Au-delà, il doit constituer une source d'inspiration pour l'élaboration du programme qui succédera au programme de La Haye.

### **1. 2010-2014: les défis à relever**

Conscient des défis que l'Union européenne aura à relever dans la période qui s'ouvre, le Groupe du futur appelle à renforcer l'espace européen de justice, de liberté et de sécurité. Ces défis sont liés à des évolutions structurelles majeures, qui ont été identifiées par le groupe au cours de ses travaux.

Le premier est le lien croissant entre la situation intérieure de l'Union européenne et les pressions extérieures auxquelles elle se trouve confrontée, aussi bien du point de vue sécuritaire que du point de vue migratoire. Dans la période à venir, l'Union devra mieux prendre en compte cette réalité dans la définition de ses politiques de sécurité et d'immigration, en développant notamment la coopération avec les pays tiers.

Parallèlement, l'Union européenne est confrontée au développement continu des technologies, en particulier des technologies de l'information. L'adaptation à cette évolution représente un défi essentiel pour l'Union européenne, tout particulièrement dans le domaine des affaires intérieures compte tenu de l'importance que revêtent les échanges d'information entre les Etats membres.

En même temps, les citoyens européens revendiquent légitimement des garanties quant au respect de leur vie privée. L'Union européenne devra trouver les moyens de concilier la protection des données personnelles avec la mobilité croissante des individus et la nécessaire utilisation des ressources technologiques dans la gestion de l'immigration, le contrôle des frontières et la lutte contre le terrorisme et la criminalité organisée. La recherche d'un « modèle européen » en la matière pourrait constituer un objectif pour le futur programme de travail de l'Union.

## ***2. Quels moyens pour relever ces défis ?***

Le Groupe du futur s'est interrogé sur les moyens qui pourraient être utilisés par l'Union européenne pour relever ces défis. Il en a identifié plusieurs, dont voici les principaux.

- Echanges d'information: qu'ils soient organisés de façon centralisée ou directement entre Etats membres, les échanges d'information au sein de l'Union européenne doivent être poursuivis et enrichis, dans le respect des normes européennes de protection des données. Ces échanges nécessitent l'interopérabilité des fichiers mis au point par l'Union européenne et des matériels utilisés dans les Etats membres, aussi bien pour les systèmes d'information que pour les matériels de télécommunication et les équipements de sécurité.
- Culture commune: la culture commune aux services des Etats membres doit être progressivement enrichie grâce à l'essor des formations européennes communes et à la mise en place de réseaux européens d'experts. Cette évolution encouragera les échanges de bonnes pratiques, entre services, de façon à améliorer l'action de chaque Etat membre. A cette fin, l'apprentissage des langues étrangères devrait être pleinement intégré aux programmes de formation continue des services concernés.

- Compatibilité des cadres juridiques: la simplification de certaines procédures de coopération, l'adoption de procédures communes et le rapprochement des cadres juridiques dans les Etats membres permettrait de renforcer la coopération opérationnelle au sein de l'Union européenne, notamment pour les enquêtes criminelles et la gestion des frontières extérieures. L'approfondissement de l'acquis de l'Union devra être poursuivi dans certains domaines, lorsqu'il représente une plusvalue pour les Etats membres.
- Mécanismes de solidarité: des «modèles de solidarité» doivent être mis en place pour intervenir ponctuellement sur le territoire de l'Union européenne en cas d'urgence. Les «équipes conjointes» et les «outils conjoints », déjà pour partie appliqués à la gestion des frontières et à la protection civile, pourraient être renforcés dans les domaines existants et développés dans de nouveaux domaines. En outre, la mutualisation de certains équipements de haute technologie onéreux permettrait aux Etats membres d'en disposer dans le cadre d'événements exceptionnels.
- Clarification des rôles: sans préjudice de la dynamique liée à la mise en place d'un espace commun. de liberté, de sécurité et de justice, une compréhension claire des compétences actuelles des différents acteurs au sein de l'Union européenne (Conseil et Parlement européen, Etats membres, Commission) est souhaitable. Il s'agit, d'une part, de garantir l'efficacité des actions entreprises à chacun des échelons concernés; d'autre part, de favoriser l'intelligibilité de ces politiques par les citoyens européens.

### ***3. Vers un nouveau programme de travail***

Dans une première étape, l'Union européenne s'est efforcée de mettre en place des formes de coopération permettant aux Etats membres de faire face ensemble à des problèmes communs, par exemple la lutte contre les trafics de drogue. Dans un second temps, l'Union a organisé la mise à disposition de l'information entre Etats membres, à partir du principe de disponibilité figurant dans le programme de La Haye.

- Aujourd'hui, une nouvelle étape doit être franchie. Après une phase de rodage des outils mis en place jusqu'à présent, ceux-ci doivent désormais être pleinement exploités, de manière efficace et coordonnée. Né du constat selon lequel les Etats membres de l'Union rencontrent encore trop souvent des difficultés pour communiquer ou pour mettre en place une action commune, le *principe de convergence* peut servir de ligne directrice à l'Union européenne dans la période qui s'ouvre. Il serait appliqué à tous les domaines qui peuvent favoriser le rapprochement entre les Etats membres: rapprochement des agents, des institutions, des pratiques, des matériels, des cadres juridiques. Il permettrait de concevoir de façon globale et cohérente l'évolution de la politique de l'Union européenne en matière de sécurité et d'immigration dans le futur programme de travail.
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**Bidrag modtaget under udarbejdelsen**  
**af rapporten fra Fremtidsgruppen (retsvæsen)**

## NETHERLANDS

The contribution of the Netherlands to the Future Group, 27 March 2008

### § 1 Introduction

*The JHA policy is based on trust and practical collaboration (actual implementation of existing instrument) and should be geared to concrete needs (demand-driven new actions).*

In the field of the Justice and Home Affairs (JHA) policy several actions have already been taken, developed and commenced within the European Union (EU). A new JHA multi-annual framework after 2010 should of course follow up these actions and their results while at the same time supplement them. An important point of departure for the Netherlands is the question of what is actually needed in practice in the field of JHA collaboration within the EU. The Netherlands takes the view that practical measures are needed that highlight the added value of EU collaboration in the field of Justice and Home Affairs to citizens, politicians and enforcement authorities and, as a result, reinforce trust in such collaboration and hence in the JHA policy. New collaboration initiatives should focus on the solution of urgent problems occurring in various member states.

### § 2 Trust

*Trust among authorities and services and trust of citizens and politicians is the basis for JHA collaboration. Trust requires constant upkeep. Measures should be taken to realise this. According to the Netherlands it is important that measures are taken to maintain and reinforce such trust.*

Trust between the EU member states in one another's legal system and the administration of justice and in the European legal system and among EU bodies constitutes the basis for constructive and permanent collaboration in the field of JHA. Trust at all these levels is a prerequisite for proper collaboration in the field of JHA and justifies it. At the same time, trust is fed and reinforced by good results of JHA collaboration. Trust and collaboration, in other words, are communicating vessels. There should be trust at different levels:

- trust among the judicial authorities and the different police services to engage in cross-border collaboration;
- trust of citizens in secure rights wherever they are in the EU;
- trust of national politicians in the effectiveness of the JHA policy.

Given that trust is relevant at various levels, measures should also be taken at various levels.

### **Common standards in procedural law, processes and procedures**

Aside from monitoring the rule of law in the member states, trust in the operational collaboration may also benefit from trust in processes and procedures in the member states meeting certain standards. Perhaps this requires some harmonisation of procedural law, procedures and processes, to ensure that one enforcement authority knows that the other enforcement authority has observed certain procedures in obtaining information and evidence thereby inspiring trust in the results. For example, harmonisation of procedural law, but also of the common certification of processes and criteria for expert registers, reinforces trust in and thus the usefulness of products and results to which experts (e.g. forensic experts) contribute. In that respect common supplementary standards on the procedural rights of suspects may also contribute to mutual trust among both enforcement authorities and EU citizens.

### **Guaranteeing data protection by way of technologies**

The increased exchange of data requires a review of data protection. Both from the point of view of the citizens whose data is shared and from the point of view of the collaboration enforcement services that have to be able to trust that the data they supply is treated correctly and in conformance with agreements. Thus trust in one another's data protection regimens contributes to the success of the optimal exchange of data serving Justice objectives. Where such trust is inadequate, both the use of information systems and handling international requests for information will lag behind. Especially in the EU where technological developments have contributed to new generations of data exchange (immediate digital access, do-it-yourself rather than send and-wait, hit/no-hit) it may be useful to explore where technological developments may enhance the monitoring of correct access and correct access to data (logging, tracing, privacy-enhanced access control or authentication/certification, reliability, robustness and abuse prevention in privacy systems).

## Meeting

The Netherlands would like to emphasise the importance of meeting each other. Meetings between enforcement authorities strengthens mutual trust. Knowing one another, knowing how the other party works and discussing this with each other will reinforce trust. It is therefore important that we invest in meetings between enforcement authorities (the various services in the EU member states and the European forums, e.g. Europol, CEPOL, Eurojust and Sitcen) and in meetings between members of the judiciary, for example by organising discussions, joint training and education programmes. The Forum of practitioners as a networking opportunity as proposed by the European Commission may perhaps have a complimentary role in that regard.

## Monitoring

Monitoring one another in the field of the rule of law - and not just the new member states - is an appropriate method. Periodically, the member states jointly discuss the developments in the field of the rule of law in the EU as a whole and in the individual member states. Not in order to judge individual member states, but as an instrument that works both ways and to involve member states in reinforcing the rule of law in the EU. This contributes to trust among politicians and between enforcement authorities and citizens in the EU. In addition, member states gather information and knowledge about each other's legal system and its practical implementation, which in turn has collateral benefits.

### § 3 Practical collaboration

*Practical collaboration is strengthened by, on the one hand, focusing on the best possible implementation of existing instruments in practice. In addition, and on the other hand, supplementary or new measures should be taken, further to identified practical needs, to improve practical collaboration in the field of JHA.*

The effective, practical and coherent implementation of the acquis should be ensured. Lessons should be drawn from the outcome of the measures and, if necessary, follow-up steps should be taken. The following tools may be useful in that regard: monitoring and evaluation and sharing knowledge and experiences.

### **3.1 Optimal implementation through various ways**

There is a tendency to look for the solution in new legislative instruments and policy measures. The Netherlands takes the position that investments should in particular be made in optimising the implementation of existing measures in practice. Existing measures should be implemented in a timely fashion, comprehensively and structurally and maximum use should be made of them. If necessary, conditions should be created to facilitate this. More focus is needed on practical collaboration, the exchange of public officers, sharing knowledge and information and joint training and education. Such measures are required to effectively implement existing agreements, which in turn highlights the added value of EU and more specific JHA collaboration to citizens and thereby contributes to reinforcing trust.

#### **Optimising through monitoring and evaluation**

The monitoring option relating to implementation will increase in this field given that the Court's jurisdiction is extended under the Lisbon Treaty (infringement proceedings). This will better safeguard the implementation of agreed instruments. Monitoring is also important in respect of the measures taken in the field of the anti-terrorism actions. The CTC regularly (twice a year) reports on the state of affairs but such reports are too noncommittal. This procedure, however, is too noncommittal. Clearer consequences should be attached to failure to perform.

However, this does not mean that agreed instruments may not have same undesired side effects in practice or prove less effective than planned. By way of an evaluation it can be thoroughly assessed whether improvement proposals are required to better serve practical needs, e.g. by supplementary or alternative policy measures or legislative instruments. In that light it may also be reviewed whether the current evaluation method (as regards criminal law based on a mechanism adopted by joint action 1997), namely a questionnaire and a study visit, suffices. Given that no provision was made for an evaluation of all instruments it should be determined how the practical effectiveness of these instruments might be assessed, the consequences of the assessment, and which mechanism would be most appropriate to do so. Input from expert networks (European Judicial Network in Civil and Commercial Matters, Councils for the Judiciary, etc.) and the Justice Forum might play a complementary part in that regard.

## **Optimizing by sharing knowledge and experiences**

Joint training and education programmes for enforcement authorities of EU member states may increase operational collaboration. The Lisbon Treaty creates more opportunities for training and education. Joint training and exchange of experiences may prove most useful within an EU context in the sense that the exchange of best practices may lead to improved collaboration and better results in the joint fight against crime and terrorism.

Sharing experiences relating to issues that do not (yet) dominate the JHA agenda but nevertheless occur throughout the EU may contribute to improved collaboration. For example, problems in certain areas of major European cities: run-down areas, violence against government officials, radicalisation among citizens, the emergence of no-go areas and the proliferation of organised (small) crime. Although the resolution to such problems is not often sought in collaboration within the EU, sharing experiences about national actions and methods may have great benefits.

Three examples to illustrate the value of sharing knowledge and experiences. The Netherlands has gained positive experiences in administrative action against organised crime. This innovative approach is not yet known on an European level and the Netherlands would like to share its experience with other member states. It is important in that regard to examine the existing policies in that field in the different member states focusing on integrated action. The second example regards combating radicalisation. In that regard the Netherlands favours local action focusing on prevention, signalling and intervention. The role of local authorities, (community) police officers, teachers and juvenile welfare workers is crucial in that respect and focuses on collaboration in order to recognise radicalisation tendencies at an early stage. The objective is to revert the impending threat, whereby population groups feel alienated from society, isolate themselves and then rebel against that society. Practical collaboration, such as joint training exercises, and exchanging best practices between EU member states may make a useful contribution to the European action against radicalisation. In dealing with online extremism it would also be useful to share experiences on barring or blocking such content, self-regulation options or other measures with which member states have gained experience.

Other member states may have gained interesting experiences in other fields. Sharing and making use of these experiences, the exchange of successful action methods, the exchange of authorities and sharing information may optimise the collaboration between member states thanks to the more specific nature of the collaboration.



## **Optimising by joint exercises**

Aside from sharing knowledge and experiences it is also of vital importance to intensify joint exercises among the EU member states. This is of particular relevance to the field of disaster relief and emergencies measures. The greatest challenge in the future is the development of a coherent international cooperation between all parties involved in the international safety and security community. After all the common threats don't stop at our borders. The practical components of such collaboration are essential, including testing agreements by organising more (cross-border) exercises. This is a good opportunity to strengthen any weak links. The planned peer evaluations regarding preparedness and response of attacks may provide a good basis for this. This is not confined to emergencies measures after terrorist attacks, but also to managing an emergency after a natural disaster. A sound future mechanism of civil protection for all member states is not only a challenge in the near future, it is also a necessity. In case of emergencies it is important that the crisis is handled on a local level. If the crisis is too big to handle at this level European solidarity is of utmost importance. Member States can support each other by making use of self supporting operational modules. Transparency concerning finance of mutual assistance and a improvement of the EU Monitoring and Information Centre (MIC) can increase the efficiency of the emergency assistance as well. These principles of this renewed European crisis management system were stated by The Netherlands in a joint non paper together with Germany, Sweden, Finland, Austria and the UK recently.

## **National responsibility vs. EU responsibility**

Special attention should be drawn to the balance between national responsibility in the field of civil protection and the principle of solidarity within the EU. In order to sustain solidarity, the member states must first and foremost accept their own responsibility in the field, if necessary, with the assistance of other member assistance. Once the individual member states have taken all the necessary measures and preventive measures to avoid a disaster, the EU may subsequently show its solidarity where necessary.

## **3.2 New measures based on a demand-driven approach**

In each phase -prevention, investigation, prosecution and enforcement - it should be reviewed whether the operational collaboration is open to improvement. For example, by screening the results of collaborative instruments and agreements. In each phase, the practical needs should be examined, for example, the need for other kinds of collaboration or a more technical exchange.

### **3.2.1 Prevention**

In the post-Hague Programme more emphasis should be place on prevention of the types of crime and terrorism to which the JHA Council has given priority. After all preventing terrorist attacks and preventing certain problems from escalating is the starting point. Recommendations in this field have already been made in section 3 (prevention of terrorism and administrative action) and 4 (human trafficking).

#### **Prosecution and investigation**

According to the Netherlands further detailing the principle of availability (availability+) and seeing to one single sound follow-up trajectory is needed, whereby one single efficient evidence obtaining regimen in the EU is important. In addition, providing more direction of the different instruments, in particular in the fight against human trafficking, is important.

#### **Demand-driven further detailing of the principle of availability**

The current basic principle in the EU is formulated in the Hague Programme: throughout the EU a law enforcement authority in one member state may obtain information required in the performance of its duties from another member state and that the law enforcement authority in the other member state makes such information available with due regard to the interest of the pending investigations in that member state. In addition, it is essential that the conditions subject to which information is shared be sound. The performance of the law enforcement authorities must be reliable, their systems must be reliable, and the administration of justice must be in order.

Various systems have meanwhile been developed in the EU to realise this, e.g. Prüm (digital hit/no-hit questions) and the Swedish framework decision (classical question answer method but subject to a mandatory time-limit). And prior to the Hague Programme, various systems were selected to facilitate the exchange of data and access to such data, such as Eurodac and SIS. In addition, many kinds of information are still exchanged in the traditional way, i.e. on the basis of the question-answer system.

According to the Netherlands practical needs should act as the guiding principle for any plans for the future. It should examine what types of information are needed in practice and how expeditious its provision should be. After all not all information is urgent. Based on that, it might be reviewed by using the identified systems, which exchange systems are most suitable to the different types of information taking account of the specific nature of the type of information, opportunities, effectiveness and necessity.

By improving the exchange of information within the EU emphasis should not be on concluding new treaties or developing new instruments, but rather on the optimal implementation of existing instruments and treaties. In addition, available information of one domain might also be used for another domain (for example Eurodac on behalf of enforcement).

The exchange of information is not confined to information of police and judicial authorities, given that, especially in the field of human trafficking, other kinds of information may also contribute to completing the criminal file (for example public information of the Chamber of Commerce, disclosure of the names of managers of legal entities, information regarding social security, health and safety inspectorate). The exchange of such information has not yet been clearly embedded in the EU even though it may be relevant to completing criminal files.

### **Providing one effective evidence obtaining regimen**

The combination of the European evidence warrant ("EEW") and classical legal assistance is impractical. There should be a single regimen for obtaining evidence. An example: by means of the EEW existing documented evidence may be obtained through mutual recognition. However, other evidence such as evidence that still has to be gathered by means of coercion, for example by means of a telephone tap, still has to be arranged by following the traditional request for mutual assistance.

A rather laborious procedure for the operational legal practice. The Netherlands believe that obtaining all evidence should be regulated through mutual recognition as agreed in the Action Plan of the Hague Programme (Action Plan, page 18, item 4.2 (0)).

### **More direction**

Investigation and prosecution are inextricably linked with one another. Same areas have been prioritised. They involve the use of criminal law to protect our European shared norms and values. In our common awareness that we must continue the fight against any violation of such norms, steps have to be taken. A new incentive in further outlining an Intelligence agenda in the EU is needed. Thanks to our common Organized Crime Threat Assessment of Europol the risks are known enabling us to prioritise. The JHA Council sets these priorities. This is how we prioritised human trafficking. The implementation is however open to improvement. Concrete collaboration geared to these priorities between the EU member states involved may give a new incentive to international operational collaboration and bring to light any bottlenecks. There is no logical follow-up during better agreements on the actual action against prioritised cross border serious crime are concluded, in the sense of investigation and prosecution, focusing on the question which member states are prepared to actually initiate investigations further to EU prioritising. This requires more direction. There lies a stronger role both for Europol and Eurojust, working together. In that regard joint investigation teams must be used more often. Furthermore, the enforcement of the fight against human trafficking should be combined more with activities in the policy areas immigration and development assistance (section 4 external relations).

### **3.2.3 Implementation**

Within the scope of the Hague Programme attention was drawn to the implementation of policy measures and legislative instruments. Thus in the next phase emphasis has to be put on the optimal implementation of those policy measures and legislative instruments.

### **§ 4 External relations**

The world does not end at EU borders. Collaboration with other countries is necessary to combat serious forms of crime. As such we depend on each other. However, in that regard we also have to deal with countries in which human rights violations pose obstacles to collaboration in criminal investigations. Collaboration with such countries should therefore, aside from focusing on collaboration in the field of security, also draw attention to the protection of human rights.

## **Human trafficking, a priority**

Human trafficking is rightly often referred to as a modern form of slavery and a serious violation of fundamental rights of the individual. Strong action against human trafficking and smuggling is imperative. Human rights aspects should be observed in all stages of the projected actions. Action should revolve around the protection of victims. Efforts in the EU external policy in the field of human trafficking, smuggling and illegal migration may be further intensified.

Within the scope of the EU, joint attention and collaboration should focus on three aspects: preventive measures (including the development of capacity), effective enforcement and adequate protection of victims. Within the scope of prevention of human trafficking it may be reviewed where the use of so-called 'quick action teams' or a variety on such teams might be deployed more broadly in a joint EU context. The Netherlands started a pilot of these teams geared to combining expertise in the field document fraud and risk profiles and to respond quickly and flexibly to signals regarding striking changes in the flow of migrants and activities of human traffickers in the countries of origin of human trafficking. The EU lends its assistance to (development) countries with a shortage of capacity in the field of police and judicial authorities and/or in the field of victim care and the reintegration of victims of human trafficking in the countries of origin. However, more assistance is required in setting up effective law enforcement structures in countries that are a source of human trafficking. This is combination with improved exchange of information and collaboration between police and judicial authorities in those countries and that of the EU countries. In addition, in the field of human trafficking it is imperative to focus on the protection of victims and, where appropriate, one should strive for the victims' safe return to and reintegration in the countries of origin. In particular, in countries outside the EU, in which the human rights are not always properly observed, we as EU member states may work together more emphatically. For example, by preparing risk assessments focusing on the return to such countries, exchanging experiences, but perhaps also by collaborating in the field of the logistics of their return.

We may in fact apply all these elements (technical assistance, capacity building, exchange of information and collaboration) to the entire field of illegal migration, human smuggling and human trafficking. The dividing lines between these three areas are not clear: illegal migration and human smuggling may after all result in the kind of exploitation that is key to human trafficking.

## **§5 Asylum/migration/borders**

The proposed line regarding the asylum, migration and border policy is that the Hague Programme will be implemented and progress will be made. Existing policies must be implemented and evaluated and possible follow-up trajectories should be initiated. The French idea of a European immigration and asylum pact is in fact, aside from a few points, a further specification and clarification of the Hague Programme.

## **§ 6 Implications of the Treaty of Lisbon**

The Treaty of Lisbon provides that parliamentary involvement shifts to the European Parliament; broad political attention is also desired in contacts between Ministers and the fractions of the European Parliament. Furthermore, we should consider redefining the work areas of the councils.

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## FINLAND

Helsinki, 10 January 2008

### **PREPARATION OF THE NEXT MULTI-ANNUAL PROGRAMME FOR THE AREA OF FREEDOM, SECURITY AND JUSTICE – PRELIMINARY FINNISH VIEWS**

The Tampere Programme and the Hague Programme form a continuum which has, for a decade, provided a comprehensive framework for the area of freedom, security and justice within the EU. A balanced and coherent multi-annual programme is also needed after 2009. The new programme should ensure the monitoring and continuous assessment of the extensive work carried out during the past decade. Respect for human rights and support for democratic institutions must remain the fundamental values characterising the entire scope of the programme.

The new programme must be based on the full execution of the Hague Programme, effective implementation of the decisions already agreed on and extensive assessment of the existing regulatory framework.

When reviewing the Hague Programme in autumn 2006, the Justice and Home Affairs Council stressed the importance of the principles of subsidiarity and proportionality. In view of the different legal and administrative systems of the Member States, the Council also underlined the importance of impact assessment. Thus, one of our main aims must be the development of a comprehensive evaluation mechanism for the area of freedom, security and justice. The effectiveness of EU level action can only be improved by taking practical level experiences into account in future decision making. Improving the existing evaluation mechanisms will also support the objectives of better regulation and transparency. It is also important to maintain and further develop the current Schengen evaluation mechanism which draws on Member States' expertise.

The preparation of the new programme must be kept as open as possible. This will, later on, facilitate the actual implementation of the programme. It is important that all Member States can contribute to the preparations carried out by Presidency teams and the European Commission and that all Member States are regularly informed of progress made.

The Treaty of Lisbon introduces new possibilities for the forthcoming programme. The decision making will be more effective, the role of the EU institutions will be strengthened and legislative instruments will be the same as those applicable to the current Community policies (the first pillar). It is also necessary to take into account the declaration attached to the Treaty according to which institutions will work towards replacing, during the next five years following the entry into force of the new Treaty, as many as possible of the legislative instruments adopted under the third pillar with new instruments.

The entry into force of the Treaty of Lisbon will reinforce the Union's fundamental rights dimension. The provisions of the Charter of Fundamental rights will become legally binding. The competence of the EU Fundamental Rights Agency should be extended to include police cooperation and judicial cooperation in criminal matters. The Union must accede to the European Convention on Human Rights.

### **Border control, asylum and immigration policy**

*The need to create and implement an active, comprehensive and coherent immigration policy*

The EU must continue the effective development and implementation of a comprehensive immigration policy in line with decisions adopted at the European Councils (Tampere, the Hague, Brussels 12/2006). A cross-cutting objective must be to attach greater attention to issues concerning human and fundamental rights and international protection.

The EU should also work determinedly and concretely towards promoting understanding of the links between migration and development and towards improving the coherence of policies within the EU and at global level. The EU's internal coordination in these matters should also be improved.

Within the EU, it is necessary to work actively towards the realisation of a common EU asylum system and remedy the shortcomings of the current one by, for example, improving the functioning of the Dublin system. The creation of a European asylum system should aim at far-reaching legislative harmonisation and its uniform application.

The EU's common standards on return should be further developed. The objective should be to establish a common set of effective, humane and fair return practices. Practical cooperation with third countries must be further intensified.

Finland participates actively in the development of integration policies within the EU with particular attention to the issues around the points of contact between integration policy and the promotion of work-related immigration. It is necessary to stress the central importance of measures aimed at the promotion of equality and prevention of racism and discrimination within the whole framework of EU immigration policy.

To improve the management of migration flows and to create a common immigration policy, the EU should also initiate discussion on objectives with regard to the treatment of such third-country nationals who enter Member States illegally and who are not in need of international protection, but to whom Member States, for whatever reason, decide to grant the right of residence.

#### *Ensuring the functioning of Schengen cooperation*

The introduction and smooth functioning of the new Schengen Information System (SIS II) will continue to be one of the most important objectives in the near future.

The Schengen evaluation system has up to now drawn on the expertise of Member States' authorities, and it is important to maintain this system and develop it still further to allow, for example, the carrying out of unannounced inspections.

All new members of the Schengen area must implement the Schengen rules in full. This can be guaranteed by safeguarding the operations of groups evaluating the implementation of the Schengen rules.

#### *Border security to be improved*

The development of an integrated border management system must be continued. Particular attention must be given to strengthening the control of external borders and enabling traffic to run smoothly across our borders. The utilisation of new technologies will play an important role in these matters. The Union's cooperation will intensify at all levels of the EU four-tier border security model. The operations of Frontex will be further developed although the main responsibility for external border control will remain in the hands of Member States.

In efforts to develop external border control, particular consideration must be given to the special characteristics of border control and the concomitant requirements for specialised professional skills. In Finland's opinion, the integrated EU border management system must recognise the primacy of Member States' national responsibility for border control and, subject to this, Member States' joint responsibility which is primarily exercised through joint operations coordinated by Frontex.

#### *The need to create a common visa policy*

The European Union must ensure the establishment of a common visa policy. The common visa policy is one of the essential factors contributing to the management of migration flows which offers means to facilitate legal immigration and cross-border travel and prevent illegal immigration.

The ongoing extensive reforms, with regard to legislation and the information system, require that in the near future emphasis be placed on their proper and wide implementation.

*Identification and protection of victims key issues in trafficking in human beings*

In the future, too, it is necessary to pay particular attention to the broad implementation and regular assessment of the EU Action Plan for preventing trafficking in human beings.

The Action Plan must be regularly updated and extended on the basis of the Commission's proposals.

Finland considers it important that in the process of updating the Action Plan attention is given to the human trafficking phenomenon as a whole. Any new measures must provide concrete and practical ways for action. Particular attention must be given to measures which will help to better identify the trail of victims from their countries of origin to the countries of destination and promote the protection of victims and related support measures.

The possibilities brought about by the Treaty of Lisbon, and especially the new legal basis, for developing EU action against human trafficking must be fully utilised.

**Judicial cooperation in the field of civil and criminal law**

*Mutual recognition to remain the cornerstone of judicial cooperation*

Mutual recognition is to remain the cornerstone of judicial cooperation. Increasing mutual trust among Member States must be one of the key cooperation objectives in the future, too. Confidence should be increased, especially through common provisions guaranteeing a minimum protection of fundamental rights.

Currently, the instruments of mutual recognition, both in the field of criminal and civil law, constitute a complicated set of instruments which should be re-assessed as a whole. The aim should be to simplify regulation by harmonising procedures included in the existing provisions and by streamlining fragmented and sometimes inconsistent legislation. Cooperation among competent authorities must focus on accelerating procedures and on legislation which creates real added value for the resolving of cross-border crime.

By aiming at a simpler, more general and more flexible regulation, negotiations at EU level would lead to concrete results more easily than today. More coherent European regulation would also make it easier for judicial authorities to genuinely apply national legislation issued on the basis of EU instruments.

The new forms of cross-border crime, often with links to new technology and cyber crime, underline the need for ever closer cooperation among Member States and at global level. The underlying objectives of judicial cooperation in criminal matters must be, first, to increase the risk of being caught and, secondly, to prevent crime effectively. Special attention is to be paid to the protection of children.

Mutual recognition should only in very exceptional cases, mainly in matters concerning serious crime with cross-border dimensions, require the harmonisation of national criminal law systems. In Finland's opinion, the harmonisation of substantive criminal law should primarily concern cross-border and organised crime. Defining and scaling of sanctions should respect the internal coherence of Member States' sanction systems. Within the Council, the Justice and Home Affairs Council must also be responsible for defining criminal acts and penalties as regards provisions on criminal law included in instruments pertinent to other fields.

#### *Minimum requirements for criminal law procedures to be developed*

The creation of minimum requirements for fair legal proceedings would increase Member States' mutual trust and strengthen the position of the individual particularly in cross border cases. When developing legal safeguards, particular attention should be paid to the position of the crime victim and to the fulfilment of the claimants' rights.

Finland regrets that these issues, which are essential for legal protection and mutual confidence, remain unresolved within the EU. Work must be continued within the framework of the new programme at the latest.

*Cooperation in the field of civil law to focus on the international dimension*

The need for regulation as regards cooperation in civil law is often global in nature. The EU and its Member States must work actively towards the development of worldwide regulation and its smooth functioning particularly within the framework of the Hague Conference on Private International Law. The objective should be that the jointly negotiated instruments of international law can be rapidly implemented throughout the Union.

Community legislation overlapping with international arrangements should be avoided. Community legislation concerning cooperation in civil law is justified mainly when it produces added value in relation to wider arrangements. For example, when at Community level it is possible to go further than at international level or when there is no international consensus. The objective must be that the various Community provisions create a coherent whole both among themselves and in relation to wider international arrangements.

In family law, it is necessary to take into consideration differences in Member States' legal systems and legal cultures.

**Promoting police cooperation and strengthening security**

*Operational cooperation and the principle of availability to be enhanced*

Member States must implement effectively operational cooperation, as laid down in the Treaty of Prüm, both nationally and as part of the Union's legal system. The benefits of multilateral cooperation among authorities must be taken into account.

Cooperation among EU Member States' law enforcement authorities must be improved by implementing, as extensively as possible and in line with the principles of the rule of law, the principle of availability of information as laid down in the Hague Programme. The primary means of achieving this is to increase and improve the joint use of information systems and to implement the agreed instruments in full (e.g., the Swedish initiative).

The principles behind the information systems must be functioning. Special attention is to be paid to the compatibility of the systems. In the first place, Finland supports the development of centralised information systems instead of decentralised systems and the implanting of new functions into the existing information systems. Both Union level and national provisions on data protection must be taken into account. Data protection must be ensured through regular assessments at practical level. The operational capabilities of Europol must be guaranteed. It is necessary to find means to ensure that Member States provide Europol with extensive information on matters falling within its responsibility.

Eurojust must be developed on the basis of the gained practical experience. First, the objective should be that the national members of Eurojust enjoy a common minimum standard of competence. Cooperation among Eurojust, the European judicial network and Europol should be facilitated and intensified. In Finland's opinion, the primary task of Eurojust is to support Member States' national authorities in the coordination of crime investigation and prosecution and to promote cooperation and exchange of information among authorities to prevent cross-border crime. It is necessary to ensure that Member States provide Eurojust with relevant information on matters falling within its responsibility. By contrast, Finland is not in favour of developing Eurojust into a supranational prosecution authority.

#### *Fight against terrorism to be further intensified*

The fight against terrorism must be approached from a broad angle and prepared for, in addition to police and criminal instruments, by developing other means (e.g., civil protection), too. Consideration must also be given to the new forms of terrorism.

Member States must implement the already agreed instruments and strategies and their effective enforcement must be ensured through assessments.

In combating terrorism, it is important to continuously update the existing criminal law instruments and thus ensure cooperation among competent authorities. A common commitment to respect for human rights is a key premise on which to base the development of anti-terrorist legislation.

As a main rule, the CCA mechanism, which is activated in response to terrorist attacks, must be further developed to ensure effective exchange and coordination of information among Member States and EU institutions in a crisis situation.

### **Enhancing civil protection cooperation**

In the future, civil protection cooperation must be still developed on the basis that each Member State has primary responsibility for the provision of civil protection. EU action in this field must only be complementary in nature.

Preparedness for cooperation in major emergencies should be developed not only within the EU but also within the framework of action coordinated by other key international players. Attention must be given to the interoperability of cooperation arrangements between neighbouring countries.

In the future, it is necessary to improve the effectiveness of rescue operations coordinated through the Community civil protection mechanism. The importance of coordinating EU and UN rescue operations must be continuously underlined to avoid overlapping action.

### **Funding for JHA activities to be secured**

The Commission has just started the mid-term review of the financial perspective for 2007-2013 in line with the conclusions of the December European Council 2005. In this connection, it is also necessary to safeguard the financing of the key sector, the Justice and Home Affairs sector, in the building of an area of freedom, security and justice.

### **The area of freedom, security and justice plays key role in the Union's external Relations**

The area of freedom, security and justice occupies an increasingly prominent role in the Union's external relations. Cooperation with countries of origin and transit is important in relation to immigration and asylum issues. Such cooperation is supported by a common visa policy and agreements on visa exemption, visa flexibility and readmission.

The role of JHA issues has increased in importance, in particular, as regards the European Neighbourhood Policy and the EU-Africa and EU-Russia relations. The measures initiated and envisaged on the basis of the roadmap of the EU/Russia Common Space on Freedom, Security and Justice and the action oriented paper that was agreed upon during the Finnish EU Presidency should be carried out.

The smooth functioning of bilateral and regional cooperation among Member States' authorities responsible for home affairs and the corresponding Russian authorities must be kept at the forefront in the future, too.

It is important that the civil and criminal law dimension of the Union's external relations is taken into consideration more consistently than before. In relation to the EU's competence to conclude or adhere to international agreements, preference should be given to multilateral arrangements that always have more extensive influence than the EU's internal arrangements. To this end, the EU must adopt an active role in international organisations for civil law cooperation. In bilateral negotiations with third countries, particularly with Russia, the EU must work towards their accession to those international agreements which are of key importance to the creation of an area of freedom, security and justice.

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**Contributions reçues à la suite de**  
**la Réunion Ministérielle Informelle tenue**  
**à Cannes le 7 juillet 2008**

## DENMARK

**JUSTITS MINISTERIET**  
Ministry of Justice, Denmark  
Civil and Police Department  
Date: 16 JULI 2008  
Office: International Division  
Contact: Jens-Christian Bûlow  
Our ref.: 2007-305-0596  
Doc.: JCB40158

The French EU Presidency  
Att. Daniel Lecrubier

The Danish Government welcomes the reports from the two Future Groups and expresses its gratitude to the involved Member States and the Commission for all the work they have put into the two reports. Denmark is convinced that the Commission will find the two reports to be a serious and qualified inspiration when drafting the communication that will formally open the debate in the Council on a new multi-annual work programme for Justice and Home Affairs in the European Union.

The Danish position on a new work programme in the area of Justice and Home Affairs will be laid down on the basis of the communication from the Commission expected in 2009. The following comments should be read in this light.

The Danish Government generally supports many of the thoughts on future initiatives outlined in the two reports, on the horizontal issues as well as on the policy areas identified.

Denmark thus fully endorses the view that special attention should be paid to the full and effective implementation of existing instruments. Also, we support the focus on practical cooperation rather than new legislative initiatives, particularly in regard to the common asylum policy.

When it comes to the policy areas identified as challenges for the future, we generally find them well chosen. Especially the fight against illegal immigration, the protection of children and the fight against terrorism must remain very high on the agenda of the European Union.

It is of course inevitable that Denmark, not having participated in the two Future Groups, is hesitant in respect of parts of the two reports, and as mentioned the Danish position on a new work programme in the area of Justice and Home Affairs will not be laid down until the communication from the Commission has been presented.

Nevertheless, Denmark would like to take this early opportunity to express its concern in respect of certain elements in the report from the Ministers for Home Affairs and Immigration which pending further clarification and refinement could give ground to constitutional considerations.

In the report some of the ideas on police cooperation appear to be based on the premise that officials, such as police officers, from one Member State should be allowed to act in an official capacity on the territory of another Member State. According to Danish constitutional law, however, there is very limited scope for allowing e.g. police officers from another country to act in an official capacity on Danish territory. If future initiatives are based on the premise mentioned, a solution, e.g. making the scheme optional, must therefore be found in order for Denmark to participate in the adoption of the initiative.

Yours sincerely,

(signature)

Jens-Christian Bülow

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## POLOGNE

### **NOTE**

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De:	Délégation polonaise
A l'attention du:	Conseil
Objet:	Groupe du Futur (Police et immigration) échange de vues
	Commentaire de la Pologne
Doc.no.	11657/08 JAI 373

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La Pologne accueille avec satisfaction la publication du rapport définitif du Groupe du Futur.

Les recommandations contenues dans le rapport seront sûrement très utiles lors du débat sur le nouveau programme pluriannuel pour l'espace Liberté, Sécurité et Justice pour les années 2010 – 2014.

La Pologne propose que les débats à venir sur les questions abordées par le Groupe du Futur se déroulent dans le cadre d'un groupe de travail ad-hoc du Conseil, dédié à ces fins, qui serait composé des représentants de tous les Pays Membres de l'UE, de la Commission Européenne et du Parlement Européen.

Ce groupe devrait se réunir en plusieurs sous-groupes thématiques afin que des experts puissent pouvoir discuter des points spécifiques de l'espace Liberté, Sécurité et Justice. Une telle formule permettra de tenir compte des points de vue de tous les décideurs qui seront par la suite chargés de la mise en œuvre du programme dans les années 2010-2014.

Parmi les questions à traiter se trouvent en premier lieu celles qui ont fait l'objet des réflexions du Groupe du Futur. La raison de cet effort à faire est que les recommandations du Groupe sont le résultat du travail d'un groupe restreint de Pays Membres. Les questions de base concernant les conditions et les orientations stratégiques de la politique de la sécurité intérieure et de la migration devraient être abordées aussi avec la participation des Pays Membres n'ayant pas participé aux travaux du Groupe. La cohésion des actions que nous menons est la garantie de leurs succès.

Le débat sur la forme du programme pluriannuel pour le volet Liberté, Sécurité et Justice pour les années 2010 – 2014 devrait aussi tenir compte des sujets dont on n'avait pas encore discuté, surtout des questions suivantes :

- a) les règles générales,
- b) les questions concernant les droits fondamentaux,

- c) les questions de cohésion des instruments financiers de soutien à l'activité croissante dans le domaine de la sécurité intérieure et de la migration;
- d) les méthodes de mise en œuvre du programme et les mécanismes de l'évaluation du progrès de la réalisation du programme; il faudrait attacher une attention particulière à la qualité de la réglementation qui devrait prévenir une inflation visible des projets d'actes juridiques.
- e) établir les méthodes permettant d'utiliser au maximum les instruments juridiques visant à améliorer la coopération entre les autorités de l'ordre public des Pays Membres et les agences communautaires afin d'assurer une sécurité accrue des citoyens de l'UE au quotidien et permettant de lutter contre les menaces mondiales (terrorisme, criminalité transfrontalière);
- f) une protection efficace de la population civile contre les effets des catastrophes naturelles.

Les résultat de ce débat devrait être la concrétisation de l'étendue et des modalités d'application du principe de convergence.

Le programme pluriannuel à venir devrait mettre l'accent sur la formulation d'un plan concret de promotion de la liberté des citoyens de l'UE par rapport aux éventuelles limitations résultant des menaces pour la sécurité. Dans ce contexte il serait nécessaire d'établir des règles précises d'application des technologies de pointe (surtout ICT) pour la réalisation des objectifs de l'espace Liberté, Sécurité et Justice.

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