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signed by Mr Jordi AYET PUIGARNAU, Director

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to: Mr Javier SOLANA, Secretary-General/High Representative

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Subject: Implementing The Hague Programme: the way forward

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

**Implementing The Hague Programme: the way forward**

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

## Implementing The Hague Programme: the way forward

(Text with EEA relevance)

### 1. INTRODUCTION

The Hague Programme "Strengthening Freedom, Security and Justice in the European Union" was adopted by the European Council in November 2004. It reaffirmed the importance that the European Union attaches since the Tampere European Council in 1999 to the area of Freedom, Security and Justice, placing it **high among the Union's priorities** – not only because it is one of the Union's fundamental objectives, but also, and above all, because it is at the heart of EU **citizens' interests**. The Commission Communication to the European Council on "A Citizens' Agenda for Europe" of 10 May 2006 strongly reaffirmed this priority<sup>1</sup>.

Since the end of 2004, the Member States and the EU Institutions have worked to ensure the implementation of the Programme in accordance with the Council and Commission Action Plan adopted in June 2005.

The European Council stated in December 2004 that "*since the Programme will run for a period during which the Constitutional Treaty will enter into force, a review of its implementation is considered to be useful*". To that end, it invited the Commission to report in 2006 "*to the European Council on the progress made and to propose the necessary additions to the Programme*".

In the absence of the entry into force of the Constitutional Treaty, it is still necessary to draw up a first political **assessment** of progress made in implementing The Hague Programme and to propose the necessary adjustments. The present Communication and the parallel Communications on "Strengthening Freedom, Security and Justice in the European Union: report on the implementation of The Hague Programme for the year 2005" (hereafter "the Scoreboard plus") and on "The Evaluation of EU Policies on Freedom, Security and Justice" constitute the answer to the call made by the European Council.

The aim of this **comprehensive package** is thus **not** to identify new priorities compared to those set out by the Hague Programme but mainly (1) to take stock of the progress made, (2) to **assess** the level of implementation at EU and national level and (3) to propose a thorough evaluation of results.

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<sup>1</sup> COM(2006) 211.

On the basis of the **policy priorities** identified for the implementation of Hague Programme in its Communication of 10 May 2005<sup>2</sup>, the Commission has identified those **areas** in respect of which it believes it is necessary to **take forward the political agenda of the Union** on the basis of The Hague Programme.

The Commission acknowledges the urgent need to find a **new impetus** in the area of Freedom, Security and Justice as part of an ambitious, policy-driven agenda for citizens

In presenting this package of measures, the Commission wishes to **stimulate and structure** the discussion with the Member States and the other Institutions during the Finnish Council Presidency (July- December 2006) on

- (1) **new policy initiatives** it considers necessary (see Chapter 2), other than those already in course of implementation under The Hague Programme, and
- (2) as requested by the June 2006 European Council<sup>3</sup>, on exploring possible ways to **improve the functioning** of Freedom, Security and Justice policies **by using the possibilities provided for in the current Treaties**, without pre-empting the Constitutional Treaty (see Chapter 3).

To make further progress in the establishment of an area of Freedom, Security and Justice, **more effective transparent and accountable decision-making** procedures are needed. As demonstrated by the "Scoreboard plus", which for the first time gives an assessment of implementation of EU legislation at national level, adoption of legislative proposals at EU level is **extremely lengthy**, and in certain areas, results barely reach the **lowest common denominator** and fail to meet some of the initial objectives.

## **2. IMPLEMENTING THE HAGUE PROGRAMME: A NEW IMPETUS TO STRENGTHEN THE AREA OF FREEDOM, SECURITY AND JUSTICE**

A first assessment of the implementation of The Hague Programme and its Action Plan through the Scoreboard plus, presented in the parallel Communication referred to above, enables the Commission to identify those areas needing attention in the Union's work and where further efforts are needed.

On this basis, the Commission makes the following proposals for action and implementation **before the expiry of The Hague Programme (2009)**.

### **2.1. Fundamental rights and citizenship**

Fundamental rights are at the core of the Union's values. The Commission will focus its action on the **respect and promotion** of fundamental rights for all people and to develop the concept of **EU citizenship**.

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<sup>2</sup> Communication from the Commission to the Council and the European Parliament: "The Hague Programme: Ten priorities for the next five years. The Partnership for European renewal in the field of Freedom, Security and Justice" - COM(2005) 184.

<sup>3</sup> Paragraph 10 of June 2006 European Council conclusions: "In the context of the review of the Hague Programme, the European Council calls upon the incoming Finnish Presidency to explore, in close collaboration with the Commission, the possibilities of improving decision-making and action in the area of Freedom, Security and Justice on the basis of existing treaties".

**Citizenship** of the Union entails a number of crucial rights, including **free movement** within the Union and **diplomatic and consular protection**.

The following actions are envisaged:

- The Commission receives an increasing number of requests to take action against alleged violations of fundamental rights by the Member States. The Commission will continue to work to monitor and promote fundamental rights in accordance with the EU Treaty and its 2002 Communication on Article 7 TEU<sup>4</sup>, which equip the Union institutions with the means of ensuring that all Member States respect the common values.
- The Commission will give utmost **priority** to ensure **correct implementation** by the Member States of the EP and Council Directive 2004/38/EC on the right of citizens of the Union to move and reside freely within the territory of the Member States, entered into force on 30 April 2006.
- It is important to develop a common EU knowledge and common standards on how protecting EU citizens who need help in a third country in which their homeland is not represented. The Commission is willing to contribute to **training activities** in favour of EU Member States officials. This might include training support in matters related to consular protection of EU citizens.
- In parallel, actions towards **communication and information campaigns** to EU citizens on their right to diplomatic and consular EU protection are currently under preparation.
- The updated common consular guidelines for EU-Member States' missions in third countries foresee for the first time a pragmatic support role of Commission delegations in providing logistics and staff in a consular crisis<sup>5</sup>. This reinforces the Member States' capabilities in serving the citizen in need and will be developed further. A joint report by the Secretary-General/High Representative and the Commission on closer consular cooperation among EU Member States, including mutual consular assistance points in pre-identified regions, is foreseen in the second half of 2006.
- Following requests voiced by Member States when adopting The Hague Programme, the Commission will consider how to further develop the ideas (1) of creating "Euro-Consulates" activities to share common consular functions also for the benefit of EU citizens, and (2) of establishing a European consular code.

## 2.2. Development of the second phase of asylum

Much work is needed over the next few years to establish a **Common European Asylum System with effective, harmonised procedures** which respect Europe's humanitarian tradition and the Union's international obligations.

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<sup>4</sup> COM(2003) 606.

<sup>5</sup> Presidency report on "Reinforcing the Union's emergency and crisis response capacities", endorsed by the June 2006 European Council.

The following actions are envisaged:

- **Evaluation of the existing legislative framework.** By the end of 2006, the Commission will present the evaluation of the Dublin Regulation and of the Reception Conditions Directive, while in 2008 the Qualification Directive will be evaluated.
- **A Green paper on asylum policy**, followed by a **Policy Plan on Asylum policy** in 2007, will detail the different steps of the second phase of completion of the Common European Asylum System.
- Following the Communication adopted in February this year<sup>6</sup>, further action will be taken in the area of **practical cooperation between administrations** with a view to achieving a convergence in the asylum systems of Member States, notably by the creation of an EU-wide database on country of origin information.

### 2.3. Migration Management

A **global approach** to migration management implies that a Common Immigration policy addressing the situation of legal migrants at Union level is developed **in parallel** with measures to address more effectively illegal migration and to enhance the fight against migrant smuggling and trafficking in human beings, in particular women and children.

The following actions are envisaged:

- Further to the policy plan on legal migration, the Commission intends to present proposals for a **framework EP and Council Directive and four EP and Council Directives for specific types of migrant worker** (highly skilled workers, seasonal workers, intra-corporate transferees and paid trainees).
- Following the growth in illegal immigration from West and North Africa affecting, in the first instance, Italy, Spain, Malta, Greece and the Mediterranean region, the Commission is coordinating the implementation with Member States, EUROPOL, FRONTEX and the Joint Research Centre of the **priority actions** identified by the Hampton Court Informal Meeting of Heads of State and Governments and December 2005 European Council. A progress report is planned to be issued **by the end of 2006**.
- Action on the **external dimension of migration will be** further strengthened. Migration issues must be firmly embedded in the Union's external relations with countries of origin and transit, as part of a global approach to migration. In particular, **migration and development** work focus on reinforcing the positive linkages between these, focussing in particular on issues such as migrants' remittances, the role of diasporas, brain circulation and circular migration as well as mitigating the impact of brain drain on countries of origin.
- The Commission will present in July this year a Communication on **illegal immigration**. Increasing mutual trust and the exchange of information between

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<sup>6</sup> COM(2006) 67.

Member States, including on regularisations of illegal immigrants, improving the access control to the territory and combating employment of illegally staying third-country nationals will be addressed as priorities.

- Sustainable legal migration policies require **co-ordinated integration policies**, tailored-made for short-term stays as well as longer-term settlement issues and problems arising in the second and third generations. Following the Commission's communication of 1 September 2005 and the Council's conclusions of December 2005, implementation of integration policies will be pursued.

#### **2.4. Integrated management of external frontiers and interoperability of information systems**

An area in which **people move freely** calls for control of the access to the Union's territory, by means of an integrated management system for external borders, a common visa policy and the judicious use of new technologies, including biometric identifiers.

The following actions are envisaged:

- Consideration will be given to the role of FRONTEX in coordinating liaison operations in the field of migration between existing liaison networks in the third countries of departure and transit.
- The Commission will present in July this year a Proposal for an EP and Council Regulation on the establishment, the powers and the financing of "**Rapid Reaction Teams**" of national experts which, under the aegis of FRONTEX, will provide **technical and operational assistance** to Member States in the control and surveillance of external borders.
- In particular, the use of biometric data would make it possible to collect and store **information on the entry/exit** of third-country nationals into/from **the Schengen area**. The Commission is launching a study, the results of which will be available in June 2007, to assess the feasibility of an **EU entry/exit information system**, as well as the implementation of a "Trusted Traveller Programme" making it easier for *bona fide* travellers to cross the border.
- The idea of setting up a **European register for travel documents** issued to EU citizens will be explored.
- The Commission will discuss with the European Parliament and the Council on how to work forward the specific proposals contained in its Communication of November 2005 on improved effectiveness, enhanced **interoperability** and synergies among European **databases**. On the basis of these discussions, an action plan will be presented in 2007.

#### **2.5. Follow-up to the Mutual Recognition Programmes (in civil and criminal matters)**

In the field of civil and criminal law, the **principle of mutual recognition** will continue to be the cornerstone for the Union's policies. Mutual recognition relies on mutual trust in each other's legal and judicial systems.



The following actions are envisaged:

- Following its May 2005 Communication, the Commission has made several legislative proposals to enhance the implementation of the principle of mutual recognition in criminal matters both in the pre-trial and in the post-trial phases. These various initiatives now should be **rapidly adopted and implemented**. Mutual confidence needs to be strengthened by laying down EU wide rules on conflicts of jurisdiction, procedural guarantees, presumption of innocence and on minimum standards for gathering of evidence, on one hand, and by **concrete** actions to improve judicial training and the efficiency of justice systems, on the other hand.
- A study will be presented in 2007 covering the horizontal problems that are encountered in the negotiation and application of mutual recognition principle, and of the gaps in the present system of cooperation in criminal matters that can be addressed by new instruments.
- In the medium term, consideration will be given to a gradual process of **consolidation in single mutual recognition instruments** of current mutual legal assistance mechanisms, in particular in relation to obtaining evidence in criminal law area.
- The establishment of a **single area of justice in civil matters** is essential for **business** as well as **citizens**. A new political impetus should be given to the 2000 programme on mutual recognition in civil matters to ensure that the momentum built up since the entry into force of the Amsterdam treaty is maintained, leading to the completion of the programme as foreseen in The Hague Action Plan.. In particular the Commission will propose the necessary legislative measures to complete the abolition of exequatur of civil and commercial decisions, and will also present Green Papers on improving the efficiency of the enforcement of judgments. Moreover, the Commission will propose several new instruments in the field of **family law** which concerns citizens in their everyday lives, such as successions and property rights of married and unmarried couples.
- Facilitating **access to justice** for citizens is a real challenge for the consolidation of the European area of freedom, security and justice. As a first step, the Commission will propose to amend the Council Decision creating the European Judicial Network in civil matters to make it closer to citizens and legal practitioners and to improve further its efficiency.

## 2.6. Access to information needed to combat terrorism and organised crime

Information needed for the fight against terrorism and serious crime should cross the internal borders of the EU without obstacles. The processing of relevant information across the EU by competent authorities will support action at national and at Union level to improve the capacity of the EU as a whole to prevent and combat terrorism and serious crime.

The Hague Programme invited the Commission to present legislation by the end of 2005 to implement the "**principle of availability**", to be operational on 1 January 2008<sup>7</sup>. The Commission submitted a proposal for a Council Framework Decision on the principle of availability in October 2005.

Exchange of information between Member States in the field of criminal justice has to extend to **criminal records**. The current system based on the European Convention on Mutual Assistance in Criminal Matters of 1959 presents **serious shortcomings**. The Commission has already presented legislative proposals aiming at establishing a computerised system of exchange of information on criminal records, which would improve mutual understanding and facilitate the mutual knowledge of existing convictions within the EU. Financial support will be provided to the Member states to facilitate the networking of national criminal records.

New initiatives are probably unnecessary at this stage. It is of paramount importance that the existing (and incoming) legislative proposals presented by the Commission be **rapidly adopted and implemented**, with a view to ensuring a **full application** of the principle of availability and **effective development and implementation** of the EU-wide criminal record system.

The Commission firmly believes that, in parallel to progress on exchange of information, it is indispensable to move forward on **data protection** in the area of police and judicial cooperation. The Commission considers that initiatives referred above must be accompanied by a legally binding legislation on data protection, ensuring a high level of protection of personal data in all the Member States. The Commission regrets the lack of progress on the proposal which it put forward in October 2005 and considers that the quick adoption of its proposal by the Council is indispensable.

## **2.7. Fight against terrorism and organised crime, including the future of Europol**

Terrorism and organised crime will remain a **constant threat** in the coming years. The Union will have to remain particularly vigilant in demonstrating its unique capacity to drive forward policies at European level, by building up knowledge and close contacts with all stakeholders, and by helping Member States and law enforcement and judicial authorities in their daily fight to meet this challenge.

As the **operational cooperation** and **mutual trust** between Member States grows, the Commission believes that it is time to develop an agreed **Internal Security Strategy**, which should build upon the ongoing inter-institutional work in the area of counter-terrorism and protection of critical infrastructures.

The following actions are envisaged:

- The Commission will present soon a proposal for a programme on **critical infrastructure protection**, building on the extensive consultation exercise it has engaged since 2005. Later this year, following the preliminary results of a study on the feasibility of the **critical infrastructure warning information network**, the Commission will submit a proposal for a Council Decision on this matter.

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<sup>7</sup> The principle of availability, as laid out in the Hague Programme, states that information for law enforcement purposes needed by the authorities of one Member State will be made available by the authorities of another Member State, subject to certain conditions.

- The Commission is considering amending the Council Framework Decision on Terrorism to improve the definition of **incitement** to terrorism and to make punishable the circulation of **bomb-making expertise**.
- The Commission intends to put forward a Communication on **bio-terrorism** by the end of this year.

### 2.7.1. *The future of Europol*

**Europol** exists to improve the effectiveness and co-operation of Member States' law enforcement authorities in combating terrorism and organised crime by facilitating the exchange of information between Member States and by collecting and analysing this information. Europol's added value continues to lie in its ability to support investigations by providing high quality analysis of criminal intelligence.

The Commission believes that the Europol needs a **more flexible legal basis**, since this will ensure that political decisions taken to improve its functioning can be implemented without undue delay. It will also be necessary to improve oversight and control of the European Parliament over Europol's activities, in order to increase **transparency and democratic accountability**, whilst **ensuring the confidentiality** of operational information and procedures.

The following action is envisaged:

- The Commission is considering presenting a proposal for a Council Decision **replacing** the existing Europol Convention, with a view to improving its operational efficiency.

## 2.8. **Financial perspectives in the area of Freedom, Security and Justice**

One of the essential pre-conditions for achieving the policy objectives fixed by The Hague Programme is to match these objectives with **adequate financial resources**. The recent agreement on the Financial Perspectives has recognised this need by providing **more funds** to Freedom, Security and Justice policies. In 2007 the new financial Framework Programmes will be operational. They will play a strategic role in assisting the Union and the Member States.

Enhanced financial support from the Community budget will serve to support a **fair sharing of collective responsibilities** in an area without frontiers as concerns asylum, immigration and borders and operational cooperation (in particular joint patrol and joint return flights). In the fight against terrorism and organised crime and for maintaining an area of justice, EU funding will facilitate further the emergence of common approaches. Member States are invited to fully exploit the potential ensured by the new financial framework by presenting ambitious and accurate proposals for projects which demonstrate the added value of action at EU level.

## 2.9. External dimension of Freedom, Security and Justice

In December 2005, the Justice and Home Affairs Council endorsed the first ever Strategy for the external dimension of Freedom, Security and Justice<sup>8</sup>. The **strategy** set out a series of thematic priorities as well as the delivery mechanisms. The Commission is now in the process of **implementing the key elements** of the strategy through, for instance, the Common Space on Freedom, Security and Justice with **Russia**, the revised action plan on Justice and Home Affairs with Ukraine as well as the European Neighbourhood Policy Action Plans with other countries, and not least, through constantly **deepening cooperation with the US**.

Making progress on **rule of law** in our cooperation with third countries **takes time**. Therefore, the Commission and Member States should focus on **implementation rather than renewing or updating** the EU's strategy. The thematic and geographical priorities have been set out clearly, and the strategy should now be **applied effectively** in order to deliver results. In the area of Freedom, Security and Justice, progress can only be made through the **active contribution** of both Member States and the Commission, working together in a concerted manner. The preparation of the action-oriented papers for respectively the Western Balkans and drugs from Afghanistan demonstrate the value of such cooperation. Based on the work undertaken since late 2005, the Commission will provide a **progress report** by December 2006 recapitulating the application of the strategy. Other important instruments in the field of Freedom, Security and Justice with external dimension are readmission and visa facilitation agreements, so far successfully concluded with key EU partner countries, e.g. with Russia. The Commission will continue work in this area.

## 2.10. Implementation and evaluation of Freedom, Security and Justice policies

Taking into account the **mandate** given to the Commission by The Hague Programme and its Action Plan, the **fragmented situation** of existing monitoring and evaluation mechanisms, and the need for **extensive information** to be transmitted to all stakeholders regarding the implementation and results of policies, the Commission considers that the **time has come** to work towards setting up a **coherent and comprehensive evaluation mechanism** of EU policies on Freedom, Security and Justice, in spirit of **partnership** with Member States and EU Institutions.

Such a mechanism, which will include the yearly **monitoring of implementation**<sup>9</sup> and **evaluation of the results** of the policies, is presented in the parallel Communication on "The Evaluation of EU Policies on Freedom, Security and Justice".

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<sup>8</sup> "Strategy for the external dimension of JHA: Global freedom, security and justice", drawing on the Commission's Communication COM(2005) 491, 12.10.2005.

<sup>9</sup> As detailed in the Communication on "Strengthening Freedom, Security and Justice in the European Union: report on the implementation of The Hague Programme for the year 2005", presented in parallel to the present Communication.

### 3. IMPROVING THE DECISION MAKING PROCESS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE

#### 3.1. Facing recurrent difficulties in the area of Freedom, Security and Justice

Freedom, Security and Justice policies are of real **concern and relevance for our fellow citizens**, as recently shown by the debates under Plan D (for democracy, dialogue and debate) and supported by opinion polls. European citizens want the EU to be more effective in particular in the fight against organised crime and terrorism, but also in management of migration flows and control of external borders.

Despite this strong interest, progress is slow and the development of Freedom, Security and Justice policies at EU level faces **recurrent difficulties** leading to numerous blockages. The first annual follow-up to The Hague Programme, presented in the parallel Communication, has proven that these difficulties are mainly due to the particularity of the **decision making process**.

Decisions on **police and judicial co-operation in criminal matters**, in particular, still need unanimous agreement by all Member States. These matters are dealt with under a **particular framework** (Title VI TEU), which applies the so-called "**third pillar**" method, characterised by:

- **specific legislative instruments** (Common Positions, Framework Decisions, Decisions and Conventions) that complicate further its implementation;
- insufficient powers for the European Parliament in the **legislative process**;
- use of **unanimity** that often leads to agreements on the lowest common denominator basis;
- a shared right of initiative with each of the 25 Member States that does not favour a true "European dimension", nor the accountability of the Member States' legislative initiatives, which are not submitted to ex-ante impact assessment, and
- a **limited role** of the Court of Justice (exclusion of infringement procedures and preliminary rulings subject to national opt-in – consented so far by 14 out of 25 Member States- and possibility to limit to the highest national jurisdictions).
- the lack of formal infringement procedures to ensure proper transposition and implementation.

In fact, discussions in the Council have recently showed it is proving very difficult to move forward in the EU in areas such as **mutual recognition in criminal matters and police cooperation**.

Last June the Justice and Home Affairs Council could eventually reach an agreement on the Commission proposal for a **European evidence warrant** only after extremely lengthy negotiations and on the basis of the lowest common denominator, which is not satisfactory not only for the Commission but also for most Member States and has a **negative impact** on the application of the principle of mutual recognition, which under the Tampere and The Hague

Programmes represent the cornerstone of the Union's policies in the area of judicial cooperation.

No progress has been made either in the last three years on basic minimum standards for **procedural rights** applicable throughout the EU, such as the right for an interpreter when arrested. Discussions on a text providing for defining and condemning in the same way throughout Europe offences of **racism and xenophobia** are equally totally blocked and frozen for almost two years, even though there are recent signs that they could now restart.

Finally, discussions have not progressed on a Commission proposal intended to authorise further **cross-border investigation and prosecution**.

Some such recurrent difficulties are also visible for the "communitarised" Freedom, Security and Justice policies (Title IV TEC), where specificities remain regarding the competence of the Court of Justice for **preliminary rulings** (Article 68 TEC) and where **legal migration** and **family law** are still decided upon by unanimity. On **legal migration**, for example, discussions on the 2001 Commission proposal for a Directive on entry and stay of third country nationals for employment purposes were unsuccessful under the unanimity rule. The Commission has recently revived this issue through a Green Paper and a resulting Action Plan presented in December 2005, but is difficult today to predict where this debate will end still applying the unanimity rule in this area.

Regarding the **competence of the European Court of Justice**, the risk exists that matters of high importance and sensitivity such as access to justice or asylum rights do not benefit from the same jurisdictional control or uniform application throughout Europe.

### **3.2. Resolving current difficulties: *the bridging clauses***

The Commission believes that the timing of the first review of implementation of The Hague Programme is an opportune moment to **reactivate** and **stimulate consideration** on how to **better shape the decision-making in the EU** and ensure better evaluation and implementation of Freedom, Security and Justice legislation. This needs to be done by making the **best use of the possibilities offered by the current Treaties**.

The Commission considers that fully implementing the current Treaties would allow for further **efficiency** and **coherence** in areas where the **added value** of action at EU level is widely recognised and expressly requested by our citizens that, as recently confirmed by the results of the last Euro barometer, ask for **more protection and security**.

Moreover, as stated in its Communication of 10 May 2006, it is the Commission's view that the maximum use of the current Treaties will set in place the conditions necessary for reaching the **ambitious goals** contained in The Hague Programme and allow its **full implementation**. The current Treaties provide for the possibility to overcome the difficulties mentioned in Chapter 3.1 by the use of the so-called "**bridging clauses**" contained in Articles 42 TEU and 67(2), second indent, TEC.

Article 42 TEU provides for the right of initiative of the Commission (or of a Member State) to propose that action in areas referred to under Article 29 TEU (**fight against terrorism and crime through actions in the field of law enforcement and criminal matters**) falls under title IV TEC and is subject to the same institutional framework as other "communitarised" Freedom, Security and Justice policies. The decision on the use of Article 42 TEU is subject

to **unanimity** within the Council, after consulting the European Parliament, and adoption in accordance with **Member States' constitutional requirements**.

Article 67(2), second indent, TEC allows the Council, acting unanimously after consultation of the European Parliament, to decide that **legal migration** becomes governed by **co-decision procedure**, ensuring therefore a proper democratic scrutiny by the European Parliament.

Article 67(2), second indent, TEC requires the Council, acting unanimously after consultation of the European Parliament, to adapt the provisions of Article 68 EC relating to the powers of the Court of Justice; this should be done by deciding that **preliminary ruling competence** of the Court of Justice under "communitarised" Freedom, Security and Justice policies be align to the one provided for under other EC policies, ensuring an enhanced role of the Court of Justice<sup>10</sup>.

The Commission believes that the **bridging clauses** represent an appropriate tool at disposal of the Union and the Member States to reach the ambitious goal of better shaping the decision-making in the area of Freedom, Security and Justice.

The real added value of the application of the bridging clauses would be to apply the **"Community" method** to the policies in this area, which has proven to ensure **more efficiency, more transparency and more accountability**. The best example of the benefits of the "Community" method is the recent adoption by the European Parliament and Council of the Commission proposal for a Directive on retention of communication data, agreed upon only three months after the Commission proposal.

By applying the "Community" method, the following advantages would be obtained:

- increasing the efficiency, the transparency and the accountability of the legislative procedures;
- generalising the **Community legislative instruments** (Regulations, Directives, Decisions under the current Treaties);
- acknowledging the legislative co-decision power to the democratically elected representatives of EU citizens through the European Parliament;
- guaranteeing a "European dimension" of the legislative proposals through the right of initiative of the Commission and the use of effective impact assessment tools;
- favouring both consensus and high standard achievements through the **qualified majority vote**;
- ensuring a proper judicial dialogue with national jurisdiction through the **preliminary ruling mechanism** and monitoring of implementation by the Member States through the **infringement procedure**.

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<sup>10</sup> Given that, despite the expiration of the transitory period on 1 May 2004, the Council has not yet taken up work to fulfil its obligation to adapt the provisions of Article 68 EC, the Commission addresses to the European Parliament and the Council, in parallel to the present communication, a specific Communication on that subject.

Moreover, use of the bridging clauses for police and judicial cooperation matters would certainly be critical in addressing the question of the delimitation between first and third pillars, which is far from being hypothetical as **recent rulings** of the Court of Justice (in the **environmental crime** and the **Passenger Name Record** cases) clearly show. Dealing with these matters under a **single legal framework** would certainly lead to more legal certainty and efficiency.

Article 42 TEU, in particular, allows for certain **flexibility** notably in terms of definition of the relevant voting conditions to be applied to the areas transferred from Title VI TEU to Title IV TEC. The Commission believes that reflection and discussion should be launched with Member States and with the EU Institutions to make the **best use** of the different **options** offered by Article 42.

#### 4. CONCLUSIONS

European citizens urge the EU to put in place the necessary measures to make Europe a safe place to live in. The Union must be able to respond rapidly, guaranteeing at same time that European citizens may exercise their individual freedoms.

The Union and the Member States must respond together to this challenge because terrorism and organised crime do not respect borders or procedures. Implementing and developing further The Hague Programme is a common goal, which imposes effective decision-making and clear political priorities.

Identifying the next steps to **move forward European integration** in Freedom, Security and Justice and **streamlining decision-making procedures** should be pursued in parallel. The Commission believes it represents the only sustainable way forward for progress in this policy area.

The Commission intends, on the basis of its assessment of the state of implementation of The Hague Programme, to **launch a discussion in partnership** with the other EU Institutions and the Member States on how to bring forward the policy agenda in a way to address the expectations of EU citizens and improve the functioning of the area of Freedom, Security and Justice

On the basis of the **outcome of reflection and discussion** during the incoming Finnish Council Presidency about the benefits of using the current Treaties, **the Commission is ready to take initiatives** under Article 42 TEU and Article 67(2), second indent, TEC<sup>11</sup>.

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<sup>11</sup> Without prejudice to the specific initiative taken in the Commission's communication referred to in footnote 6 above.